



C.M.P(MD)No.6401 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.08.2023

Pronounced on : .10.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.6401 of 2023

in

C.M.A(MD)SR.No.22385 of 2023

P.Sundaram

... Petitioner

Vs.

Latha Maheswari (Died)

1.Hindhuja

2.Harija

3.A.Kuthalinga Nadar

4.T.Suresh

... Respondents

(Cause-title accepted vide Court order dated
21.04.2023 made in C.M.P(MD)No.4729 of 2023 in
C.M.A(MD)SR.No.22385 of 2023)

PRAYER : Civil Miscellaneous Petition is filed under Section 5 of the
Limitation Act, 1963, to condone the delay of 4482 days in filing the
present Civil Miscellaneous Appeal.

For Petitioner : Mr.S.Kadarkarai

For R1 – R2 : Mr.M.Ashok Kumar

For R4 : No Appearance



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O R D E R

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This Civil Miscellaneous Petition is filed to condone the delay of 4482 days in filing the Civil Miscellaneous Appeal against the award dated 05.08.2010 made in M.C.O.P.No.45 of 2008 on the file of the Motor Accidents Claim Tribunal/Subordinate Court, Virudhunagar.

2. The petitioner has stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The respondents 1 and 2 through their deceased mother filed claim petition before the Tribunal. The Tribunal erroneously awarded compensation of Rs.15,73,000/- along with interest. The petitioner is not the owner of the vehicle involved in the accident. The Tribunal fixed the liability on the petitioner and the respondents 3 and 4 and the deceased. So they entered into compromise talks with deceased Latha Maheshwari and agreed to settle the matter and not to proceed with execution proceedings. The claimant has not initiated execution proceedings till 2019, but the petitioner received the notice in E.P.No.56 of 2019 filed by the claimant. The petitioner was under strong impression that the matter was settled. So on receipt of notice in E.P.56 of 2019 the petitioner was advised to prefer an appeal. Therefore, there is a delay of 4482 days in



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preferring the appeal. Therefore, the delay days may be condoned.

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3. The first respondent filed a counter affidavit and objected the petition and stated as follows:

The first respondent filed a claim petition in M.C.O.P.No.45 of 2008. The petitioner was served Court notice and he appeared through counsel and also filed a counter. After hot contest, the Tribunal passed the award on 05.08.2010. The petitioner has to prefer an appeal within 02.11.2010, but he did not do so. After 12 years, the petitioner has filed a petition with 'illusory cause' to escape from legal action. The petitioner states that he is not the owner of the vehicle, such a plea was not taken by the petitioner before the Tribunal. The petitioner falsely averred that there was compromise talks held since this respondent's mother died. Since the petitioner and other respondents failed to pay the compensation award amount, the 1st & 2nd respondents/claimants 2 & 3 filed the execution proceedings in E.P.No.29 of 2021 and the same was allowed on merits and the same is pending for sale papers. At this stage, the petitioner colluded his wife filed a claim petition in E.A.No.1 of 2023 and simultaneously filed this petition. The petitioner has no valid reason to file this petition and has not explained the delay period of 12 years.



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Therefore, the petition may be dismissed.

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4. The learned counsel for the petitioner has submitted that the Tribunal fixed liability on the petitioner and the respondents 3 and 4 and also on the deceased Latha Maheswari and therefore they made compromise talks, upon which the claimant undertook that they would not prefer execution proceedings. Contra to that they filed execution petition. Moreover, the petitioner is not the owner of the vehicle and he sold the same to the third respondent. Hence, the petitioner has filed this petition.

5. Per contra, the learned counsel for the respondents 1 and 2 has vehemently contended that the petition has falsely stated that he is not the owner of the vehicle involved in the accident and also falsely stated about the compromise talks with deceased Latha Maheswari, since she is now no more. To escape from the liability, the petitioner has filed this petition belatedly after 12 years that too without any proper explanation for the delayed period and also after allowing of execution proceeding and sales papers are pending. Therefore, the petitioner has no merits in this petition.



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6. Heard both sides and perused the records in this Civil Miscellaneous Petition.

7. It is clear that the respondents 1 and 2 along with their mother Latha Maheswari filed the claim petition in M.C.O.P.No.45 of 2008 before the Motor Accidents Claim Tribunal/Subordinate Court, Virudhunagar against the petitioner and two others. The petitioner and the third respondent therein in MCOP, filed the counter and contested the case. The Tribunal after considering both side evidences passed award directing the petitioner and respondents therein M.C.O.P.No.45 of 2008 to pay the compensation of Rs.15,73,000/- to the respondents/claimants therein. On hearing both and on perusal of records, it is clear that since the compensation amount was not paid, the 1st & 2nd respondents/claimants 2 & 3 filed the Execution Petition in E.P.No.29 of 2021 and the same was allowed on merits and attachment order passed over the petitioner's property and the same is pending for sale papers. At this stage, the petitioner filed this petition stating that he is not the owner of the vehicle involved in this accident and also stated that compromise talks was held between the parties and the claimants. Admittedly, the petitioner alleged to have made compromise talks with



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Latha Maheswari, who was mother of the respondents 1 and 2, is now no more. So, the petitioner's statement is not believable. On perusal of the records and award passed by the Tribunal it is clear that the petitioner as second respondent filed a counter, wherein he has not stated that he is not the owner of the vehicle involved in the accident, as now averred in this petition. The petitioner has not filed any material to show that there was compromise talks held between the parties and how much the compensation was fixed in the compromise and when it was held. Except averment, the petitioner has not filed sufficient materials. Moreover, after lapse of 12 years from the date of award and also after allowing the execution petition for sale of the petitioner's property, the petitioner filed this petition in a hasty manner. The petitioner has actively participated the execution proceedings and it was not denied by him. The petitioner has not properly made an acceptable explanation for the delay of 4482 days. The delay of 4482 days is not an ordinary delay and it is an abnormal delay. The law will not help the litigant who slept over years. Considering the above facts and circumstances, this Civil Miscellaneous Petition is devoid of merits and the same is liable to be dismissed.



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8. In the result, this Civil Miscellaneous Petition stands dismissed.

Consequently, the Civil Miscellaneous Appeal is rejected at SR stage itself. No costs.

.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

vsd

To

1.The Motor Accidents Claim Tribunal/Subordinate Court,
Virudhunagar.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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