

Benny John Vs. Shone v.Thomas

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Court : Kerala

Decided On : Aug-13-2015

Judge : Honourable Mr. Justice Anil K.Narendran

Appellant : Benny John

Respondent : Shone v.Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN THURSDAY, THE 13TH DAY OF AUGUST 2015 22ND SRAVANA, 1937 WP(C).No. 22901 of 2007 (B) ----- PETITIONER(S): ----- BENNY JOHN, S/O. JOHN, KORAMANGALATH HOUSE, THATTEKKANNI, KANJIKUZHI IDUKKI. BY ADVS.SRI.R.RAMADAS SRI.C.DILIP RESPONDENT(S): ----- 1. SHONE V. THOMAS, VADAKKETHARA HOUSE, ETTICHUVADU PO, RANNI PATHANAMTHITTA.

2. BIJO MATHEW, S/O. THOMAS MATHEW, BHAGAVATHIKUNNEL HOUSE, KOLANI PO, THODUPUZHA NOW RESIDING AT "KRIPALAYAM", MANACADU, KANJIRAMPARA THODUPUZHA.

3. THE BRANCH MANAGER, THE ORIENTAL INSURANCE COMPANY LIMITED, THIRUVALLA. R2 BY SRI.C.A.CHACKO R3 BY ADV. SRI.MATHEWS JACOB (SR.) THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON1308-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO.22901/2007 APPENDIX PETITIONER'S EXHIBITS: P1: COPY OF THE ORIGINAL PETITION IN OP(MV) 431/2005 BEFORE THE M.A.C.T., MUVATTUPUZHA P2: COPY OF THE 'b' DIARY SHOWING THE PROCEEDINGS IN OP(MV) 431/2005 OF MACT, MUVATTUPUZHA P3: COPY OF THE POLICY ISSUED BY THE 3D RESPONDENT FOR THE PERIOD STARTING FROM 1903.2004 TO 1803.2005 P4: COPY OF THE

ORDER

IN I.A.1254/2007 IN OP(MV) 431/2005, MACT MUVATTUPUZHA DATED 1605.2007 P5: COPY OF THE

ORDER

IN I.A. 1255/2007 IN OP(MV) 431/2005, MACT, MUVATTUPUZHA DATED 1605.2007 RESPONDENTS' EXHIBITS: NIL //TRUE COPY// P.A. TO JUDGE JV ANIL K. NARENDHAN, J.

----- W.P.(C) No.22901 of 2007
----- Dated this the 13th day of August, 2015

JUDGMENT

The petitioner, who is the claimant in O.P.(M.V.) No.431/2005 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha, has filed this writ petition seeking an order to quash Exts.P4 and P5 orders passed by the Tribunal in I.A.Nos.1254/2007 and 1255/2007 and for an order to allow the aforesaid interlocutory application.

2. Going by the averments in the writ petition, the petitioner has approached the Tribunal in O.P.(M.V.) No.431/2005 claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in a motor accident occurred on 07.12.2004 while he was riding a motor cycle bearing registration No.KL-7/1249 from Kothamangalam to Thattekkanni. When the motor cycle reached the place of occurrence, a lorry bearing registration No.KL-7/D-6291 driven by the 2nd respondent hit the motor cycle causing serious injuries to the petitioner. The 1st respondent is the insured and the 3rd W.P.(C) No.22901/2007 2 respondent is the

insurer respectively of the aforesaid lorry bearing registration No.KL-7/D-6291.

3. A claim petition was filed on 18.04.2005. Though notice was served on respondents 2 and 3, the same was not complete in respect of the 1st respondent. In spite of repeated steps, service of notice on the 1st respondent could not be completed. On 14.03.2007, the Tribunal declined relief against the 1st respondent on the ground that the petitioner has not taken steps to serve notice on the 1st respondent in his correct address. In such circumstances, I.A.No.1254/2007 was filed seeking an order to review the earlier order passed by the Tribunal on 14.03.2007, alongwith I.A.No.1255/2007 seeking an order to serve notice on the 1st respondent by paper publication in a daily newspaper circulating in the locality in which the 1st respondent is last known to have actually and voluntarily resided and also by affixture in the Court premises. The aforesaid applications were dismissed by order dated 16.05.2007, vide endorsement made on the dockets of Ext.P4 and P5 applications, and it is aggrieved by the same, the petitioner is before this Court in this writ petition, seeking various reliefs. W.P.(C) No.22901/2007 3 4. In spite of service of notice through paper publication, none appears for the 1st respondent.

5. I heard the arguments of the learned counsel for the petitioner, the learned counsel for the 2nd respondent and also the learned Standing Counsel appearing for the 3rd respondent insurer.

6. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of the order dated 16.05.2007 of the Tribunal disposing Exts.P4 and P5 applications.

7. From the pleadings and documents on record, it is evident that, the address of the 1st respondent shown in the cause title of the claim petition is his address as shown in Ext.P3 insurance policy. Before the Tribunal, in spite of repeated steps, service of notice could not be effected on the 1st respondent. As evident from Ext.P2 'B' Diary, on 14.03.2007 the Tribunal declined relief against the 1st respondent on the ground that the petitioner took notice to the said respondent in the old address. A reading of Ext.P2 proceedings would show that there was an earlier order dated 24.05.2006 by which the petitioner was directed to take fresh

steps in the correct address of the 1st W.P.(C) No.22901/2007 4 respondent. Going by the averments in the affidavit accompanying Ext.P5 application the specific case of the petitioner is that the address of the 1st respondent shown in the cause title is that shown in Ext.P3 insurance certificate issued by the 3rd respondent insurer. The affidavit would further show that, in spite of earnest efforts the petitioner could not find out the present address of the 1st respondent. Therefore, he made Exts.P4 and P5 applications seeking an order to review the earlier order passed by the Tribunal dated 14.03.2007 declining relief against the 1st respondent and also for an order to effect service of notice on the 1st respondent by paper publication. In spite of the fact that the none of the respondents have chosen to file any counter affidavit to Exts.P4 and P5, the Tribunal by order dated 16.05.2007 dismissed those applications.

8. The reason stated by the Tribunal for dismissing I.A.No.1254/2007 is that the petitioner has not taken any steps in the correct address of the 1st respondent. I have already noticed the address of the 1st respondent shown in the cause title is that shown in Ext.P3 certificate of insurance. The specific case of the petitioner is that, in spite of his earnest efforts, the address of the 1st respondent could not be traced out. In such W.P.(C) No.22901/2007 5 circumstances, the petitioner is fully justified in filing Exts.P4 and P5 applications seeking an order to review the order of the Tribunal dated 14.03.2007 and to effect service of notice on the 1st respondent by paper publication. In such circumstances, the reasoning of the Tribunal in order dated 16.05.2007 for rejecting Exts.P4 and P5 applications cannot be sustained. Therefore the said orders are set aside. In the result, I.A.Nos.1254/2007 and 1255/2007 will stand allowed and the Tribunal shall permit the petitioner to effect service of notice on the 1st respondent by paper publication. The Writ Petition is disposed of as above. SD/- ANIL K. NARENDRAN, JV JUDGE