

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944
OP (MAC) NO. 56 OF 2022
AGAINST THE ORDER/JUDGMENT IN EP 20/2021 OF DISTRICT COURT &
SESSIONS & MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD

PETITIONER:

P.B. AHAMED
AGED 65 YEARS
S/O. BEERAN MOIDEEN, TAJ NAGAR,
CHENGALA VILLAGE AND POST,
KASARAGOD TALUK AND DISTRICT., PIN - 671541
BY ADVS.
AVM.SALAHUDIN
A.D.DIVYA

RESPONDENT:

ABDUL MAJEED
AGED 43 YEARS
S/O. C.M. MOIDEEN KUNHI,
CHERIYAVEEDU, PEEDIGA HOUSE,
CHEROOR, CHENGALA VILLAGE,
KASARAGOD TALUK AND DISTRICT., PIN - 671541
BY ADVS.
SABU GEORGE
P.B.KRISHNAN(K/1193/1994)
P.B.SUBRAMANYAN(K/1145/2009)
MANU VYASAN PETER(K/000652/2013)

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 30.09.2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

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O.P.(MAC).No. 56 of 2022

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Dated this the 30th day of September 2022

J U D G M E N T

The above original petition (MAC) is filed with the following prayers:

“ To set aside the order dated 29.03.2022 in E.P. No. 20/2021 in Op(MV) No. 49/2006 of the Motor Accidents Claims Tribunal, Kasaragod.

2. The order dated 29.03.2022 in E.P. No.20/2021 in O.P.(MV) No.49/2006 of the Motor Accidents Claims Tribunal, Kasaragod is challenged in this original petition. The contention of the petitioner is that, Section 59 of the Civil Procedure Code is not considered by the tribunal while passing the order.

3. This Court perused Ext.P5 order. The tribunal directed the petitioner to file an affidavit and the same is also not filed. In such circumstances, the petition is

allowed and warrant is issued. Therefore, this Court cannot accept the contention of the petitioner. But, the petitioner submitted that he will pay a portion of the amount and the matter may be remanded so that he can raise all the contentions before the tribunal. Therefore, in the light of the same, I think the impugned order can be set aside and the matter can be remitted back to the tribunal for afresh consideration.

4. Therefore, this original petition (MAC) is allowed in the following manner;

1. Ext.P5 order is set aside, on condition that the petitioner deposits an amount of Rs. 1 lakh before the tribunal within a period of one month.

2. If the amount is deposited as directed above, the tribunal will consider the matter afresh in accordance to law.

3. If the amount is not paid, the tribunal can proceed with Ext.P5 in accordance to law.

4. The claimants in the claim petition is free to file

appropriate application before the tribunal for release of the amount and if such an application is filed, the tribunal will pass appropriate orders in accordance to law.

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**Sd/-
P.V.KUNHIKRISHNAN
JUDGE**

APPENDIX OF OP (MAC) 56/2022

PETITIONER EXHIBITS

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| EXHIBIT1 | TRUE COPY OF THE EXECUTION PETITION, E.P. NO. 20/2021 IN OP (MV) NO. 49/2006, MACT, KASARAGOD. |
| EXHIBIT2 | TRUE COPY OF THE COUNTER DATED 10/01/2022 FILED BY THE PETITIONER HEREIN IN E.P. NO. 20/2021 IN OP (MV) NO. 49/2006. |
| EXHIBIT3 | TRUE COPY OF THE MEDICAL CERTIFICATE DATED 16/05/2022 ISSUED BY THE DR. ABI ABRAHAM, DIRECTOR-NEPHROLOGY & CHIEF OF RENAL TRANSPLANTATION SERVICES, LAKESHORE HOSPITAL, KOCHI. |
| EXHIBIT4 | CERTIFIED COPY OF THE ORDER DATED 29/03/2022 IN E.P. NO. 20/2021 IN OP (MV) NO. 49/2006, MACT, KASARAGOD. |
| EXHIBIT5 | TRUE COPY OF THE ORDER IN E.P. NO. 21/2021 IN OP(MV) NO. 50/2006, MACT, KASARAGOD. |
| EXHIBIT P7 | TRUE COPY OF THE MEDICAL REPORT. |
| EXHIBIT P8 | TRUE COPY OF THE MEDICAL CERTIFICATE. |

RESPONDENTS EXHIBITS : NIL

// True Copy // PA To Judge