

(2023) 07 KL CK 0040

In the High Court Of Kerala

Case No : Original Petition (MAC) No.99 Of 2023

Shainas

APPELLANT

Vs

Parvathy. L

RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2023) 07 KL CK 0040

Hon'ble Judges : C.S Dias, J

Bench : Single Bench

Advocate : Liju.V.Stephen, Indu Susan Jacob, P.M.Hridya, P K Manoj Kumar

Final Decision : Allowed

Judgement

C.S Dias, J

1. The original petition is filed to direct the Motor Accidents Claims Tribunal(in short, 'Tribunal'), Thiruvananthapuram, to consider and dispose of Review Petition No.2830/2022 (Ext P3) in O.P. (MV)No.1121/2014, expeditiously, and until such time, to stay the recovery proceedings initiated against the petitioner.

2. The petitioner's case is that he was the owner-cum-driver of the motor vehicle bearing Reg.No.KL 25E 7772, which met with a road accident on 24.08.2014, causing injuries to the first respondent. The first respondent filed O.P. (MV)No.1121/2014 before the Tribunal for compensation. The Tribunal, by Ext P2 common award, allowed the claim petition and directed the second respondent – insurer – to pay the compensation amount to the first respondent and recover it from the petitioner. The Tribunal passed the direction on the finding that the petitioner did not have a valid driving licence and therefore, there was violation of the insurance policy conditions. The petitioner asserts that there is an error apparent on the face of Ext P2 award, because the petitioner had a valid driving licence as on the date of accident which is reflected in Ext P1 driving licence particulars. Actually, Ext P1 was produced before the Tribunal and was marked as

Ext B2 in evidence. However, the Tribunal failed to appreciate Ext B2 in its proper perspective. Even though the petitioner has preferred Ext P3 review petition before the Tribunal in the light of the law laid down by this Court in *Oriental Insurance Company Ltd. v. Santhoshkumar & Anr.* [2021 KHC 747], the Tribunal is not considering the said application. On the contrary, the second respondent has initiated revenue recovery proceedings to recover the compensation amount from the petitioner. The inaction on the part of the Tribunal is causing severe prejudice and hardship to the petitioner. Hence, the original petition.

3. Heard; Sri. Liju.V.Stephen, the learned counsel appearing for the petitioner and Sri. P.K. Manojkumar, the learned Standing Counsel appearing for the second respondent. As the second respondent has admitted the insurance policy, notice to the first respondent is dispensed with .

4. The petitioner's contention is that he had a valid driving licence on the date of the accident i.e., on 24.08.2014. Therefore, the finding of the Tribunal in Ext P2 award that the petitioner violated the insurance policy conditions is erroneous and wrong.

5. In *Oriental Insurance Company Ltd. v. Santhoshkumar & Anr.* (supra) this Court has categorically declared that in the case of 'pay and recovery proceedings', it would always be open to the owner of the vehicle to file a review petition before the Tribunal, instead of resorting to the remedy of the appeal.

6. It is relying on the above decision that the petitioner has preferred Ext P3 review petition. Yet, the Tribunal is not considering the same. The petitioner has also filed Ext P4 application to condone the delay in filing the review petition.

7. Having considered the pleadings and materials on record, and the law laid down by this Court in *Oriental Insurance Company Ltd. v. Santhoshkumar & Anr.* (supra), I am definitely of the view that the Tribunal is to be directed to consider and dispose of Exts P3 & P4, expeditiously, and until such time, to defer further coercive proceedings.

Resultantly, in exercise of the supervisory powers of this Court under Article 227 of the Constitution of India, I allow the original petition as follows:

(i) The Motor Accidents Claims Tribunal, Thiruvananthapuram, is directed to consider and dispose of Ext P3 review petition and Ext P4 delay petition, in accordance with law and as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment, after affording the petitioner and the second respondent an opportunity of being heard.

(ii) Until such time orders are passed on Exts P3 & P4, all further proceedings pursuant to Ext P5 notice shall stand deferred.