



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2019

CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (MD) No. 22 of 2015

and

M.P. No. 1 of 2015

The Oriental Insurance Company Limited,
Rep. by its Divisional Manager,
Town Hall Road,
Kumbakonam.

... Petitioner/Petitioner/Third Respondent

-vs-

Renuka Devi

... Respondent/Respondent/Petitioner

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to call for records in respect of order passed in I.A. No. 902 of 2012 in M.C.O.P. No. 531 of 2006 dated 30.04.2013 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Kumbakonam and set aside the same.

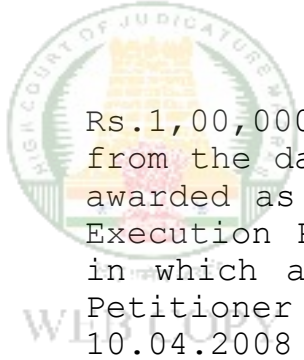
For Petitioner	:	Mr. K. Bhaskaran
For Respondent	:	Mr. C. Mahadevan for M/s.AL.Gandhimathi

O R D E R

The Civil Revision Petition arises out of the order dated 30.04.2013 in I.A. No. 902 of 2012 in M.C.O.P. No. 531 of 2006 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Kumbakonam.

2.The car bearing registration no. MDO 4842 belonging to the Respondent met with an accident involving the car bearing registration no. TN 49 X 2583 belonging to one Mr. Ramarajan at about 10.30 p.m. on 17.08.1997 on the Panruti-Kumbakonam Road in front of Gengappa Paper Mill. The Respondent filed the Original Petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,00,000/- towards the damages caused to his car against the said Mr. Ramarajan in M.C.O.P. No. 531 of 2006 before the Tribunal below. The Petitioner, who was the insurer of the car of the said Mr. Ramarajan at the relevant time, was also made as a party to that proceeding.

3. Since neither the said Mr. Ramarajan owner nor the Petitioner appeared before the Tribunal below in M.C.O.P. No. 531 of 2006, they were called absent and an exparte award dated 10.04.2008 was passed directing them jointly and severally to pay a sum of

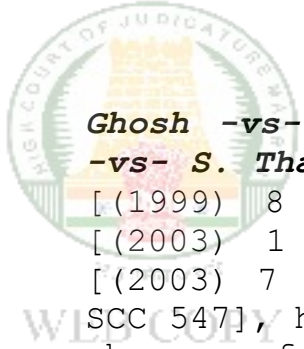


Rs.1,00,000/- with interest thereon at the rate of 15% per annum from the date of Petition till realization with costs. As the amount awarded as compensation was not deposited, the Respondent had filed Execution Petition in E.P. No. 75 of 2012 before the Tribunal below in which attachment was ordered on 22.10.2012. At that stage, the Petitioner filed an application to set aside the exparte award dated 10.04.2008 in M.C.O.P. No. 531 of 2006 passed by the Tribunal below along with the application in I.A. No. 902 of 2012 to condone the delay of 1634 days in filing the same. The Respondent filed a Counter Affidavit and opposed the said application in I.A. No. 902 of 2012 and the Tribunal below found that there was no sufficient cause for condoning the delay and accordingly proceeded to dismiss that application. Aggrieved thereby, the Civil Revision Petition has been preferred by the Petitioner before this Court.

4. Heard Mr. K. Bhaskaran, Learned Counsel appearing for the Petitioner, Mr. C. Mahadevan, Learned Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

5. The Learned Counsel for the Petitioner strenuously urged that inasmuch as the Petitioner is an insurance company dealing the funds collected from the public as vehicle owners towards insurance premia for meeting the claims of third parties for compensation, the Tribunal below ought to have condoned the delay in filing the application for setting aside the exparte award and could have imposed costs, if necessary, instead of dismissing the said application, as a result of which serious prejudice has been caused. It is further contended that the Insurance Policy issued to the said Mr. Ramarajan by the Petitioner was an 'Act only policy', which does not cover any liability for the damage to the vehicle of a third party, like the Respondent, and as such, the Petitioner has a good case to be argued and decided in M.C.O.P. No. 531 of 2006 on merits. The Learned Counsel for the Respondent while justifying the impugned order, submitted that even from the affidavit filed in support of the application for condoning the delay in filing the application for setting aside the exparte order, it could be seen that despite service of notices in M.C.O.P. No. 531 of 2006, no effective steps have been taken to contest the matter till attachment was ordered in E.P. No. 75 of 2012 before the Tribunal below and the Respondent cannot be made to wait indefinitely for recovering her legitimate dues.

