

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P. No. 3459 of 2020
in
C.M.A. SR. No. 23930 of 2014

Rajendran

.. Petitioner

Vs.

1. B.M.Y. Basheer
2. The Divisional Manager
National Insurance Company Limited
No. 19, Officers Line
Vellore.
3. Dharmichand
4. The Divisional Manager
Oriental Insurance Company Limited
75, Krishna Street
Tiruvannamalai.

.. Respondents

PRAYER: C.M.P. No. 3459 of 2020 is filed under Section 173(1) of Motor Vehicles Act, 1988 to condone the delay of 286 days in filing the above appeal.

C.M.A.SR.No. 23930 of 2014 is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MACTOP No. 593 of 2007 dated 07.01.2013 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai.

For Petitioner : Ms. A.Subadra
For Ms. Malar

For Respondents : Mr. J.Michael Visuvasam (For R2)

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O R D E R

The civil miscellaneous petition is filed to condone the delay of 286 days in filing the civil miscellaneous appeal against the order passed by the Motor Accidents Claims Tribunal in MACTOP.No.593 of 2007 dated 07.01.2013.

2. The condone delay petition is filed under Section 173(1)

of the Motor Vehicles Act, 1988. The appeal has to be filed within the period of limitation prescribed under Section 173(1) of the said Act. Accordingly, 90 days time limit is contemplated. The Proviso Clause to Section 173(1) stipulates that the High Court may entertain the appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Thus, there must be sufficient cause for delay and the reasons stated for such an enormous delay in filing the appeal is also to be explained and must be an acceptable one.

3. Law of Limitation as contemplated under Section 173(1) of the Motor Vehicles Act is the law. The condonation of delay is an exception under the proviso clause. Thus, the condonation of delay can never be a mechanical affair and the High Court cannot condone the delay in a routine manner. When the law provides limitation for preferring an appeal and the proviso clause as contemplates the power of discretion to the Court to condone the delay, then such discretionary powers are to be exercised judiciously and by recording reasons. It is not as if, the High Courts can condone the delay in a routine manner, so as to dilute the law of limitation as contemplated under the said Act. Thus, in all cases, where there is an enormous delay in filing an appeal, the Courts are bound to ascertain the reasons and its genuinity and the acceptability of such reasons. The reasons must be candid and the Courts are bound to record such reasons, while condoning long delay.

4. As far as the lis on hand is concerned, there is a delay of 286 days in filing the appeal is sought to be condoned in the present civil miscellaneous petition.

5. The reasons stated in the affidavit filed in support of this miscellaneous petition is that, the Tribunal has permitted the petitioner/ claimant only to receive 50% of the award amount and further directed that the balance amount shall be kept in a Fixed Deposit in any one of the nationalized bank for a period of three years. Hence, the petitioner was not in a position to file an appeal by spending money as he spent the said amount for his medical expenses.

6. The learned counsel for the appellant also stated that the 50% of the awarded amount received by the petitioner was spent towards medical expenses and therefore, he was not in a position to spend money for filing an appeal.

7. For the above reasons, there is a delay of 286 days in filing the appeal is not acceptable in view of the fact that the Court fee is also not enormous and further, the free Legal Aid Services are available to such litigants, who all are unable to

mobilize the funds. Thus, all such litigants are expected to approach the Legal Services Authority for the purpose of filing an appeal, if they are of the opinion that their grievances are not redressed. Contrarily, they cannot file an appeal after a huge delay of 286 days and state that they could not able to mobilize the money. In the event of accepting such reasons, this Court is of the considered opinion that all such appeals filed with huge delay are to be condoned as a matter of routine and such practice is impermissible with reference to the provisions under Section 173(1) of the Motor Vehicles Act.

8. Power of discretion and the exception clauses are to be exercised properly and in order to mitigate certain circumstances arising on account of the certain events or incidents, which must be an acceptable one. Contrarily, certain reasons, which are flimsy and routine, cannot be a ground to condone the huge delay. Uncondonable delay cannot be condoned.

9. In the present case, the petitioner has not established any acceptable reason for the purpose of condoning the enormous delay of 286 days and therefore, this Court is not inclined to condone the delay and consequently, C.M.P. No.3459 of 2020 stands dismissed and C.M.A.SR.No.23930 of 2014 is rejected at the SR Stage itself. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

may

To

1.The Principal Sub Judge
Motor Accidents Claims Tribunal
Thiruvannamalai.

2.The Sub Assistant Registrar,
A.E.Section,
High Court, Madras.

+1cc to M/s.J.Michael Visuvasam, Advocate, Sr.No.20944

C.M.P. No. 3459 of 2020
in

C.M.A. SR. No. 23930 of 2014

RR(CO)
GS(31/07/2020)