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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.12962 of 2018
in C.M.A.No.SR61857 of 2016

Mohan .. Petitioner/Appellant
Vs.

1. Kumarasamy
2. The Branch Manager,
National Insurance Company Ltd.,
Periya Street,
Vellore Town and Taluk,
Vellore District. .. Respondents/ Respondents

C.M.P.No.12962 of 2018 is filed under Section 173(1) of Motor Vehicles Act, 1988 to condone the delay of 331 days in filing the appeal against the order dated 03.03.2015 passed in M.A.C.T.O.P.No.126 of 2010 on the file of the Motor Accidents Claims Tribunal, Arni, Thiruvannamalai District.

C.M.A.No.SR61857 of 2016 is filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 03.03.2015 passed in M.A.C.T.O.P.No.126 of 2010 on the file of the Motor Accidents Claims Tribunal, Arni, Thiruvannamalai District.

For Petitioner : Mr.Ashokapathy
for M/s.Pass Associates

For R2 : Ms.Sree Vidhya

O R D E R

The Civil Miscellaneous Petition is filed to condone the delay of 331 days in filing the appeal against the order dated 03.03.2015 passed in M.A.C.T.O.P.No.126 of 2010 on the file of the Motor Accidents Claims Tribunal, Arni, Thiruvannamalai District.

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, 1988, 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 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 a long delay.

4. The learned counsel for the appellant mainly contended that, on account of injuries, the appellant lost his memory slowly and he was suffering from severe headache and therefore, he was not in a position to file an appeal within the period of limitation.

5. Except this, there is no reason stated for condoning the long delay. This Court is of the view that, in every case of accident, one cannot expect that the injured person will take active steps to file an appeal. There are other family members, relatives, friends or learned counsel, who are assisting these persons for getting remedy are available and therefore, by citing the reason of injuries sustained, the delay cannot be condoned and if such reason is accepted by the Courts, all the cases of appeal with long delay ought to be condoned in a routine manner. For the reason that, the claimant is an injured person and on account of injuries, he was unable to file an appeal, wherein, the condone delay petition is filed irrespective of the number of days of delay, the Court will be bound to condone the delay as a rule of law, which is not permissible under the provisions of the statute.



6. Therefore, the reason that the claimant sustained injuries, on account of which, he could not be able to file an appeal, cannot be an acceptable reason, in view of the fact that, such reasons are undoubtedly happening in every case of accident and therefore, the condonation of delay would be a routine affair.

7. As far the appellate Court is concerned, such reasons cannot be accepted for condoning uncondonable delay and therefore, this Court is not inclined to allow this petition for condonation of delay.

8. Power of discretion and exception clauses are to be exercised properly in order to mitigate certain circumstances arising on account of 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.

In the present case, the petitioner has not established any acceptable reason for the purpose of condoning the enormous delay of 331 days and therefore, this Court is not inclined to condone the delay and consequently, C.M.P.No.12962 of 2018 stands dismissed and C.M.A.No.SR61857 of 2016 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

1.The Motor Accidents Claims Tribunal,
Arni,
Thiruvannamalai District.

2.The Sub Assistant Registrar,
A.E.Section,
Madras High Court,
Chennai - 600 104.

+1cc to M/s.Pass Associates, Advocate SR.20042

+1cc to M/s.R.Sreevidhya, Advocate SR.20290

C.M.P.No.12962 of 2018
in C.M.A.No.SR61857 of 2016

GP(CO)
CB(01/07/2020)