



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Wednesday, the Seventeenth day of November Two Thousand and Twenty
One

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PRESENT

The Hon`ble Mrs.Justice S.ANANTHI

C.M.P (MD) No.6141 of 2020
in
C.M.A (MD) SR.No.40816 of 2020

1 STEPHEN
2 YACOB
3 MINOR.THANGAMANI
(MINOR 3RD RESPONDENT THROUGH
HER FATHER AND NEXT GUARDIAN
1ST APPELLANT HEREIN)

... PETITIONERS/ APPELLANTS

Vs

1 THE CHAIRMAN
V.K.P.POLYTECHNIC,
MADURAI MAIN ROAD,
CHOCKAMPATTI POST,
TENKASI TALUK
(R1 EXPARTE BEFORE THE TRIAL
COURT. HENCE NOTICE DISPENSED
WITH)

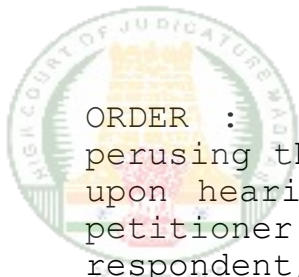
2 NATIONAL INSURANCE COMPANY LTD,
THROUGH ITS BRANCH MANAGER,
NO.26/2, FIRST FLOOR,
SHANMUGA PATTAR COMPLEX,
UNION BANK OF INDIA UPSTAIRS,
PERUMAL KOVIL STREET,
TENKASI.

... RESPONDENTS/ RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 882 days in filing the above Civil Miscellaneous Appeal in CMA(MD)SR.No.40816 of 2020.

PRAYER IN C.M.A(MD)SR.No.40816 of 2020:

To allow this appeal, enhance the award amount in M.C.O.P.No.795 of 2015 on the file of the Motor Accident Claims Tribunal, (Special Sub Court) Tirunelveli, dated 30.11.2017.



ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.T.SELVAKUMARAN, Advocate for the petitioner and of M/S.P.MALINI, Advocate on behalf of the 2nd respondent, the court made the following order:-

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This Civil Miscellaneous Petition has been filed to condone the delay of 882 days in filing the Civil Miscellaneous Appeal in C.M.A (MD) SR.No.40816 of 2020.

2.The appellants have filed a claim petition in M.C.O.P.No.795 of 2015 on the file of the Motor Accidents Claims Tribunal/Special Sub-Court, Tirunelveli. The trial Court pronounced the judgment on 30.11.2017 and the copy of the judgment has also been made ready on 06.03.2018. The appellants to file an appeal within 90 days, but due to non mobilizing of the fund, he could not file the appeal in time.

3.The learned counsel for the respondents submitted that the entire amount of compensation has been deposited on 04.05.2018. Hence, the reason is not sufficient for condoning the delay. He also relied upon the judgment of this Court reported in **2021 (1) TN MAC 461** in the case of **K.Thirumalselvan Vs. Indhira Gandhi**. In paragraph Nos.2, 5 & 8, the Hon'ble Judge has held as follows:-

2.Unconardonable delay cannot be condoned in a routine manner. Law of limitation is substantive. Litigations/Appeals are expected to be filed within the period of limitation as contemplated under the Statutes. Rule is to follow limitation. Condonation of delay is an exception. Exceptions are to be exercised discreetly, if the reasons furnished are genuine and acceptable. The Courts are vested with the discretion to condone the delay. This does not mean that enormous delay are to be condoned mechanically. Undoubtedly, if the reasons are candid and convincing, then the Courts are empowered to exercise its power of discretion so as to condone the delay. Power of discretion is a double-edged weapon. Thus, the discretionary powers are to be exercised cautiously and uniformly. Exercise of power of discretion if made excessively, would defeat the purpose and object of the Law of Limitation. The Courts are expected not to travel beyond the permissible extent, so as to condone the enormous delay in a routine or mechanical manner. Power of discretion is to be exercised to mitigate the injustice, if any occurred to the litigants.

