



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:29.01.2021

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.P. (MD) No.6760 of 2018

and

CMA(MD) .SR.No.3955 of 2015

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The Branch Manager
ICICI Lombard General Insurance Co.,Ltd.,
2nd Floor, A.R.Plaza
North Veli Street,
Madurai -1

...Petitioner/Appellant

-Vs-

1.Ramamurthy
2.Devi
3.Minor.Satheesh Babu
4.Minor.Indumathi
(Minor respondents 3 & 4 are represented by
their father and guardian 1st respondent)
Chelliah (died)
Sathmeega Seelan (died)

5.Venkateswaran

6.Muniasamy

...Respondents/Respondents.

7.Puyalrani

8.Selva Vigneswara Karthik

9.Vasuki

10.Minor Sidarthan

11.Minor Ishwarya

(Minor respondents 10 & 11 are represented by
their mother and guardian 11th respondent)

Amended as per order No.153/2012 dated 07.04.2011

Impleaded as per order in I.A.No.148 of 2012, dated 03.10.2012

Impleaded as per order in I.A.No.348/2012 dated 13.12.2012

...Respondents/Respondents.

Prayer in C.M.P(MD) .No.6760 of 2018 : This Civil Miscellaneous
Petition filed under Order IV Rule 9(4) of A.S.Rules, to condone the
delay of 1082 days in representing the appeal papers in
CMA.SR.No.3955 of 2015 on the file of this Court.

Prayer in C.M.A. (MD) .No.SR3955 of 2015 : This Civil Miscellaneous
Appeal has been filed under Section 173 of the Motor Vehicles Act,
1988, against the judgment and decree dated 28.10.2013 made in
MCOP.No.56 of 2007 on the file of the Motor Accidents Claims
Tribunal(Additional District & Sessions Judge), Ramanathapuram.



For Petitioner : Mr.S.Srinivasa Raghavan
For R1 to R4 : Mr.K.Kumaravel
For R5 to R11 : No appearance

O R D E R

This Civil Miscellaneous Petition has been filed to condone the delay of 1082 days in representing the appeal papers in CMA.SR.No.3955 of 2015 on the file of this Court.

2.The learned counsel for the petitioner would submit that the petitioner had filed the above appeal on 28.01.2015 against the fair and decreetal order dated 28.10.2013 and made in M.C.O.P.No.56 of 2007 on the file of the Motor Accident Claims (Additional District & Sessions Judge), Ramanathapuram. The office has returned the appeal papers on 04.02.2015 for production of original deposit receipt, certified copy of order and deficit Court fee. The original deposit receipt and certified copy of order were to be arranged through the counsel before the Tribunal, the deficit Court fee payable in the appeal was due to paucity and scarcity of stamp papers and non-availability of the same. Thereafter, the appeal was represented on 26.08.2016 with a Court fee of Rs.2000/- which was only available and we were unable to get sufficient court fee from the counsel before the Tribunal. Due to the above reasons, there has been a delay of 1082 days in re-presenting the appeal papers.

3.The learned counsel for the respondents 1 to 4 would submit that the respondents 1 to 4 /claimants had already withdrawn 50% of the award amount along with interest as apportioned by the Tribunal. The Civil Miscellaneous Appeal has been filed by the Insurance Company with delay of 1082 days in representing the above appeal where there is no acceptable reason has been stated by the petitioner. Since the appeal is pending from the year 2018, the claimants are not able to withdraw the entire award amount with interest.

4. Heard the learned counsel for the petitioner as well as the respondents 1 to 4 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.

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(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:

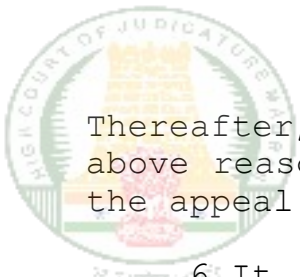
(a) An Application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(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 office has returned the appeal papers on 04.02.2015 for production of original deposit receipt, certified copy of order and deficit Court fee. The original deposit receipt and certified copy of order were to be arranged through the counsel before the Tribunal and the deficit Court fee payable in the appeal was due to paucity and scarcity of stamp papers and non-availability of the same.



Thereafter, the appeal was represented on 26.08.2016. Due to the above reasons, there has been a delay of 1082 days in re-presenting the appeal papers.

6. It is seen that no valid reason has been adduced for condoning the delay of 1087 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 1082 days in representing the appeal. Considering the facts and circumstances of the case and also considering the fact that this C.M.P is pending from 2018 onwards, this Court is not inclined to consider the appeal. Accordingly, this Civil Miscellaneous Petition is dismissed. No costs. Consequently, C.M.A.(MD)SR.No.3955 of 2015 is rejected, at the S.R stage itself. No costs.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /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 Accidents Claims Tribunal
(Additional District & Sessions Judge),
Ramanathapuram.

+1 CC to M/s.K.KUMARAVEL, Advocate (SR-2435[F] dated 29/01/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-2565[F] dated 01/02/2021)

C.M.P.(MD) No.6760 of 2018 and
CMA(MD) .SR.No.3955 of 2015
29.01.2021

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KB(16.02.2021) 5P 4C