



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CMP (MD) No.4054 of 2018
in
CMA (MD) No.SR15010 of 2018

The Branch Manager,
Reliance General Insurance Company Limited,
Trichy. : Petitioner/Appellant

Vs.

1.D.Parvathy
2.Selvi.D.Ramya
3.D.Vivek

Apporvam Ammal
(Died Pending petition)
4.R.S.Chandrasekaran : Respondents/Respondents

PRAYER:- This Civil Miscellaneous Petition filed under Section 173(1) of the Motor Vehicles Act, 1988, to condone the delay of 1833 days in filing the appeal.

Prayer in CMA(MD).SR.No.15010 of 2018:

This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the decree and Judgment dated 06.10.2012 made in M.C.O.P.No.48/2010 by the Motor Accidents Claims Tribunal-Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Petitioner : Mr.G.Maruthiah
For R1 to R3 : Mr.S.Raja Prabhu
For 4th Respondent : No appearance

O R D E R

(Order of the court was delivered by **T.KRISHNAVALLI , J**)

<https://hcservices.ecourts.gov.in/hcservices/>
CMP (MD) NO.4054 of 2018 is filed to condone the delay of 1833 days in filing the appeal.



2.The wife, daughter, son and the mother of the deceased Devasihamani filed MCOP No.48 of 2010 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thanjavur @ Kumbakonam, claiming compensation of Rs.15,00,000/- alleging that on 20.03.2008 at 9.00 pm, when the deceased Devasihamani riding his Hero Honda motor cycle TN-51-Y-1386 on Kumbakonam-Karaikal main road, at that time, a tractor bearing registration No.TN-45-H-9466 along with Trailer TN-45H-5592 came in the opposite direction in a rash and negligent manner and hit against the motor cycle. In the accident, the deceased sustained injuries and after taking treatment for some time, he died in the hospital. In this regard, the Thiruneelakudi Police have registered a case in Crime No.68 of 2008 under Section 304(A) IPC against the driver of the offending vehicle.

3.The appellant Insurance Company contested the claim by filing a counter and disputed the manner of the accident and the claim is excessive.

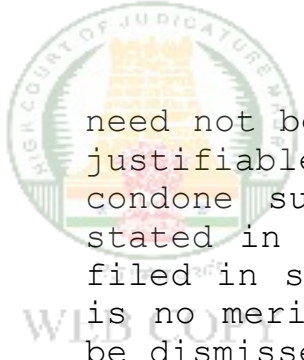
4.The claimants, in order to establish their case, examined PW1 to PW3 and marked Exs.P1 to P21. On the side of the appellant Insurance Company, 3 witnesses were examined as RW1 to RW4 and marked one document as Ex.R1. After analyzing, both the oral and documentary evidences, the tribunal held that the driver of the offending vehicle caused the accident and awarded Rs.14,02,546/- together with interest @ 7.5% p.a. Challenging the award, dated 06.10.2012, this appeal has been preferred with delay.

5.CMP(MD)No.4054 of 2018 is filed to condone the delay of 1833 days caused in filing the appeal.

6.Heard both sides and perused the materials available on record.

7.The learned counsel for the petitioner/appellant argued that the order copy in MCOP No.48 of 2010 was made ready only on 05.01.2013 and due to shifting of the office from Trichy to Madurai and then, Madurai to Trichy, the order copy obtained mixed up with other files and now only it was traced out and hence, there is a delay of 1833 days caused in filing the appeal and prays that the above delay of 1833 days may be condoned.

8.It is settled law that for filing a petition to condone the delay, proper reasons are to be stated. In this case, the order copy made in MCOP No.48 of 2010 was dispatched on 06.10.2012. But as per the version of the petitioner, the order copy was ready only on 05.01.2013. No proper explanation was given on the side of the petitioner for the delay in getting the copy of the order passed in MCOP No.48 of 2010. Further, the reasons stated by the petitioner in his petition that due to shifting of the office from Trichy to Madurai and then, from Madurai to Trichy, the order copy was mixed up with other bundles and now only, it was traced out and afterwards, they filed this petition are not convincing to condone the enormous delay of 1833 days. Though each and every day's delay



need not be explained, however, it is expected that convincing and justifiable reasons are stated with cogency, while seeking to condone such huge delay. No such details and particulars are stated in this case. Hence, the reasons stated in the affidavit filed in support of the petition are not acceptable. Hence, there is no merit in the petition and hence, the petition is liable to be dismissed.

9. Even otherwise, when we perused the matter on merits, we are not convinced that the appellant has a case on merits. The petitioner filed CMA as against the order passed in MCOP No.48 of 2010. In the claim petition, the claimants claimed compensation of Rs.15,00,000/- for the death of the husband of the first respondent/first claimant and the father of the respondents 2 and 3 and the mother of the deceased. The 4th respondent died after filing of the petition and the respondents 1 to 3 were on record as legal-heirs of the deceased the 4th respondent and the tribunal passed Rs.14,02,546/- to the respondents 1 to 3.

10. In this case, the deceased was working as LIC Agent, as seen from Ex.P12. The tribunal accepted that in addition to LIC Agent, the deceased did agricultural work. To prove the income, no document was filed on the claimants side. Hence, the tribunal fixed the monthly income of the deceased as Rs.15,000/- and also held that the age of the deceased is 53 at the time of the accident. Hence, the monthly income taken by the tribunal appears to be correct. The tribunal, after deducting 1/3rd towards personal and living expenses, determined the loss of income of the deceased as Rs.13,20,000/- (Rs.10,000/- x 12 x 11). In addition, the tribunal has awarded Rs.10,000/- each to the claimants towards loss of love and affection; Rs.2,000/- towards funeral expenses. Further, the tribunal has awarded Rs.50,546/- towards medical expenses based on Ex.P16. In total, the tribunal has awarded Rs.14,02,546/- together with interest @ 7.5% p.a.

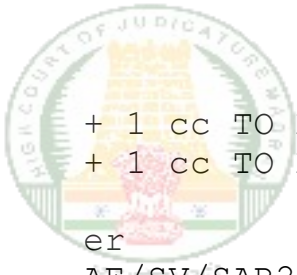
11. Thus, this Court is of the view that the compensation awarded by the tribunal is fair and reasonable. Further, the petitioner/appellant has not shown sufficient cause for condonation of the delay. Looking at from any angle, this court do not find any merit, in this case, hence, this petition is liable to be dismissed.

12. In fine, this petition is **dismissed**. Consequently, the appeal is dismissed in the SR stage itself. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



+ 1 cc TO Mr.S.Rajaprabu , Advocate in SR No. 71183
+ 1 cc TO Mr.G.Maruthiah , Advocate in SR No. 71532

er

AE/SV/SAR2/16.07.2018/4P/3C

WEB COPY

CMP (MD) No.4054 of 2018
in
CMA (MD) No.SR15010 of 2018
04.07.2018