



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2017

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CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.P. (MD) No. 631 of 2017

in

C.M.A (MD) .No. SR. 1769 of 2017

Rajan

... Petitioner/Appellant

Vs.

1. Esakkiyammal @ Elzi
2. Minor Amirthalangam
3. Minor Saranya
4. Minor Bhavani
5. Minor Siva

(Minor Respondent Nos. 2 to 5 through
their Mother and Next Guardian-
First respondent herein)

6. M/s. United India Insurance Company Ltd.,
Rep. by its Branch Manager,
Office No. 164-C,
Panchayat Union Road,
Valliyoor,
Thirunelveli District.
(Policy No. 091081/31/08/02/00004925 and
valid from 18.02.2009 to 17.02.2010)

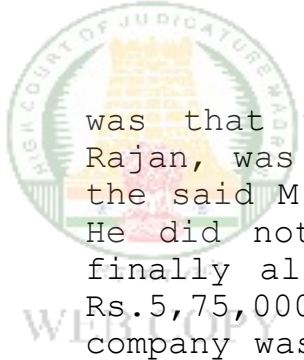
... Respondents/Respondents

Prayer: Petition filed under Section 173(1) of the Motor Vehicles Act, 1988, to condone the delay of 1868 days in filing the Civil Miscellaneous Appeal before this Court against the Judgment and Decree in M.C.O.P.No.230 of 2010, dated 06.07.2011 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court, Thirunelveli (Full Additional Charge of Fast Track Court No.1), Thirunelveli.

For Petitioner	: Mr.S.Vinayak
For R-6	: Mr.A.Ilango

J U D G M E N T

This petition has been filed by the vehicle owner. <https://hcservices.ecourts.gov.in/hcservices/> M.C.O.P.No.230 of 2010 was filed by the Legal Representatives of the deceased. The specific allegation made in the said claim petition



was that the vehicle, belonging to the appellant herein namely Rajan, was involved. The said Rajan was served with the summons in the said M.C.O.P. The appellant herein filed only a formal counter. He did not choose to enter into the witness box. The Tribunal finally allowed the claim petition and passed an award to sum of Rs.5,75,000/- with interest at the rate of 8%. The insurance company was directed to satisfy the award in the first instance and thereafter recover the paid amount from the vehicle owner. i.e. the appellant herein. This award was passed as early as on 06.07.2011. This Civil Miscellaneous Appeal has been filed only on 11.01.2017. There is a delay of 1868 days in filing this Civil Miscellaneous Petition.

2. This Court went through the contents of the affidavit filed in support of the delay condonation petition. The petitioner herein has averred that he came to know about the award only when he received the notice from the Execution Court. The petitioner would also claim that his counsel was not able to contact him. It is clear from a mere reading of the affidavit filed in support of this petition that the conduct of the petitioner is clearly not *bona fide*. In the decree passed in M.C.O.P the petitioner herein is mentioned as a resident of South Street, Nadar Uvari, Radhapuram Taluk, Thirunelveli District. But in the affidavit filed in support of the present petition, the petitioner's address is mentioned as North Bazaar, Thisaiyanvilai Post, Kanyakumari District and there is no mention as to when the petitioner shifted to the present address. In any event, when the petitioner was shown as a party to the proceedings and he also engaged an advocate, it is the duty of the petitioner to be in contact with his counsel.

3. The endeavour of the petitioner appears to fasten the entire financial liability on the insurance company. The insurance company has already deposited the entire award amount. Since the insurance company has been permitted to file Execution Petition against the vehicle owner, the petitioner herein has started to feel the heat. He has chosen to conveniently wake up only now. The petitioner has not set out any sufficient cause for invoking the indulgence of this Court. In matters relating to condonation of delay in Motor Vehicle Act proceedings, this Court usually adopts a very liberal approach. But such an approach cannot be followed in this case. This is because, the petitioner herein colluded with the claimants and was under the impression that the entire liability will fall only on the insurance company. He probably did not anticipate that pay and recover award would be passed. This Court sees no *bona fides* in the conduct of the petitioner. There is absolutely no merit in this Civil Miscellaneous Petition. This Civil Miscellaneous Petition stands dismissed. Accordingly, C.M.A (MD).No.(SR).1769 of 2017 is also dismissed. No costs.

Sd/-

Assistant Registrar(P&A)

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The Additional District and Sessions Judge,
The Motor Accident Claims Tribunal cum
Additional District and Sessions Court,
Thirunelveli
(Fast Track Court No.1),
Thirunelveli.

Copy to:-

The Record Keeper, Vernacular Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

Kmi/psd

RL/4C/3P/SV/MMS/SAR2/5/3/2018

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