



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P. (MD) No.6581 of 2020

in

CMA(MD) .No.SR394 of 2015

WEB COPY

The Branch Manager
National Insurance Company Ltd.,
first Floor
No.1631/1B, Salem Bhavani Main Road
Sankari, Salem

: Petitioner/Appellant

Vs.

1.Pandiammal
2.Muthukrishnan
3.Yoganathan
4.Shanmugam Pillai
5.Karalan
6.The Manager
Reliance Insurance Company Limited
Srilakshmi Complex
First Floor, Bharathi Street
Omalur Main Road
Sornapuri, Salem 636 004

: Respondents/Respondents

PRAYER in C.M.P(MD) .No.6581 of 2020: The Civil Miscellaneous Petition has been filed under Order 4 Rule 9(4) of A.S Rules, to condone the delay of 2017 days in representing the appeal papers in CMA.SR.No.394 of 2015 on the file of this Court.

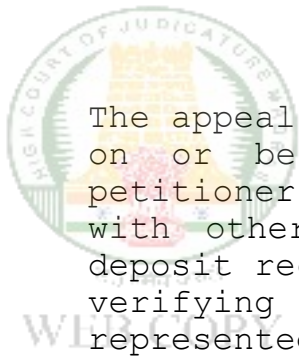
PRAYER in C.M.A. (MD) .SR.No.394 of 2015: The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.08.2014 passed in M.C.O.P.No.61 of 2013 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Virudhunagar.

For Petitioner :Mr.S.Srinivasa Raghavan
For R1 to R3 :Mr.M.Sarangan
For R4 to R6 :No appearance

O R D E R

This petition has been filed by the petitioner seeking to condone the delay of 2017 days in representing the above Civil Miscellaneous Appeal.

2.The learned counsel for the petitioner would state that the Court office has returned the appeal papers on 08.01.2015 for production of original deposit receipt and certain other documents.



The appeal papers ought to have been represented within 10 days time on or before 18.01.2015. In the meantime, the clerk of the petitioner's counsel to have represented the appeal papers complying with other defects on 19.02.2015 without production of original deposit receipt. While so, the new clerk who was engaged has without verifying the non-availability of original deposit receipt, represented the appeal papers on 05.10.2020. The Court office has once again returned the appeal papers on 02.11.2020. The original deposit receipt has been made available to the petitioner from the Tribunal which has been immediately forwarded to the present counsel on record. In the above circumstances, there has been a delay of 2017 in representing the above appeal.

3. Heard the learned counsel for the petitioner and also perused the materials available on record.

(i) In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others**, [2013 (5) CTC 547 (SC) : 2013 (5) LW 20], it was observed by the Supreme Court that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. The principles elucidated at paras 15 and 16 of the said judgment, are usefully extracted as follows:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(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.

(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 encapsulate 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 the 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.

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-challan manner requires to be curbed, of course, within legal parameters."

5. Now coming to the present facts and circumstances of the case, the petitioner has stated in a routine manner that the Court office has returned the appeal papers on 08.01.2015 for production of original deposit receipt and certain other documents. In the meantime, the clerk of the petitioner's counsel to have represented the appeal papers complying with other defects on 19.02.2015 without production of original deposit receipt. While so, the new clerk who was engaged has without verifying the non-availability of original deposit receipt, represented the appeal papers on 05.10.2020. The Court office has once again returned the appeal papers on 02.11.2020. The original deposit receipt has been made available to the petitioner from the Tribunal which has been immediately forwarded to the present counsel on record. Due to the above reason, there was a delay of 2017 days in representing the appeal.

6. It is seen that no valid reason has been adduced for condoning the delay of 2017 days in representing the above Civil Miscellaneous Appeal. The delay is not minimal and it is a very long delay. The reasons stated for the delay are not acceptable reasons. Therefore, this Court is not inclined to condone the delay of 2017 days in representing the appeal.

7. Accordingly, this Civil Miscellaneous Petition is dismissed. In view of the order passed in CMP(MD)No.6581 of 2020, connected C.M.A. (MD)SR.No.394 of 2015 is rejected at the SR stage itself. No costs.

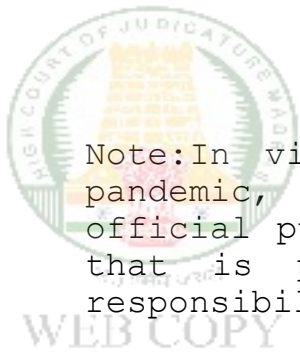
Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Motor Accident Claims Tribunal
(Additional District Judge),
Virudhunagar.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-2564[F] dated
01/02/2021)

C.M.P. (MD) No.6581 of 2020
in

CMA (MD) .No.SR394 of 2015
29.01.2021

VR (CO)
KB (16.02.2021) 5P 3C