

Abdul Majeed, vs Santhosh.,

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr. Justice D. K. Singh

Appeal No. : OP (MAC)/1/2023

Appellant : Abdul Majeed,

Respondent : Santhosh.,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
THURSDAY, THE 30TH DAY OF NOVEMBER 2023/9TH
AGRAHAYANA, 1945 OP (MAC) NO. 1 OF 2023 AGAINST EXT.P5
ORDER DATED 26.02.2021 IN UN-NUMBERED I.A. IN OP(MV) NO.
1190/2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL VADAKARA
PETITIONER/PETITIONER/2ND RESPONDENT: ABDUL MAJEED,
AGED 48 YEARS S/O MOIDEENKUTTY, PANANKAI(H), KAITHAPOYIL
P.O., THAMARASSERY TALUK, KOZHIKODE DISTRICT., PIN - 673023
BY ADVS. P.K.IBRAHIM SREEJI K.B.
RESPONDENTS/RESPONDENTS/PETITIONERS AND 1ST
RESPONDENT: 1 SANTHOSH., AGED 51 YEARS S/O LATE

KARUNAKARAN, KATTAMVALLIKKAL HOUSE, PANANGAD P.O., NIRAMALLOOR, VIA BALUSSERY, PIN - 673612 2 JAYANTHI AGED 47 YEARS D/O LATE KARUNAKARAN, KATTAMVALLIKKAL HOUSE, PANANGAD P.O., NIRAMALLOOR, VIA BALUSSERY, PIN - 673612 O.P.(MAC.) No.1/2023 2 3 ABDUL RAHIMAN, AGE NOT KNOWN S/O MUHAMMED, PONNANKAYI HOUSE, P.O. KATHAPOYIL, KODUVALLY, PIN - 673572 THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: O.P.(MAC.) No.1/2023 3

JUDGMENT

The present original petition has been filed impugning Ext.P5 order dated 26.02.2021 in O.P.(M.V.)No.1190/20211 whereby the application filed under Order IX Rule 13 of the Code of Civil Procedure, (for short, 'the CPC') for setting aside the award dated 19.03.2016 passed by the Motor Accidents Claim Tribunal, Vatakara in O.P.(M.V.) No. 1109/2011, has been dismissed on the ground that the said application was filed after four years from the date of the award and no application or prayer to condone the delay was filed. Even after the lapse of sufficient time, no application for condoning the delay in filing the application under Order IX Rule 13 of the CPC was filed.

2. The petitioner was one of the respondents before the

Motor Accidents Claim Tribunal in the O.P.(M.V.) No. 1109/2011. The legal heirs of the deceased Sarojini filed the said petition and summons were issued to the petitioner and the owner of the vehicle. However, neither the petitioner nor the owner of the vehicle responded to the said summons and they were set ex-parte. The claim petition was filed in the year 2011 which was finally O.P.(MAC.) No.1/2023 4 decided on 19.03.2016. The Tribunal awarded a sum of Rs. 4,62,000/- as compensation to the legal heirs of the deceased with interest at the rate of 9% per annum.

3. I have mentioned above that the petitioner filed the

application after four years from the date of the award. The petitioner did not file any application for condoning the delay in filing the application under Order IX Rule 13 of the CPC. The learned counsel for the petitioner submits that the vehicle was insured. However, the Insurance Company was not made a party and the owner and the petitioner, who was the driver have been

held liable to pay the entire amount of the award.

4. It is further submitted that the petitioner had gone abroad in relation to his livelihood and therefore, the summons issued by the Motor Accidents Claim Tribunal in O.P.(M.V.) No. petitioner was set ex-parte.

5. The fact remains that the claim petition was filed way

back in 2011 and the award came to be passed on 19.03.2016 and the application for setting aside the award was filed only in 2020, O.P.(MAC.) No.1/2023 5 that too without accompanying any application for condoning the delay in filing the application under Order IX Rule 13 of the CPC. I find no error of jurisdiction or of law conferred on the Tribunal rejecting such an application vide Ext.P5 impugned order. This original petition has no merits and subsequently, it is dismissed. Sd/-
DINESH KUMAR SINGH JUDGE DCS/01.12.2023 O.P.(MAC.) No.1/2023 6
APPENDIX PETITIONER EXHIBITS EXHIBIT-P1 TRUE COPY OF THE INSURANCE POLICY OF THE VEHICLE BEARING NO. KL-11-S-1989 HAVING POLICY COVERAGE FROM 17.10.2009 TO 16.10.2010 EXHIBIT-P1(A) TYPED COPY OF EXHIBIT-P1 EXHIBIT-P2 TRUE COPY OF THE EX-PARTE AWARD DATED 19.03.2016 PASSED BY THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, VATAKARA IN OP(MV)NO.1190/2011 EXHIBIT-P3 TRUE COPY OF THE DEMAND NOTICE RRC

NO.2019/9769/11 DATED 28.10.2019 BY THE DEPUTY TAHSILDAR, THAMARASSERY SERVED ON THE PETITIONER ON 12.02.2020 EXHIBIT-P3(A) ENGLISH TRANSLATION OF EXHIBIT-P3 EXHIBIT-P4 TRUE COPY OF THE AFFIDAVIT AND THE PETITION DATED 12.03.2020 (UN-NUMBERED) FILED BY ADVOCATE A.BASHEER TO SET-ASIDE EX-PARTE ORDER IN OP(MV)NO.1190/2011 EXHIBIT-P5 TRUE COPY OF THE ORDER DATED

26.02.2021 DISMISSING EXT.P4

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