

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.P.No.21087 of 2017
in C.M.A.SR.No.83009 of 2017

The Divisional Manager
United India Insurance Company Limited,
DO, 13A, Nethaji Road,
Cuddalore

.. Petitioner

Vs.

1.A.Dhanalakshmi
2.R.Bharathithasan

.. Respondents

PRAYER: C.M.A.SR.No.83009 of 2017 is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 01.03.2016 made in M.C.O.P.No.2136 of 2012 on the file of the Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Cuddalore.

C.M.P.No.21087 of 2017 is filed to condone the delay of 484 days in filing the above C.M.A.

For Petitioner : Mr.A.Dhiraviyanathan

For R1 : Mr.R.Sreedhar

For R2 : Exparte

ORDER

C.M.A.SR.No.83009 of 2017 is filed against the award and decree dated 01.03.2016 made in M.C.O.P.No.2136 of 2012 on the file of the Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Cuddalore.

C.M.P.No.21087 of 2017 is filed to condone the delay of 484 days in filing the above C.M.A.

2. According to the learned counsel appearing for the petitioner-Insurance Company, the Insurance Company was settling more number of cases before the Lok Adalat and hence, could not contact the panel Advocate in time to file the appeal. 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 first 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-Insurance Company as well as the first respondent 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 01.03.2016 and C.M.A. is filed on 24.10.2017. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. 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 parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. The judgment relied on by the learned counsel for the first respondent is squarely

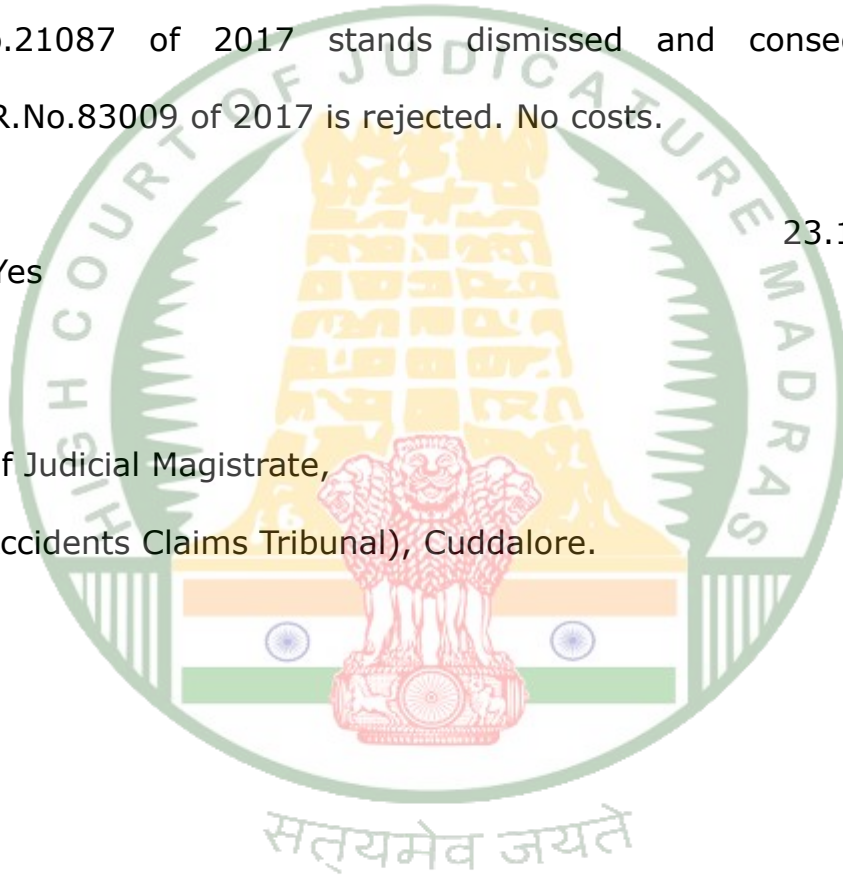
applicable to the facts of the present case. In the present case, the reasons given by the petitioner for condonation of delay of 484 days in filing the C.M.A. are not valid and sufficient reasons. Hence, this Court is not inclined to condone the delay. Accordingly, C.M.P.No.21087 of 2017 stands dismissed and consequently, C.M.A.SR.No.83009 of 2017 is rejected. No costs.

23.11.2018

Index : Yes
gsa

To

The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal), Cuddalore.



WEB COPY

V.M.VELUMANI,J.

gsa



C.M.P.No.21087 of 2017
in C.M.A.SR.No.83009 of 2017

23.11.2018

WEB COPY