

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.8176 of 2020

in

C.M.A.SR.No.47140 of 2020

Divisional Manager,
M/s.National Insurance
Company Ltd.,
No.110, J.N.Street,
Pondicheri.

.. Petitioner

Vs.

1.Vikram
2.Murugavel

.. Respondents

PRAYER: **C.M.P.No.8176 of 2020** is filed under Section 173(1) of Motor Vehicles Act, 1988, to condone the delay of 261 days in filing the Civil Miscellaneous Appeal, against the Decree and Judgment dated 26th February 2019, passed in M.C.O.P.No.2271 of 2015, by the Hon'ble Motor Accidents Claims Tribunal, (Principal Sub Court), at Cuddalore.

C.M.A.SR.No.47140 of 2020 is filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 26th February 2019 passed in MCOP.No.2271 of 2015 by the Hon'ble Motor Accidents Claims Tribunal, (Principal Subordinate Court), at Cuddalore.

For Petitioner : Mr.J.Michel Visuvasam

ORDER

The civil miscellaneous petition on hand is filed under Section 173(1) of the Motor Vehicles Act, to condone the delay of 261 days in preferring the civil miscellaneous appeal against the order passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.2271 of 2015 dated 26.02.2019.

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. As far as the present lis on hand is concerned, there is a delay of

261 days.

4. The learned counsel appearing on behalf of the petitioner / M/s.National Insurance company Limited vehemently contended that the delay was not willful on the part of the petitioner / Insurance Company. The delay occurred on account of the fact that the Subordinate Court counsel filed the copy application belatedly. The final award was passed on 26.02.2019 and the learned counsel filed the copy application on 19.12.2019, after a lapse of 296 days. The copy was made ready on 28.01.2020 by the Tribunal and it was received by the learned counsel on record on 30.01.2020 and thereafter, it was forwarded to the petitioner / Insurance company. Subsequently, the copy of the judgment and decree was referred to the Panel Advocate at High Court, seeking second opinion and thereafter, the appeal was filed.

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5. The reasons stated for an enormous delay in filing the appeal is that the learned counsel, who appeared before the Motor Accident Claims Tribunal applied for certified copy belatedly, after a delay of 296 days.

Question arises, whether such a long delay committed by the learned counsel before the Tribunal can be condoned without any valid reason. Even in such cases, where there is a delay and if the reasons are substantiated and an acceptable one, then alone, the Courts can take a lenient view and mechanical approach in the matter of condonation of delay is impermissible.

6. In the present case, the affidavit filed in support of the miscellaneous petition states that the copy application was submitted belatedly after a delay of 296 days. However, such a long delay is not explained by the petitioner / Insurance company. In the absence of any valid reason for such a delay and even such a long delay committed by the learned counsel, who appeared before the Tribunal, cannot be a ground to condone the delay in the routine manner.

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7. Law expects that every such delay is to be explained. Unexplained delay cannot be condoned. Such unexplained delay is to be construed as uncondonable. Uncondonable delay cannot be condoned in

Thus, delay under what circumstances, would be condonable is the relevant point to be considered by the Courts, while condoning such enormous delay.

8. Parties are expected to file their respective appeals within the period of limitation stipulated in the statute. Undoubtedly, certain unforeseen circumstances may be the reason for delay. However, such unforeseen circumstances or reasons, which all are genuine, must be clearly and truthfully explained in the affidavit filed in support of the miscellaneous petition. Merely stating that the delay in filing copy application cannot be a ground in view of the fact that such conduct is a negligence on the part of the learned counsel, who appeared before the Tribunal. Learned counsels are expected to perform their professional duties in an efficient manner and as law expects. The interest of the litigants are to be protected by the counsel, who are engaged by such litigants. In the event of any such negligence or misconduct, they are liable for all consequences and the litigants are also at liberty to initiate appropriate actions against such misconducts, negligence or fraud or any

other illegal activities. Therefore, adopting a lenient approach would demoralize the professional ethics, which is to be maintained. The complaints against the professionals are in an ascending mode. Thus, a change in this line is certainly warranted. Professional Ethics and its adherence are of paramount importance. Any lacuna, violations or any other illegal aspect in this matter are to be viewed seriously and under those circumstances, the litigants are at liberty to initiate appropriate proceedings, seeking appropriate remedy from the appropriate Court of law. Contrarily, the Courts cannot go on adopting a lenient approach in the matter of condonation of delay without any valid reason. In the event of adopting such a lenient approach in all circumstances, the Courts are also encouraging such negligence, which would result in demoralization of professional Ethics in legal practice. Courts are also expected to record reasons, when the reasons are genuine. The Courts are not supposed to condone the delay in a routine manner without recording reasons.

9. Law of Limitation is substantive law. Statute stipulates time

limit for preferring an appeal. However, power of condonation of delay is provided to the Courts to condone the delay. But, condonation of delay is an exception and cannot be made as a rule by condoning the delay in a mechanical manner. Thus, while exercising the power of discretion, Courts are expected to be cautious and the reasons for condonation must be recorded and in the absence of recording any reasons, the Courts are not considering the substantive law of limitation. Therefore, the law must prevail in all circumstances and discretion must be exercised discreetly and with caution.

