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CMP(MD)No.12211 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.04.2021
CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.P. (MD)No.12211 of 2019

in

CMA (MD)No.SR84903 of 2019

Sahaya Banu

: Petitioner

Vs.

1.Bharathi

2.The Tamil Nadu State Transport Corporation Limited,
Tirunelveli, represented by
Branch Manager, Nagercoil,
Kanyakumari District.

: Respondents

PRAYER in C.M.P.(MD)No.12211 of 2019: Civil Miscellaneous Petition is filed under Section 173(1) Motor Vehicles Act, to condone the delay of 1637 days in filing the above Civil Miscellaneous Appeal in CMA(MD) No.SR84903 of 2019.

PRAYER in CMA(MD)No.SR39023 of 2018: Civil Miscellaneous Appeal is filed under Section 173 Motor Vehicles Act, 1988, to enhance the compensation by modifying the award dated 14.02.2015 passed in M.C.O.P.No.44 of 2013 on the file of the Motor Accidents Claims Tribunal cum Special Court, Nagercoil, Kanyakumari District.

For Petitioner : Mr.G.Arvinthan
For 1st Respondent : Mr.G.Thalaimutharasu,
For 2nd Respondent : Mr.P.Prabhakaran

ORDER

The Civil Miscellaneous Petition has been filed to condone the delay of 1637 days in filing the Civil Miscellaneous Appeal in CMA(MD).No.SR84903 of 2019.

2.It is not in dispute that the petitioner has filed a claim petition in M.C.O.P.No.44 of 2013 on the file of the Motor Accidents Claims Tribunal cum Special Court, Nagercoil, Kanyakumari District, claiming compensation of Rs.25,00,000/- for the injuries suffered by her in an accident occurred on 03.07.2013, that the Tribunal after enquiry, has passed an award on 14.02.2015, directing the second respondent Transport Corporation to pay compensation of Rs.4,28,000/- with interest and costs and that the petitioner has filed the above appeal seeking enhancement of compensation along with the above application to condone the delay in filing the appeal.



3.The case of the petitioner is that there was some delay to mobilize the funds for preferring the appeal in time, that there was some more delay in getting the certified copies of the decree, that they came to know later that the decree passed by the Tribunal has been found missing from the case bundle, that they have tried to trace out the same, but, the same took several months, as the clerk attached to that office was absent for long time due to his family problems, that since only one copy of the decree was available, they have levied execution proceedings in E.P.No.89 of 2015, that subsequently, they have directed their advocate to apply for the copies of the decree and judgment and that they have applied on 26.02.2018 and the same was made ready on 16.03.2018 and that thereafter, they have filed the above appeal.

4.The second respondent has filed a counter affidavit opposing the above petition, stating that the petitioner's affidavit averments itself would go to show that she was not diligent, but negligent in pursuing her case, that the reasons furnished by her do not justify the delay, that the petitioner has already received the award amount in the year 2017 itself, which was deposited by the respondent and that the same shall be deemed that the petitioner had accepted the award and acted upon it and that therefore, she has no right to file an appeal and consequently, the present application is liable to be dismissed.

5.As rightly contended by the learned counsel for the respondent, the petitioner has nowhere whispered in her affidavit any reason or explanation for the delay of 1637 days. She has filed a certificate issued by one Orthopaedic Surgeon that she is still in treatment and she has permanent disablement due to her head injury, but not elaborated anything further.

6.The petitioner has herself stated in the affidavit that they have once again applied for the certified copies of the decree and judgment on 26.02.2018 and the same were made ready on 16.03.2018, but the present application has been filed on 04.12.2019, after the lapse of 1 ½ of years, since the receipt of certified copies for the second time. The petitioner has not advanced any reason for the said delay also.

7.As rightly contended by the learned counsel for the respondent, the delay of 1637 days is inordinate. The decisive factor in condonation of delay, is not the length of delay, but, sufficiency of a satisfactory explanation. But, at the same time, the condonation of long delay should not be automatic, as while considering the condonation of delay, the routine explanation would not be enough, but, should be in the nature of indicating sufficient cause to justify the delay.



8.As already pointed out, there is no reason or sufficient cause shown as to what steps were taken during this period and why immediate steps were not taken. Hence, this Court is not inclined to condone the delay of 1637 days. Consequently, the Civil Miscellaneous Petition is liable to be dismissed.

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9.In the result, this Civil Miscellaneous Petition is dismissed. Consequently, Civil Miscellaneous Appeal is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

das

To

1.The Motor Accidents Claims Tribunal
cum Special Court, Nagercoil,
Kanyakumari District.

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-17700[F] dated 27/04/2021)

C.M.P. (MD) No.12211 of 2019
in
CMA (MD) No.SR84903 of 2019

26.04.2021

CN(14.06.2021) 3P 3C