

(2011) 01 KL CK 0093
In the High Court Of Kerala
Case No : OP (MACT) No. 412 of 2011 (O)

Janani

APPELLANT

Vs

Santha Mathai, Saramma Varkki, Vims Mathai and Vimal
Mathai

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 01 KL CK 0093

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : M.K. Chandra Mohandas, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Ravindran, J.—The Petitioner is the owner of a stage carriage that was involved in an accident on 18.7.1987. Late Mathai, who was traveling in a motor bike succumbed to the injuries sustained by him in the said accident. His legal heirs, who are the Respondents herein, thereupon filed O.P(MV) No. 1373 of 1987 in the Motor Accidents Claims Tribunal, Kollam. The said case was later transferred to the Motor Accidents Claims Tribunal at Punalur where it was taken on file and numbered as O.P.(MV) No. 50 of 1993. By award passed on 26.10.1994 the Tribunal awarded the sum of Rs. 2,32,250/- with interest and costs as compensation to the Respondents. Aggrieved thereby the claimants as well as the Petitioner herein filed appeals in this Court. Though a copy of the judgment of this Court delivered on 3.9.2003 is not placed on record, the Petitioner states that this Court enhanced the compensation to Rs. 4,01,000/-, but limited the compensation payable by the insurer of the Petitioner's vehicle to 50% on the ground that the deceased was also negligent. It is stated that the SLP filed by the Petitioner was dismissed by the Apex Court on 13.7.2005 and thereupon the Respondents filed E.P. No. 61 of 2007 in the Motor Accidents Claims Tribunal, Punalur to execute the award. The Petitioner proceeds to state

that though she had engaged a counsel and had entered appearance on 17.12.2007 she was set ex parte on 1.2.2008 for the reason that the counsel did not appear, that when the counsel enquired about the status of the case he was informed that the case was posted to 31.3.2008, but the Tribunal had in fact set the Petitioner ex parte, that the said fact was known to the Petitioner and her counsel only on 31.3.2008, that the very next day, namely 2.4.2008 Ext.P1 application was filed to set aside the order setting the Petitioner ex parte along with Ext.P2 petition to condone the delay of 62 days in filing the said application. By Ext.P3 order passed on 26.11.2010 the Motor Accidents Claims Tribunal, Punalur dismissed the application to condone the delay of 62 days in filing the application to set aside the ex parte order. Consequently Ext.P1 application to set aside the ex parte order was also dismissed by Ext.P4 order. Exts.P3 and P4 are under challenge in this writ petition.

2. Sri.M.K. Chandramohan Das, learned Counsel appearing for the Petitioner, submitted that after the SLP was dismissed by the Apex Court the Petitioner had paid the sum of Rs. 2 lakhs, that the Petitioner needs only some time to pay the balance amount and that as per the statement filed by the Respondent before the Tribunal the balance amount payable with interest is only Rs. 2,63,163/-.

3. I have considered the submissions made at the Bar by Sri.M.K. Chandramohan Das, learned Counsel appearing for the Petitioner. The award directing payment of compensation to the Respondents herein was passed on 26.10.1994. More than sixteen years have passed thereafter. The award passed by the Motor Accidents Claims Tribunal was upheld by this Court by judgment delivered on 3.9.2003. The SLP filed before the Apex Court was dismissed on 13.7.2005. Thereafter also more than five years have passed. In such circumstances I am not satisfied that the request made by the Petitioner for time to pay the award amount is bona fide. Since the award passed by the Motor Accidents Claims Tribunal as modified by this Court has become final, the Petitioner is liable to pay the compensation awarded with interest. In such circumstances as more than five years have passed after the decision of the Apex Court I find no reason to permit the Petitioner to pay the amount in instalments.

The writ petition fails and is accordingly dismissed.