

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

MACA.No.1830 of 2015 (C)

AGAINST THE AWARD IN OP(MV)No.289/2006 of M.A.C.T.,KOZHIKODE
DATED 22-06-2010

APPELLANT/PETITIONER :

ISMAIL, AGED 39 YEARS,
S/O.ABOOBACKER, NADUVILAKANDY HOUSE, P.O.BALUSSERY,
POST OFFICE ROAD, KOZHIKODE.

BY ADVS.SRI.V.S.CHANDRASEKHARAN
SRI.M.V.DAS
SMT.LEKSHMI SWAMINATHAN
SMT.MARIAN G.M.THARAKAN
SRI.S.JAYAKUMAR

RESPONDENT/3rd RESPONDENT :

UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE No., P.B.No.533,
WHITE LINES BUILDING, KALLAI ROAD, KOZHIKODE-673003.

R1 BY ADV. SMT.DEEPA GEORGE
BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

C.M.Appln.No.2031 of 2015 & M.A.C.A.No.1830 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal has been filed being dissatisfied with the quantum of compensation awarded as per the award dated 22.6.2010 in O.P.(MV)No.289 of 2006 of the Principal Motor Accidents Claims Tribunal, Kozhikode. Admittedly there is a delay of 1724 days which is sought to be condoned by filing an application. The prayer is opposed by the respondent by filing a detailed counter affidavit.

2. Heard both the sides.

3. The reason for condoning the delay as given in paragraph 3 of the affidavit dated 21.6.2015 in support of the application reads as follows:-

"3. The learned tribunal passed the award on 22/06/2010. Certified copy of the order was obtained on 06-06-2011. I am not able to travel alone as I am disabled. Hence I had to wait for someone to accompany me to Ernakulam to meet

my counsel to file this appeal. In addition I also have financial problems and constraints, hence I could not travel to Ernakulam immediately. My brother met with an accident and was hospitalized and was under prolonged treatment, and so I didn't have anyone to accompany me to Ernakulam. Hence there caused a delay of 1724 days in filing the appeal. So there is no willful negligence or laches on the part of the petitioner/appellant for filing the appeal within the statutory period, I was disabled and was not in a position to travel without the help of another person at that time, hence I could not travel to Ernakulam to file this appeal in time. I am filing this appeal today without any further delay."

4. The version of the respondent as given in paragraph 2 of the counter affidavit dated 26.10.2015 is re-produced below:-

"2. It is submitted that there is an inordinate delay of 1724 days in filing the above appeal. Even though the petitioner/appellant received a certified copy of the award on 6.6.2011, the appeal was filed only on 21.6.2015. The petitioner has not stated any sufficient cause for condonation of this inordinate delay of about 5 years. The reasons stated in the above application for condoning this delay are untenable. In the accident the petitioner sustained

only a fracture to his facial bone. He had only 30% disability. The petitioner had not examined a member of the medical board to prove the disability mentioned in the certificate. Hence 30% disability cannot be taken as such. The petitioner was treated in the hospital as inpatient only for 3 days. He had not produced any bill to prove the medical expense incurred by him. The Tribunal has granted only ₹1000/- under this head. From this it is clear that the injuries sustained were not so serious as contended by the petitioner. The reason for the delay in filing the appeal that he was unable to travel to Ernakulam without the help of another person is absolutely false in view of the facts stated above. Another reason stated for the delay is the financial difficulty of the petitioner. The Tribunal has granted an amount of ₹1,76,800/- as compensation. Since the insurance company has not filed any appeal, the petitioner might have received this amount. So the financial difficulty stated by the petitioner for not filing the appeal within the period stipulated cannot be believed. It is therefore submitted that there has been willful laches and negligence on the part of the petitioner/appellant in not filing the appeal in time."

5. After hearing both the sides and also after going through the pleadings and materials on record this Court finds

that the so-called explanation offered on the part of the appellant seeking to condone the inordinate delay of 1724 days is not at all satisfactory. We are aware of the decision rendered by the Supreme Court reported in **N.Balakrishnan Vs. M.Krishnamurthy ((1998) 7 SCC 123)** that it is not the extent of delay that is to be considered but the explanation. Here the explanation offered by the appellant does not inspire confidence of this Court and the said explanation is not liable to be found as a reason, much less any satisfactory reason.

In view of the fact that there is no tenable ground to condone the inordinate delay of 1724 days, we decline interference. The application to condone delay stands dismissed and as a natural consequence, the appeal as well.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj

True copy

P.A to Judge