



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P (MD) No.6798 of 2020

in

C.M.A (MD) .SR.No.9071 of 2018

WEB COPY

1. Saraswathi
2. Minor.Shajana
3. Minor.Dhanuskumar
4. Parvathi
(Minor appellants rep. by its
guardian and next friend
1st appellant herein)

... Petitioners/Appellants

Vs.

1. Sekar
2. The Reliance General Insurance Co. Ltd.,
Rep. by its Branch Manager,
Sree Lakshmi Complex,
1st floor, Bharathi Street,
Omalar Main Road, Swarnapuri,
Salem-636 004.Respondents/Respondents

Prayer in C.M.P (MD) .No.6798 of 2020: This petition is filed under Order IV Rule 9(4) of A.S.Rules, to condone the delay of 712 days in representing the above Civil Miscellaneous Appeal in C.M.A (MD) SR.No.9071 of 2018.

Prayer in C.M.A (MD) .SR.No.9071 of 2018: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, pleaded to allow this appeal, and enhance the award amount in MCOP.No.966 of 2013 dated 11.01.2016 on the file of the Motor Accident Claims Tribunal/1st Additional District Court, Tirunelveli.

For Petitioners : Mr.T.Selvakumaran
For Respondents : Mr.V.Sakthivel for R2



ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 712 days in representing the above appeal.

2. Learned counsel for the petitioners/claimants would submit that the Tribunal passed the award on 11.01.2016 and after receiving a certified copy of the order from the Tribunal on 04.10.2017, as per the advise of the petitioners/claimants' counsel, they preferred an appeal and represented the matter on 07.12.2020. Hence, the delay is neither wilful nor wanton and would pray to condone the delay of 712 days in filing the above appeal.

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

4. 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



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 appeal has been filed by the appellants seeking enhancement of the award amount passed in M.C.O.P.No.966 of 2013 on the file of the Motor Accident Claims Tribunal/1st Additional District Court, Tirunelveli. The award was passed on 11.01.2016 by the Tribunal and the 2nd respondent/Insurance company has also honoured the award and paid the amount as early as on 13.04.2016. Further, after a lapse of two years from the date of the award, the petitioners/claimants had filed this petition to condone the delay in representing the appeal. In my considered opinion, there is no sufficient cause and no convincing and acceptable reasons have been adduced by the petitioners/claimants for condoning such a huge delay and therefore, this Court is not inclined to condone the delay of 712 days in representing the appeal.

6. Accordingly, this Civil Miscellaneous Petition is dismissed. In view of the order passed in CMP(MD)No.6798 of 2020, the connected C.M.A.(MD)SR.No.9071 of 2018 is rejected at the SR stage itself. No costs.

Sd/-

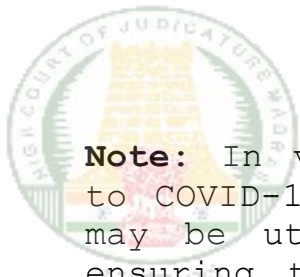
Assistant Registrar(AS)

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/ /2021

Sub Assistant Registrar(CS)

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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

1. Motor Accident Claims Tribunal/1st Additional District Court,
Tirunelveli.

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-4049[F] dated 09/02/2021)

+1 CC to M/s.T.SELVA KUMARAN, Advocate (SR-4184[F] dated
10/02/2021)

C.M.P(MD)No.6798 of 2020
in C.M.A(MD) .SR.No.9071 of 2018
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ES (CO)

TR(15.02.2021) 5P 4C