



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.9939 of 2019

and

C.M.A.SR.No.142133 of 2018

M.Palanisamy

.. Petitioner/Appellant

Vs.

1.K.Shanmugam

2.D.Velusamy

3.Oriental Insurance Co., Ltd.

May Flower Building,

Dr.Balasundaram Road,

ATT Colony, Coimbatore - 641 018.

.. Respondents/Respondents

PRAYER: C.M.P.No.9939 of 2019 is filed under Section 173(1) of Motor Vehicles Act, 1988 to condone the delay of 298 days in filing the above appeal.

C.M.A.SR.No.142133 of 2018 filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.1131 of 2013 dated 27.02.2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Petitioner : Mr.A.P.Rajaprabhu

For Respondents: No appearance

for R1 & R2

Mr.D.Bhaskaran for R3

O R D E R

The civil miscellaneous petition is filed to condone the delay of 298 days in filing the civil miscellaneous appeal against the order dated 27.02.2017 passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore in M.C.O.P.No.1131 of 2013.

2. The reasons stated in the affidavit filed in support of the miscellaneous petition is that the petitioner was under bed rest for seven months. Thereafter, he contacted his trial



Court counsel and the copy application was filed. It is stated that there was a delay in filing the copy application.

3. This Court is of the considered opinion that mere statement, the petitioner was in bed rest for seven months is insufficient to condone the huge delay of 298 days. The reasons are not substantiated and no evidence has been placed. Even in such cases, the petitioner is bound to produce some evidence, contrarily, mere statement that he was in bed rest for seven months is absolutely insufficient for condoning the long delay of 298 days. Such reasons stated in a routine manner ought to be construed as flimsy and therefore, this Court is not inclined to entertain the condone delay petition.

4. 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.

5. 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.

6. Enormous delay cannot be condoned by the Courts in a routine manner. 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.

7. 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.

8. In the present case, the petitioner has not stated any acceptable reason for the purpose of condoning the huge delay of 298 days and therefore, this Court is not inclined to condone the delay and consequently, C.M.P.No.9939 of 2019 stands dismissed and C.M.A.SR.No.142133 of 2018 is rejected at the SR Stage itself. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

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

+1cc to Mr.A.P.Rajaprabu, Advocate, S.R.No. 23510

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 23255

C.M.P.No.9939 of 2019
and
C.M.A.SR.No.142133 of 2018

MR(CO)
GN(15/07/2020)