

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 24.03.2021

Order Pronounced on : 30-03-2021

Coram

The Honourable Mr. Justice R. Subbiah

and

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

C.M.P. No. 19769 of 2017 in Rev.Appln.No.SR 87678 of 2017

and

Rev. Appln No. SR 87678 of 2017

M/s. ICICI Lombard General Insurance

Company Limited

'ICICI Lombard House'

414, Veer Savarkar Marg

Prabhadevi

Mumbai - 400 025

.. Petitioner

Versus

1. D. Shanmugham

2. D.S. Suguna

3. R. Bhavani

4. Minor. H. Anish

rep. by his mother and natural
guardian Mrs. R. Bhavani, the
third respondent herein

5. D. Jayakumar

.. Respondents

Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, 1963 praying to condone the delay of 645 days in preferring the above Review application as against the decree and Judgment dated 22.12.2015 passed in C.M.A. No. 1658 of 2015.

For Petitioner : Mr. J. Michael Visuvasam
For Respondents : Mr. A. Sirajudeen, Senior Counsel
for Mr. R. Rajamani for RR-1 to 4

ORDER

R. SUBBIAH, J

This Civil Miscellaneous Petition is filed to condone the delay of 645 days in filing the Review application against the decree and Judgment dated 22.12.2015 passed in C.M.A. No. 1658 of 2015.

2. The respondents 1 to 4 herein, as claimants, have filed MCOP No. 6160 of 2012 before the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai seeking compensation for the death of Hemachandran, who is the son of respondents 1 and 2, husband of the third respondent and father of the minor fourth respondent. The Tribunal, upon adjudication of the claim petition, awarded a total sum of Rs.1,14,67,620/- in and by the award dated 27.04.2015.

3. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have approached this Court with Civil Miscellaneous Appeal No. 1658 of 2015 against the Judgment and Decree dated 27.04.2015 passed in MCOP No. 6160 of 2012 on the file of Motor

Accident Claims Tribunal (II Judge, Small Causes Court), Chennai, seeking enhancement of the compensation amount. By the Judgment dated 22.12.2015, the Division Bench of this Court enhanced the compensation amount from Rs.1,14,67,620/- to Rs.2,42,33,572/- by awarding further sum of Rs.1,27,65,952/-.

4. Aggrieved by the Judgment dated 22.12.2015, the Petitioner herein has filed Special Leave Petition in C.C. No. 17425 of 2016 before the Supreme Court. By judgment dated 23.09.2016, the Supreme Court dismissed the Special Leave Petition by confirming the Judgment dated 22.12.2015 passed in CMA No. 1658 of 2015, with liberty to approach the High Court by filing a Review Application. Accordingly, the review applicants have filed the present Review Application with a delay of 645 days in preferring the same.

5. In the affidavit filed in support of the Civil Miscellaneous Petition, it is stated that the copy of the order dated 23.09.2016 passed by the Supreme Court was furnished to the counsel for the petitioner by the counsel engaged before the Supreme Court, only on 27.09.2017. In fact, the copy of the order dated 23.09.2016 was sent to the local office of the counsel for the petitioner engaged before the Supreme Court, who in turn sent to the same to

the counsel for the petitioner having office at Chennai. Thereafter, the petitioner obtained permission from the legal team at Mumbai Corporate Office seeking to proceed further in the matter by filing a review. The legal team suggested the petitioner to explore the possibility of a settlement with the claimants, but that did not fructified inspite of several discussions. Thereafter, the petitioner has filed the present Review Application. According to the petitioner, the delay in filing the present Review Application is neither wilful nor wanton but due to the reasons mentioned above.

6. The learned counsel for the petitioner submitted that the delay in filing the review application is neither wilful nor wanton. The petitioner has engaged in settling the dispute with the claimants, but it could not be fructified. It is in that process, the delay had occurred. The petitioner has a good case to be agitated in the Review Application and therefore, an opportunity may be given to prosecute the Review application on merits.

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7. On the above contentions, we have heard the learned Senior Counsel for the respondents 1 to 4, who submits that the petitioner has withdrawn the Special Leave Petition before the Honourable Supreme Court with liberty to approach this Court with a Review Application. Even though the Special

Leave Petition was dismissed on 23.09.2016, the petitioner has filed the present Review Application only on 08.11.2017 after 14 months of the dismissal of the Special Leave Petition by the Supreme Court. The learned counsel for the respondents 1 to 4 also submitted that there was no settlement talks that had taken place between the petitioners and the respondents 1 to 4 and therefore, such a plea was raised before this Court only to justify the inordinate delay. In any event, the delay in filing the review application is inordinate and the reasons assigned thereof are not sufficient to condone the delay of 645 days in filing the Review Application. The respondents 1 to 4 have filed Execution Petition before the Tribunal and only to drag on the same, the present Review Application has been filed. The learned counsel for the respondents 1 to 4 has also relied on the Judgment dated 02.11.2018 passed by the Division Bench of this Court in W.A. SR Nos. 2266 and 2269 of 2018 in which one of us (R. Subbiah, J) was a member. In that judgment, the Division Bench of this court held that the delay of 667 and 690 days respectively, in filing the appeals, has not been satisfactorily explained by the petitioners therein. The learned counsel for the respondents 1 to 4 therefore prayed for dismissal of the Civil Miscellaneous Petition.

8. We have heard the learned counsel for both sides and perused the materials placed on record. We are conscious of the fact that the present application has been filed by the petitioner to condone the delay in filing a Review application. The Civil Miscellaneous Appeal filed by the respondents 1 to 4 for enhancement of compensation, was allowed, against which the petitioner has also filed Special Leave Petition before the Supreme Court. However, the petitioner withdrew the Special Leave Petition with liberty to file a Review application before this Court. The Special Leave Petition was dismissed as withdrawn on 23.09.2016 and after lapse of nearly 14 months, the present Review Application has been filed with a delay of 645 days. In our opinion, the delay has not been properly explained. The reasons assigned by the petitioner for condonation of inordinate delay of 645 days in filing the Review Application, are far from satisfactory. The petitioner has not swiftly approached this Court with the Review Application, even though they have withdrawn the Special Leave Petition on 23.09.2016, with liberty to approach this Court with a Review Application. After having withdrawn the Special Leave Petition, there is no justification on the part of the petitioner to engage in settlement talks with the respondents 1 to 4. In fact, the respondents 1 to 4 have disputed having engaged in any settlement talk with the petitioner. In any event, when the delay sought to be condoned is not properly explained,

we are not in a position to entertain this petition to condone the delay of 645 days in filing the Review Application. The petitioner has not shown due diligence in filing the Review Application soon after the dismissal of the Special Leave Petition by the Honourable Supreme Court.

9. In the result, the Civil Miscellaneous Petition is dismissed. No costs. Consequently, Rev.A.S.R.No.87678 is rejected.

(R.P.S.J.) (S.S.K.J.)

30-03-2021

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Index : Yes / No

Speaking Order : Yes

To

The II Judge,

Small Causes Court,

Chennai.

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R. Subbiah, J
and
Sathi Kumar Sukumara Kurup, J

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Pre-delivery Order in
CMP No. 19769 of 2017
in
Review SR No. 87678 of 2017

30-03-2021

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