

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.Nos.832 & 833 of 2018

V.Radhakrishnan
S/o.Varadhan

...Petitioner in both CRPs/Petitioner

Vs

1.P.R.Mani
S/o.V.M.Raj

2.The New India Assurance Company Ltd.,
No.45, Moore Street
Chennai-600 001.

3.The Managing Director of Tamil Nadu
State Transport Corporation Limited
Kancheepuram Region
Kancheepuram.

...Respondents in both CRPs/Respondents

Prayer:

Civil Revision Petition No.832 of 2018 filed under Section 115 of CPC prayed to set aside the decretal order dated 05.10.2017 made in M.P.No.2464 of 2017 in M.C.O.P.No.4032 of 2006 on the file of the Motor Accident Claims Tribunal, Chennai (In the II Court of Small Causes, Chennai).

Civil Revision Petition No.833 of 2018 filed under Section 115 of CPC prayed to set aside the decretal order dated 05.10.2017 made in M.P.No.2463 of 2017 in M.C.O.P.No.4032 of 2006 on the file of the Motor Accident Claims Tribunal, Chennai (In the II Court of Small Causes, Chennai).

For Petitioner in both CRPs : Ms.M.Malar

For Respondents in both CRPs : Mr.Dhakshnamoorthy for R2

Mr.C.S.K.Sathish for R3

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C O M M O N O R D E R

These Civil Revision Petitions have been filed challenging the orders dated 05.10.2017 made in M.P.No.2464 of 2017 in M.C.O.P.No.4032 of 2006 and M.P.No.2463 of 2017 in M.C.O.P.No.4032 of 2006 on the file of the Motor Accident Claims Tribunal, Chennai (In the II Court of Small Causes, Chennai).

2. The above miscellaneous petitions have been filed before the Court below to condone the delay in filing the restoration petition and to set aside the exparte decree passed in MCOP.No.4032 of 2006.

3. The above MCOP was dismissed for non-appearance of the petitioner. However, he has filed the applications in M.P.Nos.2463 & 2464 of 2017 to set aside the exparte decree dated 05.08.2013 passed by the Court below with a condone delay petition.

4. The Court below, by stating the reason that the delay was not sufficiently explained, passed the following orders:

Order in M.P.No.2463 of 2017

'No counter filed. Heard perused, considered. On perusal of main OP after giving ample opportunity only OP was dismissed. The reason for delay is not sufficiently explained for 1121 days, hence in the interest of justice, this Court is not inclined to allow this petition. Hence petition dismissed.'

Order in M.P.No.2464 of 2017

'Condone delay petition dismissed, in consequence to it, this MP is also dismissed.'

5. Heard both sides and perused the records placed before this Court.

6. According to the petitioner, the petitioner was bedridden and he was not able to appear before the Court below to let in evidence. This fact has not been considered by the Court below while dismissing the application to condone the delay. Hence, the orders passed by the Court below are non-speaking orders.

7. Therefore, the above orders passed by the Court below are liable to be set aside.

8. The learned counsel for second respondent strongly supported the orders passed by the Court below and submitted that the MCOPS were filed in the year 2006 and till the dismissal of the said MCOPS in the year 2013, the petitioner has not taken any steps to let in evidence. He further submitted that taking into consideration of this aspect and also that the petitioner has not given sufficient reason for the delay, the Court below dismissed the applications. He further submitted that these are well considered orders, hence, there cannot be any interference by this Court.

9. Though the above submissions were made, the learned counsel for the 2nd respondent submitted that in the event if this Court is to consider the condone delay application, this Court may consider for waiver of interest for the period from the date of order i.e., 05.08.2013 to till date i.e., 15.02.2021, in the event if any compensation awarded by the Court

10. For the above said submission, the learned counsel for the petitioner submitted that the waiver interest may be restricted for 1121 days, however, he subsequently, admitted that it may be upto as on date of this order as stated by the respondent's counsel.

11. Heard the learned counsel for the petitioner, learned counsel for the second and third respondents and perused the records.

12. Upon perusal of the orders, it would show that the Court below has not given any reason for dismissal of the applications and hence, it is a non-speaking order. The petitioner has stated that he was bedridden and he was not able to come to the Court and depose his evidence. This fact has not been considered by the Court below. Therefore, in the interest of justice, this Court is of the view that the orders passed by the Court below are liable to be set aside. Accordingly, the orders passed by the Court below are liable to be set aside and consequently, the delay is condoned. In view of the submission made by the learned counsel for petitioner, it is made clear that the petitioner is not entitled for any interest from 05.08.2013 to 15.02.2021, in case, the Court below is considered the petitioner's claim and award any amount.

13. Since the matter is pending for the past 15 years and considering the fact that the petitioner has not taken any steps to examine the witness, this Court grants only two months time to complete his side of evidence.

14. The learned counsel for the 2nd respondent submitted that it is the case of injury, therefore, the petitioner has to be referred to the Medical Board. Hence, four weeks time from the date of receipt of a copy of this order is granted to the Court below to decide as to whether the petitioner has to be referred to the Medical Board or not.

15. With the above observations, these Civil Revision Petitions are allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mk

To

The Motor Accident Claims Tribunal,
Chennai.
(In the II Court of Small Causes, Chennai).

+2cc to M/s.M.Malar, Advocate, S.R.No.8833

+1cc to M/s.S.Dhakshnamoorthy, Advocate, S.R.No.8699

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AJS (CO)
KKV/11/03/2021



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