

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.P.No.5394 of 2020
in
CMA.SR.No.24035 of 2020

M/s.ICICI Lombard General Insurance Company Limited,
No.142, 1st Floor, ECR Main Road, kottupalayam,
Pondicherry-605 008,
Represented by its Authorised signatory. ..Petitioner
Vs.

1.Ammanu@ Meenatchi
2.Chitra@Jayachitra
3.Saravanan
4.Rajkumar ... Respondents

PRAYER: Civil Miscellaneous Petition filed under Section 173(1) of Motor Vehicles Act, to condone the delay of 229 days in filing the first above appeal.

For Petitioner : Mr.S.Anil Sandeep

ORDER

The civil miscellaneous petition is filed to condone the delay of 229 days in filing the appeal against the judgment and decree passed in M.C.O.P.No.3770 of 2016 dated 21.03.2019 by the learned Accident Claims Tribunal Judge/Special Sub Judge, Cuddalore.

2. The petitioner is the ICICI Lombard General Insurance Company Limited. The reasons stated in the affidavit filed in support of the miscellaneous petition is that the Tribunal passed an order in M.C.O.P.No.3770 of 2016 on 21.03.2019 and the trial Court counsel had fallen unwell and could not attend his court works. The office of the said counsel unable to follow up with this matter to file a copy application in time to get the copy of this order. When the officials of the petitioner enquired about the order copy, it was informed that due to his illness, he was unable to follow up with the order copy. Subsequently, arrangements were made and filed copy application and thereafter, the appeal is filed.

3. Let us consider whether such reasons can be acceptable for condoning the enormous delay. The petitioner is a private Insurance Company dealing with the public money. Thus, they are duty bound to take all steps and file an appeal within the period of limitation. This apart, the affidavit states that the trial Court counsel fallen unwell. However, there is no details regarding the nature of illness, period of treatment, and other particulars. Thus, such statements are made by litigants in a routine manner and without showing any responsibility

in the matter of preferring an appeal. Courts cannot help the persons who are not responsible in such matters. By simply stating that the trial Court counsel is unwell, huge delay cannot be condoned. Even if the lower court counsel was unwell during a particular time, alternate arrangements are to be made to get the order copy and file an appeal. Even if such a delay is meager, then the Courts can condone the delay. However, long delay cannot be condoned in a mechanical manner. In the present case, the reasons stated are flimsy and not substantiated. In the absence of proof to establish the genuinity of the reasons, the Court would not accept the reasons and this apart, uncondonable delay cannot be condoned in a mechanical manner.

4. In this regard, the petitioner/Company has instituted appropriate action against the officials who are all responsible for such lapses, negligence and dereliction of duty. The officials of the petitioner company are doing public services and they are expected to be vigilantly and prudently. Therefore, any lapses, negligence or dereliction of duty, which are all misconducts, are to be dealt with in accordance with discipline and appeal rules. In the event of any financial loss to the petitioner company on account of the award amount granted by the tribunal, the petitioner Company has to initiate appropriate steps to recover the monetary transactions from

the person who are all responsible for such lapses and in this regard, an enquiry is to be conducted by the competent authority.

5. Though the petitioner is a private company, they are collecting the money from the public. Therefore, they are performing the public services, undoubtedly, they are accountable as well as bound to follow the rules of the IRDA.

6. The condone delay petition is filed under Section 173(1) of the Motor Vehicles Act, 1988. The appeal is 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.

7. 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.

8. In all such delay, the reasons must be candid, enabling this Court to exercise the power of discretion under the Proviso Clause to Section 173(1) of the Motor Vehicles Act. In the absence of any such convincing reasons, the Courts would not condone the huge delay in a routine manner, which would defeat the very purpose of law of limitation as contemplated under the statute. Uncondonable delay cannot be condoned.

9. 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.

10. In the present case, the petitioner has not established any acceptable reason for the purpose of condoning the delay of 229 days and therefore, this Court is not inclined to condone the delay and consequently, C.M.P.No.5394 of 2020 stands dismissed and C.M.A.SR.No.24035 of 2020 is rejected at the SR Stage itself. No costs.

ssb

Index:Yes/No

Internet:Yes/No

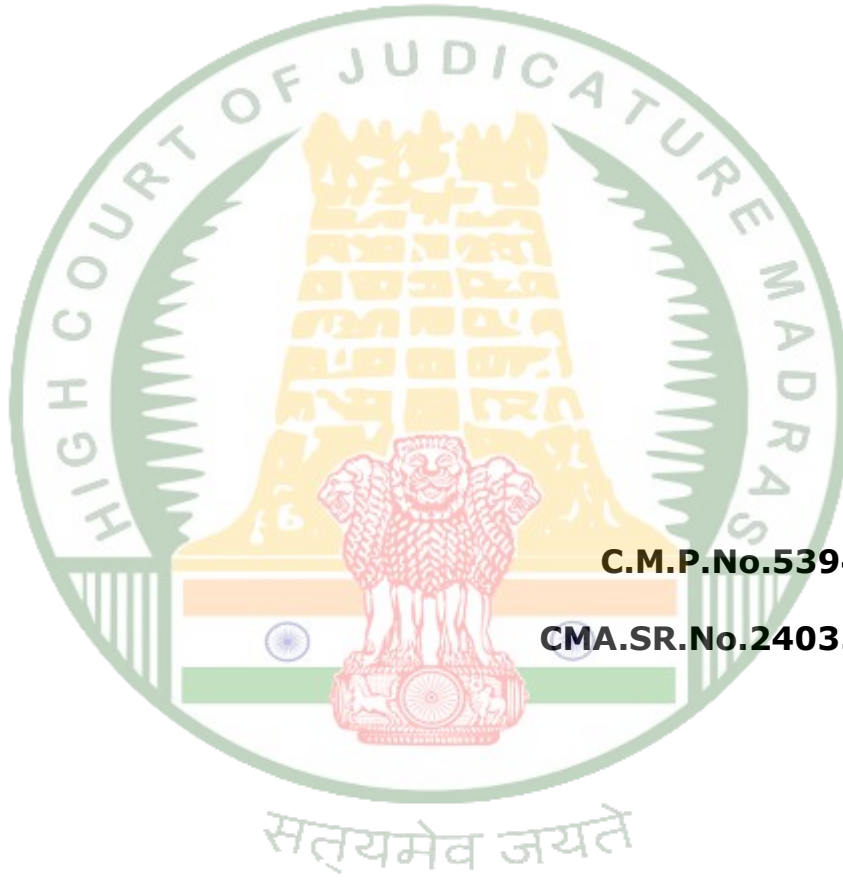
Speaking Order/Non-speaking order

05.03.2020

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S.M.SUBRAMANIAM, J.

ssb



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