

THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.M.A. NO.444 of 2020

AND

I.A.NO.2 OF 2020

IN

MACMA NO.444 OF 2020

COMMON JUDGMENT:

This appeal is filed by the appellant/claimant challenging the award and decree dated 31.01.2012 in MVOP No.1139 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Nizamabad, wherein, the Tribunal had awarded a compensation amount of Rs.16,000/-, as against the claim for an amount of Rs.2,00,000/- for the injuries sustained by the petitioner in a motor vehicle accident on 31.05.2006.

2. I.A.No.2 of 2020 is filed to condone the delay of 2649 days in filing the appeal and an affidavit is filed along with the petition, explaining the reasons for the delay occurred in filing of the appeal wherein, it is stated that – “the orders passed by the Tribunal on 31.01.2012, the copy of

application was made on 06-12-2019, the stamps were called for on 17-01-2020, stamps deposited on 21-01-2020, the copy was ready on 23.01.2020 while the certified copy of the same could be delivered on 27-1-2020 only. It is stated that her counsel informed her about the passing of the award in the third week of February, 2012, but he did not apply for the certified copies for the judgment and decree. Her counsel informed that the file is missing and he was trying to locate either it is misplaced in the premises of the concerned court or in his office. It is further informed that he tried his maximum level to locate the file but he could not locate the same. It is stated that on the basis of the bundle available with the section, she could withdraw the award amount but the case file could not be located. Finally her counsel could locate the counsel from his office only in the last week of November, 2019. Then only he filed for a copy of application on 06.12.2019 for certified copies of judgment and decree. It is further stated that she had instructed her counsel at Nizamabad to file the appeal before the Hon'ble High Court at an early date and when

the counsel was suffering with viral fever and arthritis ailments for 2 ½ months between 2.1.2020 to 17.3.2020 by then the Covid-19 intervened. Thus the filing of the appeal is inordinately delayed beyond control of herself or her counsel.” Hence prays to condone the delay.

3. A counter affidavit is filed for IA No.2/2020 by the 2nd respondent stating that since the appellant did not explain about the day to day delay in this I.A., the same is liable to be dismissed in view of the judgment reported in AIR 2019 SC 1423 and MACMA MP No.3413/2017 in MACMA No.1871/2017. Hence prays to dismiss the petition.

4. The learned counsel for the appellant contends that the petition i.e. I.A.No.2 of 2020 is filed seeking to condone the delay of 2649 days in filing of appeal duly explaining the reasons for the delay caused. It is further contended that he is ready to forego the interest for the delay period.

5. The learned counsel for 2nd respondent /Insurance Company vehemently opposed contending that there is an inordinate delay in filing of appeal which cannot be condoned and relied on Judgment of Apex court in ***Estate***

Officer, Haryana Urban Development Authority and another vs. Gopi Chand Atreja reported in (2019) 4 Supreme Court Cases 612 and MACMA MP No.3413/2017 in MACMA No.1871/2017.

6. As seen from the affidavit, no such day to day delay or any cogent reasons are assigned. Since the appellant failed to explain about day to day delay in the IA, the same is liable to be dismissed in the light of Air 2019 SC 1423.

7. In view of the decision of the Apex Court in **Gopi Chand Atreja's** case referred supra reported in (2019) 4 Supreme Court Cases 612, the condone delay application is dismissed and accordingly, MACMA is closed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE PULLA KARTHIK

Date: 26.09.2022

BV

(Note: On noticing some typographical errors, to be rectified, this case was posted under the caption 'for being mentioned' on 16.12.2022 and rectified accordingly).