

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MACA.No. 1781 of 2015 ()

(AGAINST THE AWARD IN OPMV 602/2010 of M.A.C.T.,KOLLAM DATED 15-01-2013)

APPELLANTS/PETITIONER:

SUBRAHMANYAN
S/O.KARUPAN KOUNDER, MADATHIL VEEDU
PULIYOOR VANCHI SOUTH, THODIYOOR VILLAGE
KARUNAGAPPALLY.

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

RESPONDENT/3RD RESPONDENT:

BRANCH MANAGER
ORIENTAL INSURANCE COMPANY, KOLLAM-691001.

BY ADV. DR.ELIZABETH VARKEY
BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRA, JJ.**

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**C.M. Application No.1968 OF 2015
&
MACA No.1781 OF 2015**
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Dated this the 9th November, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

The appeal is for enhancement of compensation awarded by the Tribunal in O.P.(MV) No.602 of 2010 on the file of the MACT, Kollam, in respect of the injuries sustained by the appellant. The accident was on 06.07.2009. After considering the pleadings and evidence on record, an amount of Rs.175000/- was granted by the Tribunal as compensation, which was directed to be satisfied with interest at the rate of 7.5% per annum from 30.06.2010, i.e, the date of the petition till realisation. Obviously, the appeal is belated by 756 days, which is sought to be condoned by filing the above C.M. Application.

2. The prayer is opposed from the part of the respondent / Insurance Company by filing a counter affidavit. The version of the appellant as given in paragraph '2' of the affidavit filed in

support of the application to condone the delay reads as follows:

“The above appeal is filed challenging the award passed by the Motor Accident Claims Tribunal, Kollam in O.P. (MV)No.602/2010. The judgment was delivered on 15.01.2013. The appeal ought to have been filed on or before 13.04.2013. Even though communication was sent to me from the office of my counsel I could not receive it. The appellant as a part of his treatment had shifted his place of residence temporarily to Coimbatore and was residing there with family. My counsel had applied for the certified copy of the judgment on 23.3.2013 and the copy was delivered on 30.4.2013. Due to lack of proper communication I could not collect the case bundle and the certified copy of the judgment. On 17.2.2015, I had shifted my residence along with my family to Karunagappally. On 8.4.2014 when I met my counsel the case bundle as well as the certified copy of the judgment was handed over to me and my counsel had advised me to file appeal before the Hon'ble High Court. Due to midsummer vacation I could entrust the file to file appeal only on 8.6.2015. Due to the above reason appellant herein could not file the above appeal in time consequently the delay of 756 days had occurred in filing the appeal.”

3. The version of the respondent/Insurance Company as given in paragraph '4' of their counter affidavit is extracted below:

“The award was passed on 15.01.2013. The respondent had deposited an amount of Rs,2,12,527/- in the Motor Accident Claims Tribunal, Kollam on 31.03.2013 and the said amount was withdrawn by the petitioner/appellant from the Tribunal on 17.04.2013. Hence the contention of the petitioner that there was lack of communication and the reasons given for condonation of delay is false.”

4. When the appellant contends that he was not at all aware of the verdict passed by the Tribunal, as he had already shifted his residence temporarily in connection with his treatment and was residing along with the family and could meet his lawyer only much later in 2015, the fact remains, as asserted by the Insurance Company in their counter affidavit, that the appellant had turned up before the Tribunal and withdrew the entire amount of Rs.2,12,527/- (deposited by the Insurance Company

on 31.03.2013) on 17.04.2013. This being the position, there is a conscious attempt on the part of the appellant to mislead this Court by filing false affidavit in support of the application to condone the delay. Such a course is liable to be treated as an attempt to poison the stream of justice and it virtually amounts to contempt of court, which is liable to be proceeded against in accordance with law; more so in view of the law declared by the Apex Court in **Dhananjay Sharma vs. State of Haryana and others [(1995) 3 SCC 757]**.

5. However, considering the persuasive submission made by the learned Counsel for the appellant that it was an inadvertent mistake while collecting facts from the office of another lawyer, who entrusted the matter, even though we are not satisfied with the said explanation, we dismiss the C.M. Application and consequently the appeal as well, confining the consequence to payment of the cost of Rs.5000/-(Rupees five thousand only), which shall be paid to the Kerala Mediation and

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Conciliation Centre within one month, failing which, the Registrar General shall issue necessary certificate enabling the beneficiary to realise the same from the appellant. A copy of this verdict shall be forwarded to the beneficiary of cost as aforesaid.

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

**ANIL K. NARENDRA,
JUDGE**

Cost of Rs.5000/- (Rupees five thousand only) ordered as per the judgment dated 09.11.2015 in M.A.C.A. 1781 of 2015 has been remitted within the stipulated period, vide receipt dated 05/01/2016, Sl.No.3250 of Kerala State Mediation and Conciliation Centre.

Sd/- Registrar (Judicial)

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