

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

OP (MAC).No. 1201 of 2011 (O)

OPMV. NO. 342/2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, TIRUR.

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PETITIONER:

**MEHRUNNISA, W/O. ABDUL FAIZAL,
PUTHUKKANATTIL HOUSE, P.O. TIRUR,
TIRUR TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.A.KRISHNAN.

RESPONDENTS/RESPONDENTS IN WPC:

- 1. AYYOB, S/O. MOHAMMED,
NELLERI HOUSE, OVUNGAL, THALAKKADATHUR,
TIRUR TALUK, MALAPPURAM DISTRICT-676 103.**
- 2. SAIDALAVI M.,
MANGATTIL HOUSE, KALLINGAL, P.O. TIRUR,
TIRUR TALUK, MALAPPURAM DISTRICT-670 501.**
- 3. THE NEW INDIA ASSURANCE COMPANY LTD.,
SHAFEER COMPLEX, OPPOSITE YMCA,
KANNUR ROAD, CALICUT-673 001.**

R3 BY ADV. SRI.RENI ANTO KANDAMKULATHY.

**THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP (MAC).No. 1201 of 2011 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- | | |
|--------|--|
| EXT.P1 | COPY OF THE CLAIM PETITION DATED 27/05/2006 BEFORE THE HONOURABLE MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR. |
| EXT.P2 | COPY OF THE ORDER DATED 04/12/2007 OF THE HONOURABLE MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR. |
| EXT.P3 | COPY OF THE RESTORATION PETITION DATED 21/07/2009. |
| EXT.P4 | COPY OF THE DELAY CONDONATION DATED 21/07/2009. |
| EXT.P5 | COPY OF THE COUNTER TO EXT.P3 DATED 19/10/2009. |
| EXT.P6 | COPY OF THE ORDER DATED 13/04/2010 OF THE HONOURABLE MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR. |
| EXT.P7 | COPY OF THE ORDER DATED 13/04/2010 OF THE HONOURABLE MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR. |

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

PA. TO JUDGE

rs.

K. VINOD CHANDRAN, J

O.P(MAC) No.1201 of 2011

Dated this the 05th day of March, 2015

J U D G M E N T

The petitioner is aggrieved with the dismissal of a restoration application made at Ext.P6. The petitioner allegedly suffered an accident and claimed compensation for the injuries suffered by O.P(MV) No.342/2006. The same stood posted for evidence on 04.12.2007. For non appearance of the petitioner, the claim stood dismissed as per Ext.P2. The petitioner applied for restoration of the claim petition along with delay condonation petition by Exts.P3 and P4. There was a delay of 564 days . the learned counsel for the petitioner would place before me decisions reported in **Saramma Scaria v. Mathai (2002 KHC 453)**, **Mahendra Rathore v Omkar Singh and others (2002 KHC 1903)** and **Jacob Thomas v. Pandian (2005 KHC 1509)**, to seek for restoration of the applications.

2. **Saramma Scaria** (supra) was a case in which the Division Bench of this Court found that the Motor Accidents Claims Tribunal does not have power to dismiss an application on default. However, a Full Bench of this Court in **Jacob Thomas** (supra) disagreed with the said proposition and found that looking at the intendment of the statute it is only proper that, on non appearance, a claim petition be dismissed only for default, since the injured would have an opportunity to approach the Tribunal itself to set aside such orders by filing applications under Order X Rule 9. If decided on merit, suo motu, the Full Bench held that, the only remedy would be for the claimant to file an appeal. Considering the heavy expenses and inconvenience caused to the injured, the Full Bench held that as far as possible, on non-appearance, the Motor Accidents Claims Tribunal should dismiss the claims for default.

3. In **Mahendra Rathore** (supra) the Hon'ble Supreme Court found that a liberal approach should be

taken in considering the restoration of application. None of these decisions apply in the case of the petitioner. In the present case, the Tribunal has dismissed the claim on default, quite in consonance with the judgment of the Full Bench. However, the approach in considering restoration applications, in the present case is secondary since first the aspect of 564 day's delay has to be considered.

4. **Mahendra Rathore** (supra) was a case in which a claim petition filed before the MACT was dismissed on 27.01.1998. A restoration application was filed on 15.04.1998. The principles laid down therein applicable to restoration would not be applicable herein where the restoration was sought with a delay of 564 days.

5. In such circumstance, what has to be looked at is whether there is any satisfactory explanation for the delay caused. The affidavit to condone the delay is produced at Ext.P3. The only reason stated is that the husband of the petitioner, who was conducting the case,

was abroad and hence he could not contact the lawyer to prosecute the matter. Admittedly the petitioner was in station. The petitioner also did not produce any evidence to show that the husband of the petitioner was abroad, specifically during the 564 days in which the delay was occasioned. This court does not find any reason to interfere with the finding of the Labour Court that the reason stated is insufficient to condone the delay.

The original petition would stand dismissed.

No costs

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge