
(2011) 02 KL CK 0101
In the High Court Of Kerala
Case No : OP (MACT) No. 123 of 2011 (O)

O.P.John

APPELLANT

Vs

Babu @ Francis M.J and National Insurance Company Ltd.

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Citation : (2011) 02 KL CK 0101

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

Bench : Single Bench

Advocate : Manoj P. Kunjachan, for the Appellant; Lal George, for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The Petitioner is the claimant in O.P.(MV) No. 2411 of 2004 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The claim petition was filed seeking payment of Rs. 1 lakh as compensation for the injuries sustained by the Petitioner in a motor accident. The first Respondent herein is the owner and driver of the offending vehicle and Respondents 2 and 3 are the insurers of the vehicle which the Petitioner was driving and the offending vehicle. Since the first Respondent did not enter appearance and file written statement, he was set ex parte on 3.10.2008. Since the learned Counsel for the Petitioner did not appear and there was no representation, the claim petition was dismissed for default on that day by Ext.P1 order. More than one year thereafter, the Petitioner filed Ext.P2 petition (I.A. No. 830 of 2010) to set aside the order dismissing the claim petition for default accompanied by Ext.P3 petition (I.A. No. 829 of 2010) to condone the delay of 456 days in filing the former application. Notice on the applications was served on the first Respondent, who again did not appear. Respondents 2 and 3 were heard. By Ext.P4 order passed on 11.8.2010 the Motor Accidents Claims Tribunal dismissed both the applications. Hence this writ petition challenging Exts.P1 and P4 orders.

2. I heard Sri. Manoj P. Kunjachan, learned Counsel appearing for the Petitioner

and Sri. Lal George, learned Counsel appearing for Respondents 2 and 3. The counsel for the Petitioner had averred in the affidavit filed by him in support of the applications that due to an inadvertent omission his clerk did not notice the posting of the case to 3.10.2008, that after the posting on 5.5.2008 he had shifted his office from Layam Road to Mullassery Canal Road, that in the process the case escaped his attention, that in January 2009 his clerk left him on securing employment in government service and that he was unaware of the dismissal of the claim petition for default or the posting of the case on 3.10.2008. By the impugned order the Tribunal dismissed the applications holding that the explanation offered for the delay is not acceptable. It was held that the counsel and the party were not vigilant in prosecuting the case. The fact that the Petitioner had sustained injuries in the accident that took place on 3.9.2003 is not in dispute. The insurer does not also dispute the fact that the offending vehicle was covered by a valid policy of insurance. In such circumstances I am of the opinion that the Tribunal ought to have afforded an opportunity to the Petitioner to have his claim decided on the merits. The Tribunal could have even while restoring the claim petition to file directed that the Petitioner will not be entitled for interest during the period when the claim petition stood dismissed for default. If such a course of action had been adopted it would not have caused any prejudice to the insurer and would have at the same time protected the interests of the Petitioner. I am therefore, of the considered opinion that Ext.P4 order cannot be sustained.

In the result I allow the writ petition, quash Exts.P1 and P4 orders and restore O.P(M.V) No. 2411 of 2004 to file. The Tribunal shall dispose of the claim petition expeditiously and in any event within six months from the date of receipt of a copy of this judgment. It is however, clarified that in the event of the claim petition being allowed the Petitioner will not be entitled to interest on the compensation awarded during the period from 3.10.2008 till today. The parties shall appear before the Motor Accidents Claims Tribunal, Ernakulam on 14.3.2011.