

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.4382 of 2017

in

C.M.A.SR.No.111791 of 2014

K.Coral Marium @ Coral .. Petitioner/Appellant sought
to be preferred in
CMA.SR.111791/14

Vs.

1.D.Saravanan

2.United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 600 002. ... Respondents/Appellant sought
to be preferred in
CMA.SR.111791/14

PRAYER: C.M.P.No.4382 of 2017 is filed under Section 173(1) of Motor Vehicles Act, 1988 to condone the delay of 886 days in filing the above appeal.

C.M.A.SR.No.111791 of 2014 sought to be preferred under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.5586 of 2003 dated 30.11.2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge-cum-Fast Track Court No.3, Chennai.

For Petitioner : Mr.N.S.Sivakumar

O R D E R

The civil miscellaneous petition is filed to condone the delay of 886 days in filing the civil miscellaneous appeal against the order dated 30.11.2011 passed by the Motor Accident Claims Tribunal, Additional District Judge-cum-Fast Track Court No.3, Chennai in M.C.O.P.No. 5586 of 2003.

2. The learned counsel for the petitioner made a submission that the petitioner was employed in out station and therefore, she could not able to file an appeal within the time of limitation. There was a delay in contacting the trial Court counsel and therefore, there is a delay of 886 days in filing the appeal.

3. This Court is of the considered opinion that the petitioner being a Junior Scientist, who was working in

Shankar Nathiraliya Eye Hospital, Chennai, cannot give a reason that she was working in some other place and therefore, she could not able to file the appeal in time. Such reasons are not only flimsy and also unacceptable. Therefore, this Court is not inclined to consider 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 886 days and therefore, this Court is not inclined to condone the delay and consequently, C.M.P.No.4382 of 2017 stands dismissed and C.M.A.SR.No.111791 of 2014 is rejected at the SR Stage itself. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

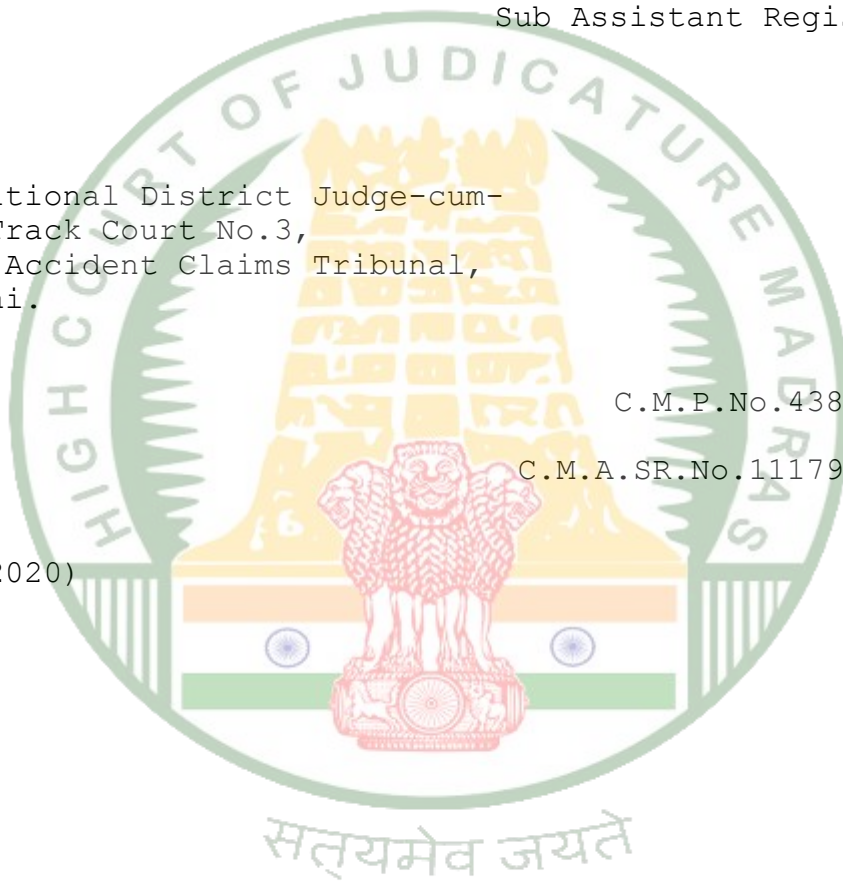
Ms

To

1.The Additional District Judge-cum-
Fast Track Court No.3,
Motor Accident Claims Tribunal,
Chennai.

C.M.P.No.4382 of 2017
in
C.M.A.SR.No.111791 of 2014

PPA(CO)
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