5.Any citizen slept over his right, cannot

<https://hcservices.ecourts.gov.in/hcservices/> wake up one fine morning and knock the doors of



the Court for redressal of his grievances. The person, who slept over, has to lose his right and efflux of time results expiry of the cause. In the event of institution of litigation after a prolonged period, the other person, who has to defend the litigation will not only suffer, but would lead to harassment. These all are the mitigating will not only suffer, but would lead to harassment. These all are the mitigating factors, which all are to be considered, while dealing with the Law of Limitation as contemplated under various Statutes. Thus, the Law of Limitation has got a definite reasoning, logic and various time limitations are prescribed under various Statutes by adopting the Principles of ''Doctrine of Reasonableness''.

8.It is a trend in the Bar that whenever the petition for condonation of enormous delay is filed, requests are made to impose heavy costs and condone the delay. This Court also witnesses many number of such submissions made by the learned counsel appearing on behalf of the petitioners that they are prepared to pay the costs. This Court is of the humble opinion that by imposing heavy costs, long delay cannot be condoned. In the event of condoning enormous delay by imposing heavy costs, undoubtedly, the legal principles are not only compromised, but 'justice' is not done. The Courts are not supposed to compromise on the legal principles under the guise of imposing certain costs. Costs are imposed on certain circumstances, when the Court forms an opinion that lapses are minor and on account of such minor lapses, the parties should not suffer or their rights cannot be denied. However, costs cannot be in terms with the number days of delay. It is not an arithmetic principle, where long delay is to be condoned with heavy costs and for meagre delay, minimum costs is to be imposed. Such a principle is opposed to public policy and this Court is not prepared to accept such concept of imposing heavy costs for condoning enormous delay by violating the Law of Limitation, which is substantive and the legal principles''.

3.But the one of the claimants suddenly lost his wife in an accident. The delay is even though inordinate, the petitioner cannot be denied the further opportunity of prosecuting the main case as per the claim of the amount fixed for monthly income is very meagre and the cause prospectus is also not calculated for compensation. In



this regard, this Court in the judgment reported in **1999 (2) CTC 623** in the case of **Edwin Alex Vs Syndicate Bank** in paragraph Nos.6 and 7 has held as follows:-

6.No doubt, the delay is inordinate numbering 265 days and very weak reasons have been assigned on the part of the respondent herein. The allegation that their counsel did not inform them of the dismissal of the Execution Petition for default is not a good or acceptable reason. However, on behalf of the respondent herein, its officer got into the box and deposed to the facts of the case alleged and as it is contended on the part of the lower Court, since no evidence contra came forth, the lower Court trusted the evidence adduced on the part of the respondent and ultimately arrived at the conclusion to allow the application, thereby condoning the delay of 265 days.

7.The upper forums of law have often and again held that delay could occur but only unexplained delay would leave room for the petition to be dismissed. Moreover, even in such event, when the delay is quite long, the petitioner cannot be punished with denial of further opportunity to prosecute the main case in which event, the petitioner's entire rights regarding the suit properties would become jeopardized.

4.Evethough the appeal is filed with inordinate delay and it has not been not properly explained, this Court is inclined to allow the petition with costs. The petitioner is directed to pay a sum of Rs.3,000/- (Rupees Three Thousand only) to the credit of Madras High Court Madurai Bench, Advocate Clerk's Welfare Association, Madurai-625 023 (Indian Bank Saving Account No.496039124, IFSC Code: IDIB000H040), on or before 25.11.2021. The period of delay ie.882 days in filing the appeal is condoned and the interest for the compensation from the date of judgment is waived.

5.Call on 26.11.2021.

sd/-
17/11/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

THE SPECIAL SUBORDINATE-COURT,
MOTOR ACCIDENTS CLAIMS TRIBUNAL,
TIRUNELVELI.

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COPY TO:

THE OFFICER INCHARGE,
ADVOCATE CLERK'S WELFARE ASSOCIATION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

C.M.P (MD) No.6141 of 2020

in

C.M.A (MD) SR.No.40816 of 2020

Date :17/11/2021

VSD

MK/VR/SAR.IV/22.11.2021/4P/3C