

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 16<sup>TH</sup> DAY OF FEBRUARY 2023 / 27TH MAGHA, 1944

OP (MAC) NO. 34 OF 2023

AGAINST THE ORDER IN I.A.NO.27 OF 202 IN OPMV 1900/2018 OF  
MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM  
PETITIONER/PETITIONER/CLAIMANT:

NITIN JOHN

AGED 36 YEARS

S/O. LONAN ANTONY, PUTHENPURAKKAL HOUSE,  
VEZHAPPARAMBU P.O., MULAMTHURUTHY, ERNAKULAM DISTRICT,  
PIN - 682314.

BY ADVS.

E.G.GORDEN

S.K.KRISHNAKUMAR

V.M.MARY HARSHA

BONIFUS P.A.

RESPONDENTS:

- 1 MAMMAD AAHIEF  
AGED 34 YEARS  
S/O. M.M. SALEEM, DASAVAL ROAD, MADIKKERI, KODAGU,  
KARNATAKA STATE, PIN - 571201.
- 2 M.A. MUSTHAQUE  
S/O. M.A HAMSA, WARD NO. 2, MAHADEV PET ROAD, MADIKKERI,  
KODAGU DISTRICT, KARNATAKA STATE, PIN - 571201.
- 3 NEW INDIA ASSURANCE COMPANY LIMITED  
BRANCH OFFICE, MADIKKERI, KODAGU, PIN - 571201.

SRI.LAL K JOSEPH, SC

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 16.02.2023  
ALONG WITH OP(MAC) NO.35 OF 2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 16<sup>TH</sup> DAY OF FEBRUARY 2023 / 27TH MAGHA, 1944

OP (MAC) NO. 35 OF 2023

AGAINST THE ORDER IN I.A.NO.26 OF 2020 IN OPMV 1899/2018 OF  
MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

PETITIONER/PETITIONER/CLAIMANT:

TEENA ANTONY  
AGED 34 YEARS  
W/O. NITIN JOHN, VALIYAVEETIL HOUSE,  
T & R CROSS ROAD, THOPPUMPADY, ERNAKULAM DISTRICT,  
PIN - 682005.

BY ADVS.  
E.G.GORDEN  
S.K.KRISHNAKUMAR  
V.M.MARY HARSHA  
BONIFUS P.A.

RESPONDENTS/RESPONDENTS/RESPONDENT:

- 1 MAMMAD AAHIEF  
AGED 34 YEARS  
S/O. M.M. SALEEM, DASAVAL ROAD, MADIKKERI, KODAGU,  
KARNATAKA STATE, PIN - 571201.
- 2 M.A MUSTHAQUE  
S/O. MA HAMSA, WARD NO. 2, MAHADEVPET ROAD, MADIKKERI,  
KODAGU DISTRICT, KARNATAKA STATE, PIN - 571201.
- 3 NEW INDIA ASSURANCE COMPANY LIMITED  
BRANCH OFFICE, MADIKKERI, KODAGU, PIN - 571201.

SRI.LAL K JOSEPH, SC

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 16.02.2023  
ALONG WITH OP(MAC) NO.34 OF 2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

## **JUDGMENT**

O.P(MAC) No.34 of 2023 is filed by the claimant in O.P.(M.V.) No.1900 of 2018 on the file of the Motor Accidents Claims Tribunal, Ernakulam. O.P(MAC) No.35 of 2023 is filed by the claimant in O.P.(M.V.) No.1899 of 2018 on the file of the Motor Accidents Claims Tribunal, Ernakulam

2. These petitions have been filed challenging the orders passed by the Tribunal restoring the petitions filed by the petitioners, which were dismissed for default by excluding interest for the period from 06.02.2020 to 30.11.2021.

3. As common issues are involved, both these petitions are taken up and disposed of by a common judgment.

4. I have heard Sri.E.G.Gorden, the learned counsel for the petitioners, and Sri. Lal K. Joseph, the learned Standing Counsel appearing for the Insurance Company. For the sake of clarity, the parties and Exhibits shall be described as referred to in O.P.(MAC) No.35/2023.

5. The Tribunal has excluded interest on the premise that though notice was ordered on 06.02.2020, the steps could only be completed in the

month of December, 2020. The Tribunal was of the view that for the delay that has occasioned, the Insurance Company shall not be burdened.

6. I have considered the submissions and gone through the proceedings, which have been produced as Exts.P1 and P3. From Ext.P1, it appears that the applications were dismissed for default on 07.01.2020. The application for restoration was filed by the petitioner on 05.02.2020, well within time. Immediately thereafter, the pandemic struck, and the lockdown was imposed. It appears from Ext.P4 impugned order that the petitioner had, in fact, taken steps to serve notice to the respondents, and notice was ordered on 06.02.2020. The proceedings sheet reveals that for the period from 26.03.2020 to 05.01.2021, though there were five postings, the case was adjourned through notification. I find that on 05.03.2021, the notice was served on the 1st respondent, and the notice to the 2nd respondent was returned as 'not known' as he was a resident of Karnataka. The petitioner was directed to produce address proof, and the case was adjourned to 27.05.2021. The case was then adjourned by notification to 29.06.2021. Thereafter, on 04.08.2021 and 08.11.2021, the petitioner was directed to take steps to serve notice to the 2nd respondent, and it appears that steps were taken only on 30.11.2021.

7. Insofar as O.P(M.V.)No.1900/2018 is concerned, the Tribunal has ordered the exclusion of interest for the period from 07.01.2020 to 07.10.2022. However, from the proceedings sheet, it appears that when the matter had come up on 07.01.2020, the claimant sought time, and the same was rejected. The Original Petition was consequently dismissed. The application for restoration was filed on 05.02.2020. Thereafter, the pandemic struck, and the case was adjourned by notification. The proceedings sheet reveals that on 01.07.2022, the 2nd respondent had appeared, and on 01.08.2022, the 3rd respondent entered appearance. Obviously, steps were taken much prior to 24.12.2021. If that be the case, I fail to understand the reason why interest was excluded till 07.10.2022.

8. Having gone through the records, I find no justification on the part of the Tribunal in excluding interest as ordered. The petitioners were claiming compensation for the injuries sustained by them, and the records do not reveal that there was any intentional laches or lack of diligence on their part. At any rate, for the failure of the Advocate representing the claimant to take steps in time, the Tribunal was not justified in ordering that the interest should be excluded.

In that view of the matter, these petitions are disposed of by ordering as under:

a) Ext.P4 order dated 07.10.2022 in I.A.No.27/2020 in O.P.(M.V.) No.1900 of 2018 on the file of the Motor Accidents Claims Tribunal, Ernakulam, will stand set aside to the extent that it orders that interest for the period from 07.01.2022 to 07.10.2022 shall stand excluded.

b) Ext.P4 order dated 02.11.2022 in I.A.No.26/2020 in O.P.(M.V.) No.1899 of 2018 on the file of the Motor Accidents Claims Tribunal, Ernakulam, will stand set aside to the extent that it orders that interest for the period from 06.02.2020 to 30.11.2021 shall stand excluded.

Sd/-

**RAJA VIJAYARAGHAVAN V  
JUDGE**

sr



