
(2011) 02 KL CK 0069
In the High Court Of Kerala
Case No : OP (MACT) No. 485 of 2011 (O)

Saji T.N.

APPELLANT

Vs

Baise Abraham and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 33, 7

Citation : (2011) 02 KL CK 0069

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

Bench : Single Bench

Advocate : Dilish John, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Ravindran, J.—The Petitioner was the driver of an autorickshaw bearing registration No. KL7/AD 1882 which was involved in an accident on 20.10.2003. In that accident the first Respondent herein, who was riding a motor bike, sustained injuries. The first Respondent thereupon filed O.P(MV) No. 2162 of 2003 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. The Petitioner did not enter appearance in spite of receipt of notice. He was therefore set ex parte. The Tribunal held on an analysis of the evidence, oral and documentary, available in the case that the accident occurred due to the rash and negligent driving of the autorickshaw by the Petitioner. Though the vehicle was insured, the insurer contended that the autorickshaw had no valid permit on the date of the accident and therefore the insurer is not liable to pay the compensation. By Ext.P1 award passed on 11.3.2008 the Tribunal held that the insurer is liable to pay the compensation in view of the policy of insurance and directed the insurer to pay the amount awarded as compensation to the first Respondent. The Tribunal however permitted the insurer to recover the amount paid as compensation from the owner and driver. Ext.P1 award has become final. The insurer paid the amount in terms of the award and thereafter filed E.P. No. 102 of 2010 for recovery of the amount deposited with interest. In the execution

petition the insurer prayed for the issuance of a revenue recovery certificate to the District Collector, Ernakulam for realisation of the amount with interest. A certificate was accordingly issued and thereafter Ext.P3 series notices were issued under Sections 7 and 33 of the Kerala Revenue Recovery Act. In this writ petition the Petitioner challenges the revenue recovery proceedings initiated against him and seeks the following reliefs:

- a) Call for the records from the Motor Accidents Claims Tribunal, Perumbavoor in O.P.(MV) No. 2162/2003 and in E.P.102/2010 and reverse the award dated 11.3.2008 by allowing the petition and dismiss the claim petition as well as the permission granted to the 3rd Respondent to realise the compensation amount paid to the 1st Respondent from the Petitioner.
- b) To issue an order or direction to the Hon"ble M.A.C.T, Perumbavoor to stay the proceedings initiated as per E.P. No. 102/2010 in O.P.(MV) No. 2162/2003 until the disposal of this original petition.
- c) To issue an order or direction to the Deputy Tahsildar, Kunnathunadu Taluk to stay the revenue recovery proceedings initiated against the Petitioner's property situated in Kombanadu Village.

It is evident from the pleadings and the materials on record that the Petitioner has not taken steps to have Ext.P1 award set aside. As on today the rights of parties stand concluded by Ext.P1 award. In such circumstances the insurer is entitled to recover the compensation paid by it from the owner and driver of the vehicle. That being the situation no relief can be granted to the Petitioner.

The writ petition fails and is accordingly dismissed.