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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P. No.6467 of 2020

and

CMA.No.SR48235 of 2020

S.Umarani : Petitioner/Appellant

Vs.

1.N.Sekar

2.Shriram General Insurance Company Ltd.,

Through its Divisional Manager

Issue Office: 10003

E-8, Riico Industrial Area Sita Pura

Jaipur, Rajasthan 302 022

Phone No.180030030000

: Respondents/Respondents

PRAYER in C.M.P.No.6467 of 2020: The Civil Miscellaneous Petition has been filed under Section 5 of Limitation Act, to condone the delay of 589 days in filing the appeal against the Decree and Judgment dated 24.10.2018 passed in MCOP.No.1001 of 2015 in the common judgment made in MCOP.Nos. 1001 of 2015, 1002 of 2015 and 1313 of 2015 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai, decide the appeal on merits.

PRAYER in C.M.A.SR.No.48235 of 2020: The Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 to pass an order by enhancing the compensation amount to the tune of Rs.6,00,000/- (Rupees six lakhs only) in addition to interest at 7.5% p.a. from the date of claim petition till date of realization ie. By modifying the Decree and Judgment dated 24.10.2018 for enhancement of compensation passed in MCOP.No.1001 of 2015 in the common judgment made in MCOP.Nos. 1001 of 2015, 1002 of 2015 and 1313 of 2015 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai.

For Petitioner : Mr.C.Karthik
For R2 : Mr.V.Sakthivel

O R D E R

This Civil Miscellaneous Petition has been filed to condone the delay of 589 days in filing the appeal against the Decree and Judgment dated 24.10.2018 passed in MCOP.No.1001 of 2015 in the common judgment made in MCOP.Nos. 1001 of 2015, 1002 of 2015 and 1313 of 2015 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai.



2.The learned counsel for the petitioner would submit that due to continuous treatment, the petitioner was not able to contact the lower court counsel to apply and get the Decree and Judgment copies dated 24.10.2018 made in MCOP.No.1001 of 2015. Thereafter, the lower Court counsel has sent the certified copies of the Decree and Judgment, from that only, the petitioner came to understand that the copies were delivered. After getting those certified copies, due to petitioner's illness and due to lock down of COVID-19 Pandemic, she was not able to arrange to file an appeal against the award dated 24.10.2018. Due to the above reason, there has been a delay of 589 days in filing the above appeal.

3.Per contra, the learned counsel for the second respondent would submit that the entire award amount has been deposited by the Insurance Company as early as in the year 2019 itself and the same was also withdrawn by the petitioner/claimant.

(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 en capsule 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



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."

4. Now coming to the present facts and circumstances of the case, the petitioner has stated in a routine manner that due to continuous treatment and lock down of COVID-19 pandemic, she could not able to file an appeal within the stipulated time. Per contra, the learned counsel for the second respondent would submit that the Insurance Company had deposited the entire award amount in the year 2019 itself and the petitioner had also withdrawn the entire award amount. Now, the petitioner has come forward with the present petition to condone the delay of 589 days in filing the above appeal. The delay is not minimal and it is a very long delay. The reasons stated for the delay are not acceptable reasons to condone the delay of 587 days in filing the above appeal. Relying on the principles enumerated in the above Judgment, I am not inclined to condone the delay. Accordingly, this Civil Miscellaneous Petition is dismissed. No costs. Consequently, C.M.A. (MD) SR.No.48235 of 2020 is rejected, at the S.R stage itself.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

Msa

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



To

The Motor Accident Claims Tribunal
(VI Additional District Court), Madurai.

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+lcc to Mr.V.Sakthivel, Advocate Sr.No.7549

C.M.P. No.6467 of 2020
and
CMA.No.SR48235 of 2020
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VB (11.03.2021) 5P 3C