

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

MACA.No. 1918 of 2015 ()

(AGAINST THE AWARD IN OPMV 1733/2007 of M.A.C.T., KOTTAYAM DATED
28-03-2012)

APPELLANT(S)/PETITIONER:

BIJOY KURIAN
THERAMBIL HOUSE, KURUPPANTHARA, MAJOOR
KOTTAYAM.

BY ADV. SRI.JACOB E SIMON

RESPONDENT(S)/RESPONDENTS:

1. JOSHI JOSE
MAMPALLY THADATHIL HOSUE, K.S.PURAM
ARUNOOTTIMANGALAM P.O., KOTTAYAM - 686 604.

2. JOSE BOBAN K
KOTHANAM HOUSE, KAROOR P.O., PALA - 686 575.

3. MOHANAN A.B
Ayyappally House, Mannanam P.O., Kottayam - 686 561.

4. CYRIACJ
Kochipurackal House, Athirampuzha P.O.
Kottayam - 686 562.

5. THE NEW INDIA ASSURANCE CO. LTD
Kottayam - 686 001.

BY ADV. SRI.P.G.GANAPPAN
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.**

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**C.M. APPLICATION No.2141 OF 2015
& M.A.C.A.No.1918 OF 2015**
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Dated this the 4th September, 2015

J U D G M E N T

Sunil Thomas, J:

The appellant seeks to condone the delay of 1083 days in filing the appeal. The reason stated by the petitioner to condone the delay in his own words, as seen from the affidavit (paragraph 2 and 3) are as follows;

2. The above appeal is filed challenging the Award dated 28/03/2012 in OP [MV] No.1733/07 of the Motor Accidents Claims Tribunal, Kottayam. The said appeal has to file within 90 days from 28/03/2012 i.e. on or before 26/06/2012. Even though I enquired about the scope of an appeal, my counsel who conducted the case was advice me that there is no scope for an appeal. But on 2 months before I met another advocate in connection with another case, when I talk about this accident case, he advised me to file an appeal. He told me that there is a scope for an appeal and I may get increase in the quantum of compensation.

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3. There after a contact my counsel and get a certified copy of the award dated 28/03/2012. Any how I received the same in the month of May 2015. There after I entrusted my counsel at Ernakulam to file an appeal only on last week . Hence there is a delay of 1083 days. The delay happened only due to my ignorance and not due to the negligence. There is no willful negligence or laches on my part in not filing the appeal in time. If the delay is not condoned it will cause irreparable lost and injury to me. A separate petition praying for the same is filed herewith and it may be allowed .

2. A counter affidavit has been filed by the 5th respondent. Heard both the sides.

3. Essentially, the delay is sought to be condoned on the ground that the lawyer who had conducted the case had instructed the petitioner that there was no scope for any appeal. Later, two months prior to the institution of the present appeal, he casually met another lawyer who advised that there is scope for appeal. There is absolutely no averment as to why he did not seek any advice, if any, immediately after the initial advice

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was given by the lawyer, who conducted the case . Sitting over his right of appeal and after long period, on a casual talk with another lawyer, getting a legal opinion about his right to file a fresh appeal, cannot be considered as a valid reason.

4. The above is also not believable, for yet another reason. The specific case of the petitioner is that the advice was given by the lawyer, who was conducting the case earlier. Presumbly, it can only be by Mr. Manuel Varghese, who conducted the case before the trial court as evident from the certified copy of award. It appears that the copy application of the award which forms part of the appeal was preferred through the same lawyer, that too in the year 2015. This proves the falsity of the case of the petitioner , which evidently shows that though he obtained a free copy in 2012, it has not been produced and a fresh copy has been applied and obtained in the year 2015. This cuts at the root of the very case set up by the petitioner in the affidavit.

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In the light of the above, we are not inclined to accept the contention of the petitioner and to condone the delay. The C.M. application is accordingly dismissed. Consequently, the appeal is rejected as time barred.

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

**SUNIL THOMAS,
JUDGE**

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