



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD)No.1824 of 2013

1.C.V.Pandian(died) ... Petitioner/Petitioner/1st Respondent
2.Saraswathi
3.Vani @ Kalaivani
4.Parthasarathy
5.Jeyabharathi ... Petitioners 2 to 5

(Petitioners 2 to 5 are brought on record as legal heirs of the deceased sole petitioner as per order dated 07.02.2019 made in C.M.P. (MD)Nos.1411 to 1413 of 2018 in CRP(NPD) (MD)No.1824 of 2013)

vs.

1.Ramesh Kumar ...1st Respondent/1st Respondent/Petitioner
2.The Divisional Manager,
United India Insurance Company Limited,
Door No.7A,
West Veli Street,
Madurai-625 001. ...2nd Respondent/2nd Respondent/2nd Respondent

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the order dated 20.02.2013 passed in the application in I.A.No.1266 of 2012 in M.C.O.P.No.1995 of 2004 by the learned Fourth Additional District Court, Madurai dismissing the application for condoning the delay of 784 days in filing application to set aside the exparte decree dated 12.03.2010.

For Petitioners : Mr.J.Barathan
For R1 : Mr.G.Solairaja
For R2 : Mr.V.R.Subramanian

ORDER

This civil revision petition has been filed against the order of the Motor Accidents Claims Tribunal / Fast Track Judge-I, Madurai made in I.A.No.1266 of 2016, which was filed by the petitioner herein seeking condonation of delay of 784 days in filing petition to set aside the exparte award made in M.C.O.P.No.1995 of 2004.

2. The claim petition was filed by the first respondent herein seeking compensation of Rs.12 lakhs for the injuries sustained by him in a motor accident that took place on 07.04.2004. The Insurance Company was arrayed as second respondent, while the petitioner was the first respondent. Though the petitioner



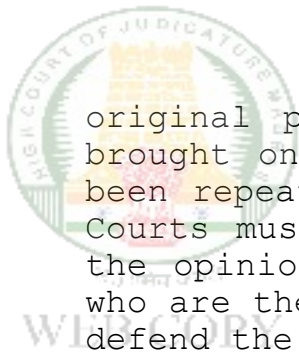
initially appeared through counsel, subsequently he remained *exparte*. The Insurance Company resisted the claim contending that the driver of the vehicle did not have valid driving license and therefore, the Company is not liable to pay the compensation. The said contention of the Insurance Company was accepted and an award was passed directing payment of compensation by the petitioner herein. Thereafter, the petitioner filed an application seeking condonation of delay of 784 days in filing application to set aside the *exparte* award.

3. The Tribunal concluded that the award is one on merits and not an *exparte* award. The Tribunal further went into the merits of the matter and examined the reasons assigned by the petitioner for the delay. In doing so, the Tribunal came to the conclusion that the petitioner has not explained the delay properly. Upon the above conclusion, the Tribunal dismissed the application for condonation of delay. Aggrieved, the petitioner has come up with this revision.

4. It is seen from the records that the first respondent in I.A.No.1266 of 2012 had in fact endorsed 'no objection' for allowing the petition. I find that the order of the Tribunal cannot be sustained. Once the Tribunal had come to the conclusion that it is not an *exparte* award and the award is one on merits, it ought not to have gone into the reasons assigned for the delay. I am unable to accept the conclusions of the Tribunal to the effect that the award is one on merits.

5. Admittedly, the petitioner herein, who was the first respondent in the original petition, was set *exparte* and no evidence was let in on his behalf. May be the Insurance Company let in some evidence, but that will not make the award as one on merits as against the petitioner. It is a common knowledge that awards in motor accident cases are basically against the owners of the motor vehicle and the Insurance Company steps in only as a indemnifier pursuant to the contract. Therefore, question of liability has to be decided against the owners of the vehicle. Therefore, if the owner of the motor vehicle remains absent, no matter that the Insurance Company contested and if an award is passed against the owner, then it is essentially an *exparte* award and it cannot be considered as one on merits. I am therefore of the considered opinion that the Tribunal was not right in concluding that the award is one on merits.

6. Coming to the question of sufficiency of the delay, the petitioner has stated that he was under the firm belief that the Insurance Company will take care and he had gone in search of solace to the Isha Yoga Centre at Coimbatore and therefore, he did not choose to contact his counsel. Of course, the said reason seems to be rather weak reason for condoning the delay of 784 days. Now the



original petitioner has also died and his legal heirs have been brought on record. This Court and the Hon'ble Supreme Court have been repeatedly reiterating that in considering cases of delay, the Courts must adopt liberal approach. In view of the same, I am of the opinion that the delay should be condoned and the petitioners, who are the legal heirs of the deceased should be given a chance to defend the original petition.

7. In view of the above, this Civil Revision Petition is allowed and the order of the Tribunal, dated 20.02.2013 refusing to condone the delay of 784 days in filing application to set aside the *exparte* award is set aside and I.A.No.1266 of 2012 will stand allowed. The Tribunal is directed to number the applications seeking to set aside the *exparte* award and proceed with the same on merits. The application to set aside the *exparte* award shall be disposed of within a period of two months from the date of receipt of a copy of this order. If the Tribunal allows the application to set aside the *exparte* award, the main original petition should be disposed of within a period of four months thereafter. No costs.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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To

The Fourth Additional District Judge,
Madurai .

+1 CC to M/s.T.R.JAYAPALAM, Advocate (SR-7893[F] dated 24/02/2020)

+1 CC to M/s.G.SOLAIRAJA, Advocate (SR-7991[F] dated 25/02/2020)

C.R.P. (NPD) (MD)No.1824 of 2013
24.02.2020

KK/12.03.2020/ 3P- 4C

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