6. Before proceeding further, it requires to be taken note of the fact that the exparte award dated 10.04.2008 in M.C.O.P. No. 531 of 2006 is a non-speaking one. The Tribunal below has merely recorded that P.W.1 was examined, his Proof Affidavit was filed and Exhibits A-1 to A-4 were marked, the claim had been proved and the Petitioner is entitled to the amount claimed as prayed for. The Division Bench of this Court in **M/s. Meenakshisundaram Textiles -vs- M/s. Valliammal Textiles Ltd.** [(2011) 3 CTC 168] after referring to the decisions of the Hon'ble Supreme Court of India in **Swaran Lata**



Ghosh -vs- H.K. Banerjee [(1969) 1 SCC 709], **State of Tamil Nadu -vs- S. Thangavel** [(1997) 2 SCC 349], **Balraj Taneja -vs- Sunil Madan** [(1999) 8 SCC 396], **Lakshmi Ram Bhuyan -vs- Hari Prasad Bhuyan** [(2003) 1 SCC 197], **Ramesh Chand Ardawatiya -vs- Anil Panjwani** [(2003) 7 SCC 350], and **State of Punjab -vs- Bhag Singh** [(2004) 1 SCC 547], has reiterated the settled legal position that even in the absence of the Defendant contesting in a suit, the Court is legally bound to give reasons for accepting the claim of the Plaintiff and in the absence of such adjudication of the claim, such decree passed cannot be sustained in law. There cannot be any doubt that the exparte award dated 10.04.2008 in M.C.O.P. No. 531 of 2006 passed by the Tribunal below in this case squarely falls under that category. In fact, the amount of Rs.1,00,000/- sought by the Respondent in M.C.O.P. No. 531 of 2006 has been granted by the Tribunal below for the mere asking and there is no discussion in the exparte award dated 10.04.2008 with reference to the evidence for arriving at that amount. In such circumstances, that exparte award certainly calls for interference. However, at the same time, it is seen that the Petitioner has rather adopted a very casual and cavalier approach in contesting the proceedings in the Tribunal below, which also cannot be lost sight of.

7. In this factual backdrop, the question that arises for consideration is whether the order dated 30.04.2013 passed by the Tribunal below dismissing the application to condone the delay in filing the application for setting aside the exparte award dated 10.04.2008 in M.C.O.P. No. 531 of 2006, requires to be interfered with and if so, on what terms?

8. In the affidavit filed in support of the I.A. No. 902 of 2012 for condoning the delay in filling the application for setting aside the exparte award, it has been stated that one of the Panel Advocates of the Petitioner had undertaken to file vakalat on the hearing and had not followed up the matter thereafter, which lead to the passing of the exparte award. Since the deponent of that affidavit has conspicuously not stated the date on which the notice in M.C.O.P. No. 531 of 2006 had been served on the Petitioner and the action taken by its officials thereafter, this Court on 15.11.2018 had called for the records of the Tribunal below to ascertain whether notice has been served on the Petitioner in the proceedings in M.C.O.P. No. 531 of 2006. On a perusal of the records produced, it has come to light that the notice in M.C.O.P. No. 531 of 2006 has been served on the Petitioner on 16.02.2007 for appearance on the hearing on 22.02.2007. In view of the same, when the matter came up for hearing before this Court on 18.01.2019, the Petitioner was required to file an affidavit stating the name, present designation and place of posting with address of the person who had received the notice of appearance on behalf of the Petitioner in the Tribunal below, as found from the records. In pursuance thereof, an affidavit dated 24.01.2019 has been filed by Mr. R. Mohan, Divisional Manager of the Petitioner at Kumbakonam stating that the said notice received from the Court on 16.02.2007



was acknowledged by Mr. K. Baskar, who was then working as Administrative Officer in that office of the Petitioner and that he has been presently posted as Assistant Manager in its Motor Third Party Claims Hub at Tiruchirappalli. Thereafter, the said Mr. K. Baskar was directed by this Court on 24.01.2019 to file an affidavit explaining the action taken by him on receipt of the said Court notice for entering appearance and conducting the case before the Tribunal below. In response to the same, the said Mr. K. Baskar has filed an affidavit dated 28.01.2019 stating as follows:-

"4. I beg to submit that Kumbakonam Branch Office, at the time of my services there as Administrative Officer, was not empowered to handle legal cases and the Branch Officials used to receive the Court Notices and Summons and forward to the Controlling Divisional Office at Tiruchirappalli who were authorised to allot the cases to our Panel of Advocates.

