



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Fifth day of July Two Thousand Seventeen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP (MD) No.6118 of 2017

IN

CMA (MD) No.SR3867 of 2010

NATIONAL INSURANCE COMPANY LIMITED,
THROUGH ITS BRANCH MANAGER,
THIRUPUR.

... PETITIONER/APPELLANT

Vs

1 P.RAJAMMAL
2 P.SELVARAJ
3 P.SELVI
4 P.THANGAPANDI
5 JEYAPRAKASH
6 M/S.A.D.A.GARMENTS

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 2688 days in paying the Deficit Court Fee of Rs.3,080/- in the above CMA.SR.No.3867 of 2010.

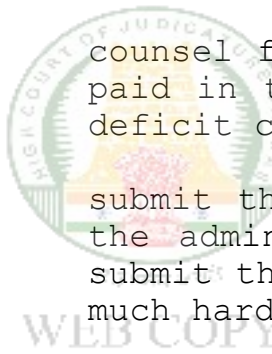
PRAYER IN CMA.SR.No.3867 of 2010:-

To set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Uthamapalayam in MCOP No.77 of 2004 dated 05.01.2007.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.D.SIVARAMAN, Advocate for the petitioner the court made the following order:-

This Civil Miscellaneous Petition has been filed against the judgment and decree dated 05.01.2007 passed in M.C.O.P.No.77 of 2004 on the file of the Motor Accident Claims Tribunal, Sub-Court, Uthamapalayam.

2. It is averred in the petition that the appeal was originally presented on 29.01.2010 by paying Court fee of Rs.100/- and the papers were returned by the Registry pointing out some defects including the payment of deficit Court fee on 02.02.2010. It is further averred that due to the administrative reasons, there was delay caused in obtaining necessary sanction from the Finance Committee of the petitioner company for paying necessary court fees and filing expenses to the counsel for the petitioner. Further, since the papers were misplaced by the clerk in the office of the



counsel for appellant and the actual correct court fee could not be paid in time. Hence, there is a delay of 2688 days in paying the deficit court fee of Rs.3,080/-.

3. The learned counsel appearing for the appellant would submit that the delay is neither wilful nor wanton but only due to the administrative reasons the delay has caused. He would further submit that if the delay is condoned, the appellant would be put to much hardship and prays for appropriate orders.

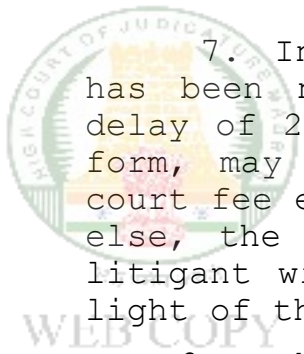
4. The question before this Court is whether such huge delay can be condoned?

In the case reported in (2009) 1 MLJ 1328, Dhanalakshmi Financiers vs. Soundarammal and others, this Court has held as follows:-

"....The Court should exercise its judicial discretion while considering as to whether time should be granted or not. Cases where the plaintiff wrongly (bona fide mistake) valued under particular provisions of law under Court Fee Act or where he could not pay the required Court fee for the reason beyond his control, due to some bona fide reasons, the Court shall condone the delay. Payment of substantial Court fee is a circumstance, which will go in favour of the claim of the plaintiff that a bona fide mistake has crept in."

5. On considering the decision reported in (2003) 2 MLJ 305, K.Natarajan vs. P.K.Rajasekaran, this Court has held that the revision petitioners must have filed an application under Section 149 C.P.C. for extension of time for payment of deficit Court fee. Admittedly, the revision petitioners have not filed an application to extend the time for payment of deficit Court fee within the time granted by the Court. But, he filed an application under Section 151 of C.P.C. to condone the delay of 729 days in representing the plaint. Eventually, this Court dismissed the claim of the plaint therein.

