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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.P.No.19188 of 2021
and
C.M.A.SR.No.96348 of 2021

The Divisional Manager,
National Insurance Co. Ltd.,
Officer Line, Vellore.

...Appellant/Petitioner

Vs.

Lakshman (died)

1.Ganesan
2.Chandra
3.M/s Tata Project Limited,
No.10, ALC Complex, Manja Kuppam,
Cuddalore.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to condone the delay of 1397 days in filing the C.M.A against the Judgment and Decree passed in MCOP No.200 of 2009 dated 16.02.2016 on the file of the Motor Accident Claims Tribunal (Sub-Court), Gudiyatham at Vellore District.

For Appellant : Ms.R.Janani for
Mr.J.Chandran

For Respondents : Mr.K.A.Ravindran
(for R1 and R2)

ORDER

[Judgment of the Court was delivered by K.KALYANASUNDARAM,
J.]

This petition has been filed seeking to condone the delay of 1397 days in preferring the civil miscellaneous appeal.



2. We have heard Ms.R.Janani, learned counsel appearing for the petitioner/Insurance Company and Mr.K.A.Ravindran, learned counsel appearing for the respondents 1 and 2/claimants.

3. The petitioner was the second respondent in MCOP No.200 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Gudiyatham. The claim petition came to be filed seeking compensation for the accident that had taken place on 05.03.2009. The Tribunal awarded compensation, vide award dated 16.02.2016. A copy application for issuance of certified copies was filed on 17.02.2016 and the copy was made ready and delivered only on 09.03.2016, but the appeal was filed only on 10.11.2021 i.e., after lapse of about 5½ years.

4. In the affidavit filed in support of this petition, it has been stated that due to pandemic/lock down and bona fide administrative reasons, the appeal could not be filed in time. Except this bald and vague statement, no supporting materials have been produced.

5. The Hon'ble Apex Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur, Nafar Academy and Others reported in 2013 (5) CTC 547 has categorically held that there is a distinction between inordinate delay and a delay of short duration and the inordinate delay warrants strict approach. The relevant paragraphs of the said judgment read as follows:-

"15.....(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms 'sufficient cause' should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.



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(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The Concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former Doctrine of Prejudice is attracted, whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and he said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the Application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of Law of Limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."



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16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

6. Admittedly, in this case, there is enormous delay in preferring the present appeal. Therefore, this Court has to see as to whether sufficient cause has been shown for condoning the delay. In the matter on hand, no convincing reason was offered to condone the enormous delay. That apart, we find lack of bona fides in this case. Hence, this petition is dismissed. Consequently, C.M.A.SR.No.96348 of 2021 is rejected. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

skn



To

1.The Motor Accident Claims Tribunal,
Sub Judge, Gudiyatham, Vellore District

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Copy to

The Sub Assistant Registrar
AE Main Section
High Court, Madras 104.

+1 CC to Mr.J.Chandran, Advocate sr 66506

+1 CC to Mr.K.A.Ravindran, Advocate sr 66507.

C.M.P.No.19188 of 2021

in

C.M.A.SR.No.96348 of 2021

SR II (CO)

SP(23/02/2022)