5. I humbly submit that the said notice and petition copy had been sent to the Controlling Divisional Office, Tiruchirappalli who were empowered to deal with the legal cases pertaining to Trichy, Kulithalai, Perambalur, Ariyalur, Jeyankondam, Thanjavur, Pattukkottai and Kumbakonam. In spite of my hectic efforts in search of Dispatch Register at the Petitioner's Office, I could not locate the same and I was informed that as per the instructions of our HO, the old records have been destroyed."

On a perusal of that evasive affidavit, it is evident that the deponent has failed to provide the requisite details as sought by the Court.

9. It is needless to remind here that the Petitioner is a public institution involved in collection of funds from the public as vehicle owners in the form of insurance premia for meeting the claims for compensation arising out of motor accidents in pursuance of the statutory requirement imposed in Chapter XI of the Motor Vehicles Act, 1988. In other words, the role of the Petitioner in defending third party claims arising out of motor accidents is that of a trustee of public funds and as such, the stakes involved in this kind of litigation cannot be treated on the same lines as those of private individuals and commercial organizations, working only for profit motive. In that context, it would be useful to quote the observations of the Division Bench of the Bombay High Court in **State Bank of India -vs- Javed Textiles** (AIR 1986 Bombay 246), which is extracted below:-

"4. What weighs with us in condoning the delay is the fact that public institutions like banks in the present case should not be treated on par with private individuals and institutions. The property of public institutions belongs to the society in general and not to any individual or group of individuals in particular. Precisely for this reason, it appears group of individuals in particular.



Precisely for this reason, it appears that no particular individual is interested in safeguarding it. What belongs to all belongs to none in particular. The affairs of public institutions are managed by paid employees some of whom are interested only in their salaries. As long as their salaries and jobs are not threatened, they take the least care in safeguarding the interest of the institutions they serve. In the hierarchy of responsibility in the bureaucratic set up which invariably accompanies these institutions, the responsibility for the loss to the institutions is hard to fix, and the employees take advantage of the same. What is more, with the growing corruption in varied forms, it is not difficult for interested parties to manage delays in taking legal proceedings against the debtors of these institutions. If the courts take a strict view of the matter without taking into consideration these realities, they will unwittingly become parties to these malpractices. In the present case, the stake is as high as Rs.2,22,319/- odd. In all cases where public institutions such as banks are involved, the stakes are bounded to be high. It will not be difficult for unscrupulous persons to make a regular business out of deliberate delays in taking appropriate legal proceedings against the debtors. We do not suggest that the present is one such case. We are only uttering a word of caution against taking a mechanical view of the provisions of the law of limitation in such matters...."

This Court shares the same view. What has been stated in that decision in respect of a Nationalized Bank, equally applies to the Petitioner, which is a Nationalized Insurance Company.

10. In fact, even in the decision of the Hon'ble Supreme Court of India in **State of Karnataka -vs- Y. Moideen Kuhi** [(2009) 13 SCC 192], which is relied by the Petitioner in support of the claim for condonation of delay, it has been held as follows:-

"22. The expression 'sufficient cause' as appearing in Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') must receive a liberal construction so as to advance substantial justice as was noted by this Court in *G. Ramegowda, Major etc. v. The Special Land Acquisition Officer, Bangalore* (AIR 1988 SC 897). Para 8 of the judgment reads as follows:

"8.The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents



and where the officers were clearly at cross-purposes with it.

Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning – of course, within reasonable limits – is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the Government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. Lindley, M.R., in the *In re National Bank of Wales Ltd.* (1899) 2 Ch. 629 at p.673 observed, though in a different context:

"Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them."

23. Keeping in view the importance of questions of law which are involved we are inclined to condone the delay subject to payment of exemplary costs which we fix at rupees ten lakhs to be paid within a period of 8 weeks to the respondents. The delay is condoned subject to the payment of the aforesaid amount as costs. After making the payment the receipt thereof shall be filed before this Court along with an affidavit. Only after the payment is made the special leave petitions shall be listed for admission. We make it clear that we have not expressed any opinion on the merits of the case.

24. It is imperative that the State shall immediately initiate action as available in law against every person



responsible for the alleged fraud and delay in pursuing the remedies, fix responsibility and recover the amount paid as costs from them. Needless to say orders shall be passed in this regard by the competent authority after grant of opportunity to the concerned person(s). If any, action under criminal law(s) is to be taken, same shall be taken."

