

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

MACA.No. 97 of 2015 ()

AGAINST THE AWARD IN OPMV 599/2004 of M.A.C.T., KOLLAM DATED 06-08-2007

APPELLANTS/PETITIONERS:

1. NOORJAHAN, AGED 43 YEARS
W/O.MUHAMMED IQBAL, NAJA MANZIL
VADAKKEVILA P.O., PALLIMUKKU.

2. NIJA, D/O.MUHAMMED IQBAL, AGED 24 YEARS
NAJA MANZIL, VADAKKEVILA P.O. PALLIMUKKU.

3. NAIJU, S/O.MUHAMMED IQBAL AGED 21 YEARS
NAJA MANZIL, VADAKKEVILA P.O. PALLIMUKKU.

BY ADVS.SRI.PRATHEESH.P
SMT.S.SEETHA

RESPONDENT/2ND RESPONDENT:

THE DIVISIONAL MANAGER
THE ORIENTAL INSURANCE COMPANY LTD., KADAPPAKKADA
KOLLAM 691008

R BY ADV. SRI.P.JACOB MATHEW
SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

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C.M. Appln No. 113 of 2015  
and

M.A.C.A. No. 97 of 2015

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Dated, this the 2nd day of September, 2015

JUDGMENT

Ramachandra Menon, J.

C.M. Appln. No. 113 of 2015 has been filed by the appellants seeking to condone the delay of nearly 7 years in filing MACA for enhancement of the compensation awarded by the Tribunal in respect of the accident occurred on 16.04.2003. The third appellant has sworn the affidavit in support of the application on her behalf and also on behalf of the other appellants as well. The reason for delay, as stated in paragraph 2 of the affidavit, is in the following terms :

"2. The above appeal is filed challenging the award passed by the Motor Accident Claims Tribunal, Kollam in O.P.(MV) No. 599/2004. The judgment was delivered on 06.08.2007. The appeal ought to have been filed on or before 05.11.2007. The first appellant, who is my mother was looking after the case because we were studying. I attained majority on 23.02.2011. I am still undergoing my graduation. On 30.11.2013 when I personally met my counsel, it was

informed that it is a fit case to file appeal before the Hon'ble High court and steps were taken to receive the certified copy on 30.11.2013 itself and the certified copy was delivered on 22.01.2014. In the meanwhile the 2nd appellant who is my sister got married and I was unable to entrust the case bundle to my counsel. My counsel had advised me that the inordinate delay in filing the appeal can be condoned in the light of the decision of the Hon'ble High Court in **2002 (2) KLT 454**. At the time of the judgment by the Hon'ble Tribunal myself was a minor, who was undergoing my schooling. After the marriage of the 2nd appellant my family was under sever financial stringencies. Due to this I could entrust the case bundle to my counsel only on 28.12.2014. Due to the above reason appellant herein could not file the above appeal in time consequently the delay of 2572 days had occurred in filing the appeal.

2. The relief sought for by the appellant is sought to be resisted from the part of the respondent Insurance Company by filing the counter affidavit as well.

3. Heard the learned counsel for the appellant as well as the learned counsel appearing for the Insurance Company.

4. The learned counsel for the appellants points out that the deponent who has sworn the affidavit was a minor at the relevant time and attained majority only on 23.11.2011. It is stated that she met the counsel only after 2 ½ years thereafter, on 30.11.2013, when steps were taken to get certified copy, which was delivered on 22.01.2014. It is further stated that her sister/second appellant got married and she was unable to entrust the case bundle to the concerned counsel. The appeal is preferred by the appellants in the said circumstances, with a delay of 2572 days, sought to be condoned by filing this application.

5. After hearing both the sides, this Court finds that the explanation offered from the part of the appellants is not satisfactory. When the 3rd respondent, who has sworn to the affidavit, concedes that the matter was being looked up and pursued by her mother and that the deponent attained majority only on 2011, the second appellant, who is the major sister of the 3rd appellant had attained majority way back in the year 2008. Admittedly, even after attaining the majority, the 3rd respondent took 1 ½ years to contact the lawyer and it took further time to have the proceedings finalized. No mitigating circumstances or hardship is pointed out with regard to the other appellants who are

also the beneficiaries. The explanation offered from the part of the 3rd appellant, in the affidavit filed in support of the application, for the inordinate delay is not liable to be reckoned as a reason or explanation as such, nor is it satisfactory in any manner. The persons who are sleeping over their rights for years are not entitled to have the benefit of any undue advantage by getting the delay condoned for no reason, much less any satisfactory reason.

In the said circumstances, C.M. Appln. No. 113 of 2015 to condone the delay of more than 7 years stands dismissed and as a natural consequence, the memorandum of appeal is rejected.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**K. HARILAL,
JUDGE**

kmd