6. In the case of Dhanalakshmi's cited supra, this Court can condone the delay if there are bona fide reasons. Similarly, in the case of Natarajan cited supra, this Court is of the view that the delay can be condoned, if there is an application for extension of time for payment of deficit court fee. Admittedly, in the case on hand, neither there is bona fide reason nor any application for extension of time is filed for payment of paying deficit Court fee. The petition filed by the insurance company is totally bereft of any particulars. It may not be out of place to stated that the litigant who already lost their beloved one's cannot be allowed to lost their patience also. The Insurance Company is run from and out of the funds received from the common man to ease their distress in the form of relief/compensation at the time of accident. Therefore, it is not only the duty of the insurance company to settle the money for the victims at the earliest but they have owe to the Society as well. The matter arising out of motor accident claims cannot be procrastinated by the insurance company in one way or other by simply stating that there is an administrative delay and hence, the delay is caused. Each and every day, the delay has to be properly expressed by the insurance company in a geographical manner and accountability must be fixed to curb this menace.



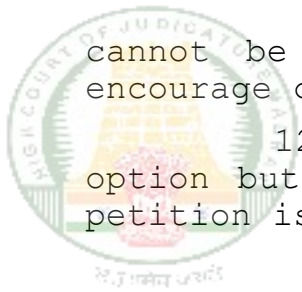
7. In the case on hand, the delay is so huge for which there has been no satisfactory or considerable reasons to condone the delay of 2688 days in paying the deficit Court fee. Delay in any form, may be, representing delay, delay in paying batta, deficit court fee etc., without proper reason should be nipped in the bud or else, the litigation will become an never ending process and the litigant will be put into darkness. The case will not be seen the light of the day.

8. While doing so, the one more question arises to this Court whether when a litigant files with huge delay in the case of motor accident claims can be condoned or not?

9. This Court is very much conscious of the fact that that the Motor Vehicles Act is a beneficial legislation which has to be favoured in favour of the litigant only. A poor litigant cannot be compared with the officers and infrastructure available with the Insurance Company where well-versed legal lumaries will be available to lead the case, whereas, the poor litigant losing their bread winner of the family or their beloved ones has to come back their normalcy and file a petition, which normally takes its own time. Some times, it may be due to poverty, illiteracy, mental agony, approaching an advocate, awareness of law, time and so on and so forth. Hence, the litigant has to overcome all these hurdles in the process of filing motor accident claims petition and proceed the case. But, the problem faced by the litigant will not be faced by the insurance company. The only solace available to the litigant eventually is the award of compensation granted by this Court. Therefore, in all fairness, the yardstick applied to the insurance company cannot be strictly applied to the poor litigant. In the case of motor accident claims, the relief should be humanity in nature.

10. By condoning this type of petition this Court does nothing but add fuel to the fire in the distressed family and making them more suffer to the deceased family. Added further, in the efflux of time, the family would have back to normalcy to some extent and condoning the delay filed by the insurance company with the huge delay will lead to unearth their cherished memories of their beloved ones, once again and put them back into mental agony in their remaining life to which this Court can never be a party to it. This Court is really at a loss to understand the lethargic attitude of the insurance company in litigating the matter in their own fashion. This Court hopes and trust that atleast in future the Insurance Company will take earnest steps to proceed the case in a full-fledged manner and avoid to file petition for the name-sake, which not only eats away the time of insurance company, but also the precious time of this Court also, when this Court already piled up with a number of cases in day to-day important stages.

11. Before winding up this order, this Court wants to make it clear that the insurance company should make an earnest steps to comply with the defect pointed out by the Registry in letter and spirit, that too, on time. The reason behind is, in the case on hand, just Rs.100/- is paid, whereas, the actual amount of deficit Court fee is Rs.3,080/-. The attitude of the insurance company that once the petition is filed before this Court by paying a meagre amount and therefore, it is a continuos proceedings, and later it



cannot be condoned, should be avoided and this Court will not encourage or allow this type of petition in future.

12. In the light of the discussion, this Court has no option but to dismiss this petition in limine. Accordingly, this petition is dismissed. No costs.

sd/-
05/07/2017

WEB COPY

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE SUBORDINATE JUDGE,
MOTOR ACCIDENT CLAIMS TRIBUNAL, UTHAMPALAYAM.

ORDER
IN
CMP (MD) No.6118 of 2017
IN
CMA (MD) No.SR3867 of 2010
Date :05/07/2017

MKV-CM-MSA-SAR 4/10.10.2017/4P-2C