11. Judicial notice also has to be taken of the fact that on account of the increase in the amount of compensation awarded arising out of motor accidents due to ineffective follow-up and consequential payment of interest for delayed payment, the tariff of insurance premia also tend to increase spirally every year, though the value of the vehicles depreciate with the passage of time and it is ultimately the common man, who shares the risk, ends in bearing that brunt. As such, due to the lack lustre explanation from the Petitioner, if this Court unwittingly proceeds to confirm the order of the Tribunal below refusing to condone the delay in filling the application to set aside the exparte award, the ultimate sufferer would be the public at large as it is the fund collected from them by way of insurance premia by the Petitioner that would have to be paid to the Respondent in satisfaction of the award passed without adjudication.

12. Bearing in mind the aforesaid relevant factors highlighted for considering applications for condonation of delay by public institutions where overriding public interest involved is of paramount importance, this Court is of the considered view that though the inordinate delay in filing the application to set aside the exparte award requires to be condoned, exemplary costs of Rs.25,000/- would have to be paid to the Respondent who had to undergo the ordeal of prosecuting the Execution Petition and contesting the application to condone the delay in filing the application to set aside the exparte award before the Tribunal below and the Civil Revision Petition in this Court due to the lethargy and inaction of the officials of the Petitioner for more than a decade. In the absence of the Petitioner placing materials to show action taken against its erring officials who were responsible for the grave lapse, this Court is constrained in public interest to order an investigation into the matter so as to identify them and fix accountability for recovering the costs from them that would have to be paid to the Respondent. When this Court expressed that view, the said Mr. K. Baskar, who was present in Court informed that he would bear the costs that may be imposed by this Court for condoning the delay in filing the application for setting aside the exparte award, from his personal funds. In pursuance thereof, the said Mr. K. Baskar produced a demand draft for Rs.25,000/- dated 28.01.2019 towards costs in the name of the Respondent along with the challan showing proof for payment of that amount from his personal funds and he has filed an affidavit dated 28.01.2019 stating the same, which is placed on record. After accepting the costs of Rs.25,000/-, the Learned Counsel for the Respondent has



agreed that the delay in filing the application for setting aside exparte award may be condoned and that M.C.O.P. No. 531 of 2006 may be restored to the file of the Tribunal below for disposal on merits and he has also filed a Memo dated 30.01.2019 to that effect, which is recorded.

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13. It also requires to be stated that in compliance of the order passed in the execution proceedings, the Petitioner has already deposited the sum of Rs.2,60,296/- in the Tribunal below to the credit of the award dated 10.04.2008 in M.C.O.P. No. 531 of 2006 and this Court during the hearing on 15.11.2018 had directed that the said sum shall continue to be in deposit and the Respondent shall not be entitled to withdraw the same until further orders of this Court. Inasmuch as the entire amount claimed by the Respondent has been fully deposited, the interests of the Respondent stand adequately safeguarded till the dispute in M.C.O.P. No. 531 of 2006 is heard and finally decided on merits by the Tribunal below.

14. Resultantly, the order dated 30.04.2013 in I.A. No. 902 of 2012 passed by the Tribunal below is set aside and the delay of 1634 days in filing the application to set aside the exparte award dated 10.04.2008 in M.C.O.P. No. 531 of 2006 is condoned. The matter is posted on 15.04.2019 before the Motor Accident Claims Tribunal/Principal Sub-Court, Kumbakonam for passing necessary orders in the application for restoration of M.C.O.P. No. 531 of 2006 to its file in the light of the aforesaid Memo dated 30.01.2019 filed by the Counsel for the Respondent. It shall be ensured by the Tribunal below that notice of appearance is issued to all the parties and their respective Counsel well in advance for that hearing. The Petitioner shall immediately thereafter file Counter in M.C.O.P. No. 531 of 2006 and the parties through their Counsel shall appear on the subsequent dates of hearings that are fixed by the Tribunal below. There shall be atleast one effective hearing every week showing progress of the case. An endeavour shall be made by the Tribunal below to expeditiously dispose that case on merits in accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court preferably by 30.09.2019.

15. The Civil Revision Petition is allowed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /



Encl: Xerox copy of Memo dated 30.01.2019

To

Motor Accident Claims Tribunal/Principal Sub Court,
Kumbakonam.

(with all connected records and copy
of Memo dated 30.01.2019 filed by
the Counsel for the Respondent)

Copy to

1.Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

**C.R.P. (MD) No. 22 of 2015
30.01.2019**

VJT

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