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C.R.P.No.2189 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2189 of 2023

Mariammal

Vettu Perumal (Died)

[Cause title accepted vide Court order dated
05.06.2023 made in C.M.P.No.10639 of 2023
in C.R.P.SR.No.141348 of 2022]

... Petitioner

Vs.

1. H.Dhilip Kumar

2. National Insurance Company Limited,
Motor Third Party CII,
No.751, Anna Salai, 2nd Floor,
Chennai – 600002.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order dated 16.12.2019 made in M.P.No.1870 of 2019 in MCOP.No.4634 of 2006 on the file of the Motor Accident Claims Tribunal, Chennai, Chief Judge, Court of Small Causes, Chennai.

For Petitioner

:

Ms.A.Subatra
for Ms.M.Malar



ORDER

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2. The claimant is the petitioner and the first respondent is the owner of the vehicle and the second respondent is the insurer. The petitioner filed M.C.O.P.No.4634 of 2006, under Section 166 of the Motor Vehicles Act and Rule 3 of the Motor Accident Claims Tribunal Rules, claiming compensation of Rs.10,00,000/- for the death of her son, viz., V.P.Natarajan, on account of an accident that had taken place on 21.10.2006, at 10.45 hours on Velachery Main Road, near Madras Christian College, East Tambaram, Chennai – 45. On account of the accident, the petitioner's son sustained head injuries and also multiple injuries and thereafter, the petitioner's son took first aid at Government Hospital, Chrompet, Chennai-44 and immediately, he was referred to the Government General Hospital, Chennai and subsequently, he died on 22.10.2006 and his post mortem was conducted on the same day. Further, it is stated that the



accident has occurred solely due to the rash and negligent driving of the Auto Rickshaw.

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3. According to the petitioner, she came to know that the claim petition was dismissed for default on 20.12.2010 and only when she contacted her counsel on 05.07.2019, she made an application to restore the claim petition with the delay condonation petition to condone the delay of 3093 days in filling such application. In the affidavit filed in support of the petition, it was stated that the petitioner's son was doing coconut wholesale business and he was earning a sum of Rs.10,000/- per month and the said MCOP was listed for enquiry on 06.07.2010 and subsequently, on 28.07.2010, which was informed by the petitioner's counsel to her. Further, the petitioner went to her native place at Madurai and returned to Chennai only on 01.07.2019 and hence, she could not contact her counsel, but unfortunately, the petitioner did not receive any information and subsequently, the petitioner went to her counsel's office on 05.07.2019 and enquired about the case, where she learnt that the case was dismissed for default on 20.10.2010 itself due to the non-appearance of the petitioner before the Court below.



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4. The Tribunal, by its order dated 16.12.2019, dismissed the application for condonation by holding that the inordinate delay of 3093 days has not been properly explained and not supported by any acceptable documentary evidence. Aggrieved by such order, the petitioner has filed the present revision petition.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. The only issue which falls for consideration in this revision is as to whether the Tribunal is justified in rejecting the application of the petitioner to condone the delay of 3093 days in filing the petition to restore the claim petition.

7. The law of limitation is founded on public policy and not meant to destroy the rights of parties, but to see that the parties did not resort to dilatory tactics.



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8. In the instant case, the claim petition is filed under Section 166 of the Motor Vehicles Act and under Rule 3 of the Motor Accident Claims Tribunal Rules claiming compensation of Rs.10,00,000/- for the death of V.P.Natarajan, viz., the petitioner's son.

9. By virtue of the Motor Vehicles (Amendment Act) 1994, which came into force w.e.f 14.11.1994, Sub-Section 3 of Section 166 of the Act, has been omitted, thus w.e.f. 14.11.1994, there is no limitation for filing claim petition before the Tribunal in respect of any accident. This amendment was due to the fact that, at many times, the claimants are the legal representatives of the accident victims who are put to great loss and hardship, as their claim petition was rejected on the ground of limitation. In fact, the Hon'ble Supreme Court in ***Dhannalal v. D.P.Vijayvargiya***, 1996 (4) SCC 652, held that it is a matter of common knowledge that majority of the claimants are ignorant about the period of limitation and after the death of the breadwinner in an accident, claimants are virtually on the streets and in the cases where the victims escape death, they are hospitalized for years and therefore, the Parliament rightly thought that prescribing a period of limitation was harsh, inequitable and in many cases likely to cause injustice



