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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P. (MD) No.7538 of 2019

in

CMA(MD) .No.SR44785 of 2012

The Divisional Manager
National Insurance Company Limited
Thanthai Periyar Complex
Near Old Bus Stand
Salem 636 001

: Petitioner/Appellant

Vs.

1.P.Masilamani
2.K.Shanmugam

: Respondents/Respondents

PRAYER in C.M.P(MD) .No.7538 of 2019: The Civil Miscellaneous Petition has been filed under Order IV Rule 9(4) of Appeal Suit Rules , to condone the delay of 2465 days in representing the above Civil Miscellaneous Appeal.

PRAYER in C.M.A. (MD) .SR.No.44785 of 2012: The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree order dated 20.03.2012 passed in M.C.O.P.No.114 of 2010 on the file of the Motor Accident Claims Tribunal, Kulithalai.

For Petitioner : Mr.D.Sivaraman

O R D E R

The above appeal has been filed questioning the negligence as well as quantum, where there was a delay of 2465 days in representing the above Civil Miscellaneous Appeal.

2.The only grievance of the petitioner is that while awarding compensation, the learned Judge has wrongly taken multiplier 9 instead of 5. On perusal of record shows that at the time of accident the deceased was aged about 55 years and therefore, the learned Judge has rightly taken multiplier 9, where I do not find any infirmity.

3.Further, it is seen from Paragraph No.3 of the affidavit that the petitioner has not given any acceptable reason to condone the delay and the same reads as follows:

3. It is submitted that the above C.M.A. Was originally filed on 5th October 2012 and the same was returned by the Registry for compliance of certain defects on 10.10.2012. The



above defects have been complied with and due to the delay caused in getting sanction from the Finance Committee for making the pre-conditioned deposit and due to some administrative reasons, there was a delay in making the initial deposit and obtaining necessary documents such as deposit receipt, the papers could not be represented in time. Hence, there was a delay of 2465 days in representing the above civil miscellaneous appeal before this Court and the delay in representing is neither wilful nor wanton but only due to the reasons stated above. I submit that the petitioner herein has got fair chances of succeeding in the appeal and hence, unless the above delay in representing the above appeal is condoned, the petitioner would be put to irreparable loss and hardship" .

4.The delay is not minimal and it is a very long delay. The reasons stated for the delay are not acceptable reasons.

5.In **State of Bihar vs. Deo Kumar Singh (SLP(Civil) No.13348/2019 dated 09.05.2019**, the appeal was filed with the delay of 728 days stating that the delay occurred in obtaining all the sanctions from the respective departments and also in receiving the affidavit and vakalathnama from the concerned department. The Hon'ble Supreme Court in the said case, has held that a clear signal has to sent to the Government Authorities that they cannot approach the Court as and when they please on account of gross incompetence of their officers and that too without taking any action against the concerned officers. Ultimately, in the said case, the Apex Court while declining to condone the delay of 728 days in filing the appeal, imposed the cost of Rs.20,000/- to be recovered from the officers responsible for that delay and be deposited to the Mediation Centre of the Supreme Court within four weeks.

6.By relying on the above Judgment, the reasons assigned by the petitioner are not satisfactory or sufficient reasons to condone the delay in representing the appeal. Therefore, this Court is not inclined to condone the delay of 2465 days in representing the above Civil Miscellaneous Appeal.

7.Accordingly, this petition is dismissed. In view of the order passed in CMP(MD)No.7538 of 2019, the connected C.M.A.(MD) SR.No.44785 of 2012 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (P&A)

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To

The Motor Accident Claims Tribunal
Kulithalai

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+1 CC to Mr.D. SIVA RAMAN, Advocate (SR-83409[F] dated 26/08/2019)

C.M.P. (MD) No.7538 of 2019

in

CMA(MD) .No.SR44785 of 2012

26.08.2019

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