10. The very purpose and object of providing discretionary powers to the Courts are to ensure that the justice is done in an appropriate manner. Because of some genuine delay, the rights of the litigants cannot be neutralized and they should not be deprived of remedy from the Court of law. Therefore, the power of discretion, which is provided with genuine intention cannot be diluted nor be neutralized by condoning the delay in a casual manner.

11. Thus, this Court is of the considered opinion that the petitioner cannot escape from their responsibility by merely shifting the burden on the learned counsel, who appeared before the Tribunal. It is needless to state that the responsible officials of the petitioner / Insurance company also have not pursued the matter properly. Once the judgment and decree is passed by the Tribunal, then the officials of the Insurance company must also follow up the matter for the purpose of implementation or to prefer an appeal or to take all further actions. Thus, officials of the petitioner / Insurance company also committed an act of negligence and dereliction of duty, which all are misconducts under the Service Regulations.

12. In the present case, whether the learned counsel before the Tribunal has committed an act of negligence or the officials of the petitioner / Insurance company is responsible for such negligence and committed dereliction of duty, are to be enquired into by the higher officials of the petitioner / Insurance company and all appropriate actions are to be taken against all concerned to recover the loss, if any occurred

to the Insurance company. The petitioner / Insurance company is entitled to recover the losses occurred on account of the negligence or dereliction of duty or otherwise. Therefore, such a practice of recovering the monetary loss from the officials and from the panel advocate are to be established and in the event of not doing so, it would be very difficult to administer the system properly. Once the responsibility is fixed, then alone, we can ensure proper filing of appeal, proper settlement of compensation to the poor victims and all other actions.

13. This Court is of the considered opinion that the petitioner/ Insurance company is bound to institute appropriate proceedings against all concerned. Monetary losses, if any occurred, is also to be recovered from the persons, who all are accountable and responsible for such lapses, negligence and dereliction of duty, etc., However, the condonation of delay is concerned, this Court is unable to accept the reasons stated as it is very plain and straight that the counsel has committed a mistake in not filing the copy application and the application was filed, after an enormous delay of 296 days. The reasons

stated are neither candid nor convincing and under these circumstances, this Court is not inclined to condone the delay and consequently, the Civil Miscellaneous Petition in C.M.P.No.8176 of 2020 stands dismissed and consequently, C.M.A.SR.No.47140 of 2020 is rejected at the SR Stage itself. No costs.

07.08.2020

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Index: Yes
Speaking order

To

1. The Principal Subordinate Court,
(Motor Accidents Claims Tribunal),
Cuddalore.

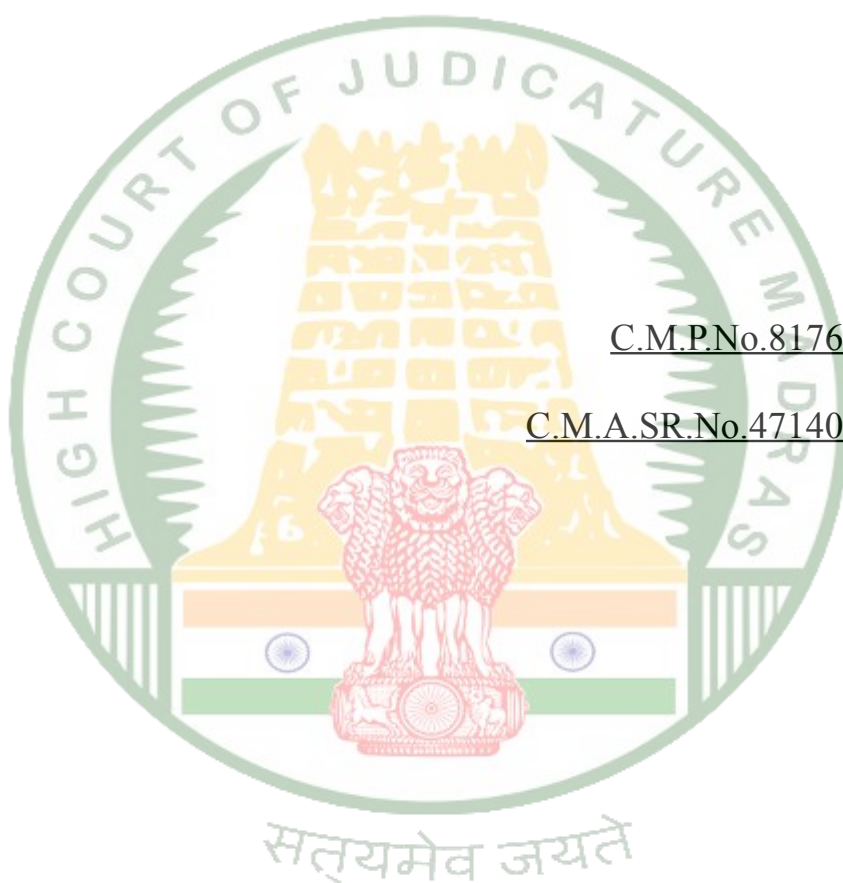
2. The Sub Assistant Registrar,
A.E. Section,
High Court, Madras.

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S.M.SUBRAMANIAM, J.

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