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to the claimants. In the same Judgment, the Hon'ble Supreme Court also took note of the fact that though the Amendment Act did not delete the Sub-Section (3) of Section 166 retrospectively, there is nothing in the Amendment Act to show that the benefit of deletion of Sub-Section (3) is not to be extended to pending claim petitions. Therefore, the Hon'ble Supreme Court held that such claim petition cannot be thrown out on the ground of being barred under Section 166(3) of the Act, when it was in force. The decision of the Hon'ble Supreme Court in Dhannalal, referred to supra, was followed in another decision of the Hon'ble Supreme Court in *New India Assurance Co. Ltd. vs. C.Padma and another*, 2003 (7) SCC 713, and in the said decision, the Hon'ble Supreme Court, while considering the effect of deletion of Sub-Section (3) of Section 166 of the Act, held that the Article 137 of Limitation Act cannot be invoked because the Motor Vehicles Act is a beneficial Legislation and is a self-contained Act which prescribes the mode of filing the application, procedures to be followed and award to be made and since, the object is to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation and invoking Article 137 would defeat the intentment of the Legislature.



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10. In the case on hand, the petitioner's son's death was on account of a road accident and she filed the claim petition within the period of limitation under the pre-amended Section 166 and the claim petition was pending.

11. It is true that the delay in this case is enormous being 3093 days. The petitioner has not given specific dates and events, which prevented her from contacting her counsel from more than eight years, after the petition was dismissed for default. Yet one thing that should not be lost sight of in the instant case is that the case on hand is a motor accident claim petition and the petitioner's son at the time of accident was doing coconut wholesale business and was earning Rs.10,000/-.

12. Bearing in mind the fact that, on the date when the claim petition was dismissed for default i.e., on 20.12.2010, Sub-Section (3) of Section 166 of the Act was deleted and there was no limitation for filing fresh claim petition as on such date. The Hon'ble Supreme Court, while interpreting the object of Section 166 being to give relief to the victims, observed that such



relief should be granted untrammelled by the technicalities of limitation.

Further, the Hon'ble Supreme Court in ***Mahendra Rathore vs. Omkar Singh and others***, AIR 2002 SC 505, condoned the delay in filing a petition for restoration of a claim petition on the ground that the statement made by the claimant on oath remained uncontroverted and the Hon'ble Supreme Court held as follows:-

“4... The applicant's own statement on oath remained uncontroverted. In such matters a justice oriented approach, and not a too technical or pedantic approach is expected to be adopted by Courts more so when the application sought to be restored for hearing was a claim case arising out of a motor accident. Refusal on the part of Tribunal to restore the claim petition, as also on the part of High Court to show indulgence to the appellant has occasioned failure of justice. The Tribunal could have put the parties to terms to meet the ends of justice but should not have refused to restore the claim petition.”



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13. Thus, by considering the facts of the present case and applying the law laid down by the Hon'ble Supreme Court in the aforementioned decision and in order to have a justice oriented approach, the only course which could be adopted is to condone the delay and to restore the claim petition filed by the petitioner and any other order would not meet the ends of justice, as the claimant would be put to irreparable hardship. In fact, the Hon'ble Supreme Court in the case of **Mahendra Rathore**, referred to supra, observed that the Motor Accidents Claims Tribunal in the said case, could have put the parties to terms to meet the ends of justice, but should not have refused to restore the claim petition. Therefore, in the instant case also, this Court is of the view that the condonation of delay and the restoration of the claim petition to the file of the Tribunal, shall be made, subject to condition.

14. For all the above reasons, the delay of 3093 days in filing the application for restoration of the claim petition, is condoned and the claim petition is restored to the file of the Tribunal to be heard and decided on merits. In the event the Tribunal passes an Award in favour of the claimant, while granting interest the Tribunal shall take into consideration, the date of



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filing of the claim petition to 20.12.2010 and the date after which the claim petition is restored to the file of the Tribunal for the purpose of computing the period for which interest would be awarded. In other words, the period from 21.12.2010, till the date of restoration of the claim petition to the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, shall stand excluded for the purpose of grant of interest.

15. This Civil Revision Petition is allowed on the above terms. No costs.

27.09.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Principal District Judge,
Chengalpattu.
2. The Section Officer,
V.R.Section,
High Court of Madras.

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V.BHAVANI SUBBAROYAN, J.

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