

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.8100 of 2020

in

C.M.A.SR.No.47137 of 2020

The Divisional Manager,
M/s.National Insurance
Company Ltd.,
No.9, Infantry Road,
Near Alankar Theatre,
Vellore.

.. Petitioner

Vs.

1.Kumar
2.Padmakumar
3.Kumar
4.Azhagiri

.. Respondents

PRAYER: C.M.P.No.8100 of 2020 is filed under Section 173(1) of Motor Vehicles Act, 1988, to condone the delay of 263 days in preferring the appeal in C.M.A.SR.No.47137 of 2020, as against the Decree and Judgment, dated 13.03.2019, passed in M.C.O.P.No.156 of 2016, by the Hon'ble Motor Accident Claims Tribunal (In the Court of Special Sub.Judge), at Tiruvannamalai.

C.M.A.SR.No.47137 of 2020 is filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and judgment dated 13th March 2019, passed in M.C.O.P.No.156 of 2016, by the Hon'ble Motor

Accidents Claims Tribunal, (In the Court of Special Sub Judge), at
Tiruvannamalai.

For Petitioners : Mr.J.Michael Visuvasam

ORDER

The civil miscellaneous petition on hand is filed under Section 173(1) of the Motor Vehicles Act, to condone the delay of 263 days in preferring the civil miscellaneous appeal against the order passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.156 of 2016 dated 13.03.2019.

2. 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.

3. Law of Limitation as contemplated under Section 173(1) of the Motor Vehicles Act is the substantive 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 present lis on hand is concerned, there is a delay of 263 days.

5. The reasons stated in the accompanying affidavit filed in support of the civil miscellaneous petition reveals that the petitioner / M/s.National Insurance Company Limited referred the cases to their Panel Advocate at Chennai and based on his second opinion, the petitioner / M/s.National Insurance Company Limited had decided to prefer an appeal against the award passed by the Motor Accident Claims Tribunal dated 13.03.2019 passed in M.C.O.P.No.156 of 2016.

6. The reasons stated for condoning the delay is that there is an administrative delay in obtaining necessary approval and compliance of statutory deposits and therefore, the delay is to be condoned.

7. This Court has to consider whether such a long administrative delay can be condoned in a mechanical manner or not. Undoubtedly, there is a possibility of some administrative delay in certain unavoidable

circumstances. However, such administrative delay, if exceeds and the delay is enormous, then it cannot be condoned in a mechanical manner. The Petitioner / M/s.National Insurance Company Limited being a public authority, they are bound to be vigilant and prompt in performing their duties and responsibilities. Small amount of delay can be condoned by taking a lenient view. However, long delay cannot be condoned in the absence of any valid and acceptable reasons. Merely stating that there was a delay in obtaining second opinion and getting necessary approval from the competent authority is insufficient. The petitioner has not stated any details regarding the date of sending the case papers to the Panel Advocate, date of approval and other details, enabling this Court to understand what exactly the correct reason for the delay. In the absence of such particulars, this Court cannot presume that the administrative delay contended in the affidavit is genuine. Such a factual presumption is impermissible. Inference cannot be drawn with reference to these factual aspects. Every dates and events are important for condonation of such huge delay. In the absence of such dates and events, Courts would not be in a position to adopt a mechanical approach by condoning such delay.

8. In recent years, these public authorities are found to be frequently negligent and committing dereliction of duty in respect of dealing with such appeals and other cases. There is a general trend that the public authorities are having lack of sincerity and committing dereliction on duty. These negligence and dereliction of duty are serious misconducts and therefore, the higher authorities are bound to ensure that the officials are performing their duties and responsibilities with utmost care and with devotion to duty. Any such lapse or dereliction of duty is to be enquired into properly and all appropriate actions are to be initiated to ensure initiations of appropriate disciplinary proceedings. Therefore, the authorities cannot approach the Court in a routine or mechanical manner with a huge delay in filing an appeal. Every such delay is to be explained in a proper manner and the Courts are also to ensure that unexplained delay is not condoned in a routine manner.

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. Uncondonable delay cannot be condoned.

10. In view of the reasons stated above, this Court is not inclined to condone the delay of 263 days in filing an appeal and consequently, the Civil Miscellaneous Petition in C.M.P.No.8100 of 2020 stands dismissed and consequently, C.M.A.SR.No.47137 of 2020 is rejected at the SR Stage itself. No costs.

03.08.2020

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Index:Yes
Speaking order

To

1.The Motor Accidents Claims Tribunal,
In the Court of Special Sub Judge,
Tiruvannamalai.

C.M.P.No.8100 of 2020 in
C.M.A.SR.No.47137 of 2020

S.M.SUBRAMANIAM, J.

Kak

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



C.M.P.No.8100 of 2020
in
C.M.A.SR.No.47137 of 2020

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