



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2021

CORAM:

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.P. (MD)No.10829 of 2018

in

CMA (MD)No.SR39023 of 2018

Minor Ragamalika : Apellant/Petitioner
(Rep. by her mother and Guardian
Amirthavalli)

Vs.

1.Arockiyaraj
2.Bajaj Alliance Insurance Company Limited,
K.M.A.Complex, No.12G, Ram Nagar,
Madurai Town, Madurai District,
represented by its Branch Manager.
: Respondents/Respondents

PRAYER in C.M.P.(MD)No.10829 of 2018: Civil Miscellaneous Petition is filed under Section 173(1) Motor Vehicles Act, to condone the delay of 2441 days in filing the above Civil Miscellaneous Appeal in CMA(MD) No.SR39023 of 2018.

PRAYER in CMA(MD)No.SR39023 of 2018: Civil Miscellaneous Appeal is filed under Section 173 Motor Vehicles Act, 1988, to enhance the award in fair and decreetal order dated 05.09.2011 made in MCOP.NO.49 of 2009 before the Motor Accidents Claims Tribunal (Sub Court, Paramakudi).

For Petitioner : Mr.D.Senthil

For 1st Respondent : No Appearance

(*) For 2nd Respondent : Mrs.K.R.Shivashankari

ORDER

The Civil Miscellaneous Petition has been filed to condone the delay of 2441 days in filing the Civil Miscellaneous Appeal in CMA (MD).No.SR39023 of 2018.



2.The minor petitioner/Appellant represented by her mother and guardian, is the claimant in MCOP.No.49 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court, Paramakudi) and the Tribunal, after conducting enquiry has passed an award on 05.09.2011, directing the second respondent/insurer to pay compensation of Rs.2,06,590/- with interest at 7.5% per annum and costs within a period of two months. Thereafter, the claimant has filed the present appeal, seeking enhancement of compensation awarded in MCOP.No.49 of 2009 along with the above application to condone the delay in filing the appeal.

3.The petitioner's contention is that the mother and guardian of the minor petitioner is not in a position to mobilize the money for preferring the appeal in time, that the delay occurred is neither willful nor wanton and that the petitioner will be put to serious loss and hardship, if the delay is not condoned.

4.The second respondent/insurer has filed a counter affidavit stating that the petitioner's affidavit is vague and bereft of particulars, that the petitioner has not shown any reason for the long delay and that the above petition is liable to be dismissed. The second respondent has subsequently filed a memo stating that after passing of the award on 05.09.2011, the entire amount was deposited to the credit of MCOP, on 21.12.2011 itself.

5.The learned counsel for the petitioner would submit that at the enquiry that there existed matrimonial dispute between the minor petitioner's parents and that is also the reason for not taking steps to prefer the appeal and that the minor petitioner's mother was not in a position to gather funds for preferring the appeal.

6.As rightly contended by the learned counsel for the second respondent, the alleged dispute between the minor's father and mother was not at all pleaded in the affidavit. Except the minor's mother inability to mobilize the funds for preferring the appeal, they have not canvassed or advanced any other reason for the delay.

7.Even according to the petitioner, the certified copy of the fair and decreetal order were made ready on 12.11.2011 and the same were received by their counsel on the same day itself. As rightly contended by the learned counsel for the second respondent, the delay of 2441 days is inordinate. Moreover, she could have filed an application seeking exemption for payment of Court fee, but without doing the same, the present reason advanced after seven years, cannot be accepted.

8.The petitioner has not shown any other valid reason or cause for the delay. Hence, this Court is not inclined to condone the delay of 2441 days. Consequently, the Civil Miscellaneous Petition is liable to be dismissed.



9.In the result, this Civil Miscellaneous Petition is dismissed. Consequently, Civil Miscellaneous Appeal is rejected at the SR stage itself.

Sd/-

Assistant Registrar (T&P)

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**(*)Amended as per order of this
Hon'ble Court dated 21.12.2021
made in CMP(MD)No.10829 of 2018 in
CMA(MD)No.SR39023 of 2018**

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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To

**(*)To be Substituted the order already despatched
on 03.06.2021**

1.The Subordinate Judge,
Paramakudi

C.M.P. (MD)No.10829 of 2018
in
CMA (MD)No.SR39023 of 2018
20.04.2021

KK(21.05.2021) 3P 2C
MGJ(06.01.2022) 3P 2C