

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.P.No.13763 of 2018
and C.M.A.SR.No.47034 of 2018

Ravichandran ... Petitioner

Vs.

1.Sundar

2.The Branch Manager
United India Insurance Co. Ltd.,
J.N.Street, Pondicherry. .. Respondents

PRAYER: C.M.A.SR.No.46934 of 2018 is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 09.01.2015 made in M.A.C.T.O.P.No.895 of 2011 on the file of the Additional Subordinate Judge, (Motor Accidents Claims Tribunal), Puducherry.

C.M.P.No.13763 of 2018 is filed to condone the delay of 1139 days in filing the above C.M.A.

For Petitioner : Mr.R.Sreedhar

For R2 : Mr.A.Dhiraviyanathan

ORDER

C.M.A.SR.No.46934 of 2018 is filed against the award and decree dated 09.01.2015 made in M.A.C.T.O.P.No.895 of 2011 on the file of the Additional Subordinate Judge, (Motor Accidents Claims Tribunal), Puducherry.

C.M.P.No.13763 of 2018 is filed to condone the delay of 1139 days in filing the above C.M.A.

2. According to the learned counsel appearing for the petitioner, the petitioner had lost all hopes in his life due to the accident and it became difficult for him to file the appeal after mobilizing necessary funds to pay the Court fee. The delay in filing the appeal is neither wilful nor wanton. Therefore, he prayed for condonation of delay in filing the Civil Miscellaneous Appeal.

3. The learned counsel appearing for the second respondent contended that the reason given by the petitioner is not sufficient and valid reason and the delay cannot be condoned on simple grounds. In support of his contention, he relied on the paragraphs 10 to 12 of the judgment reported in **2016 (1) TN MAC 137**

(Kar.) [Cheluvaraju Vs. Manager, New India Assurance Co. Ltd., and others]:

"10. The Courts should not adopt an injustice-oriented approach in rejecting the Application for condonation of delay. However the Court while allowing such Application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the Court cannot condone the delay on sympathetic grounds alone.

11. It is also a well-settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the Court at a belated stage for the reason that they cannot be permitted to take the impetus of the Order passed at the behest of some diligent person.

12. In *State of Karnataka V. S.M. Kotrayya*, this Court rejected the contention that a petition

should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches."

4. Heard the learned appearing counsel for the petitioner as well as the second respondent-Insurance Company and perused the materials available on record.

5. From the averments made in the affidavit filed in support of this petition, it is seen that the award was passed on 09.01.2015 and C.M.A. is filed only on 22.06.2018. It is a well settled that the parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits and application for condoning the delay must be considered liberally and length of delay is not a criteria. At the same time, the Court must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The other party should not be prejudiced by condonation of delay. In the

present case, the petitioner has stated that he has lost all hopes in his life and he could not mobilize funds to pay Court fee. The Court cannot condone the delay on sympathy ground. The reasons given by the petitioner for condonation of delay of 1139 days in filing the C.M.A. are not valid and sufficient reasons for condoning the delay. The judgment relied on by the learned counsel for the second respondent is squarely applicable to the facts of the present case. Hence, this Court is not inclined to condone the delay. Accordingly, C.M.P.No.13763 of 2018 stands dismissed and consequently, C.M.A.SR.No.47034 of 2018 is rejected. No costs.

23.11.2018

gsa

To

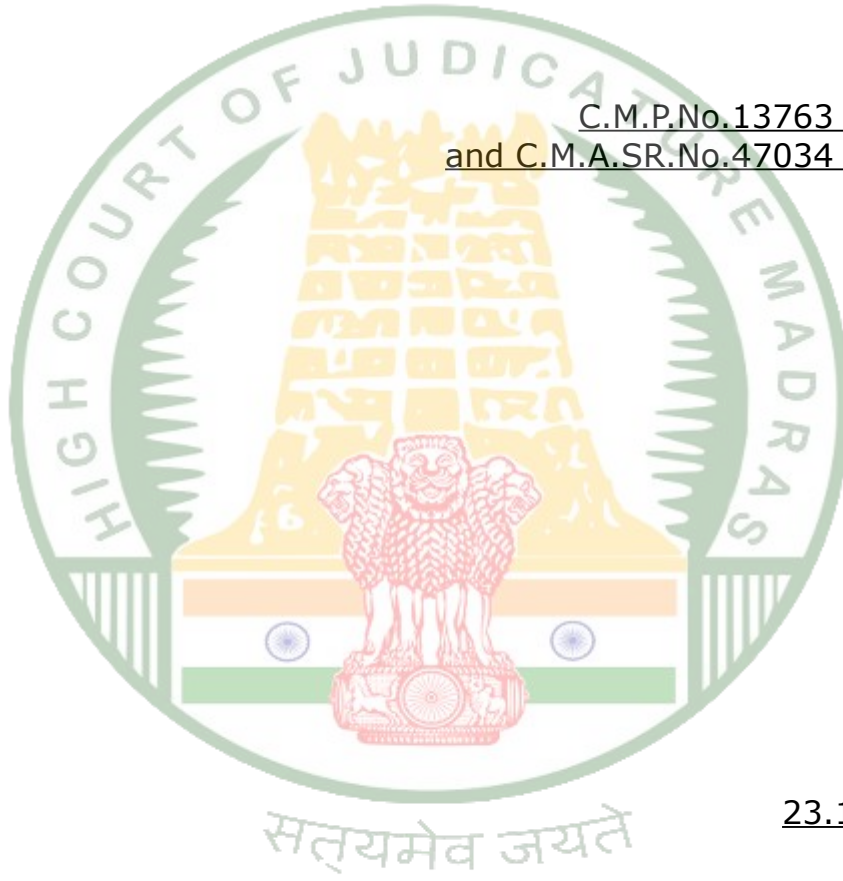
1.The Branch Manager
United India Insurance Co. Ltd.,
J.N.Street, Pondicherry.

2.The Additional Subordinate Judge,
(Motor Accidents Claims Tribunal), Puducherry.

V.M.VELUMANI,J.

gsa

C.M.P.No.13763 of 2018
and C.M.A.SR.No.47034 of 2018



23.11.2018

WEB COPY