



C.M.P.(MD)No.9998 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.P.(MD)No.9998 of 2022
in C.M.A.(MD)SR.No.11898 of 2022

The Branch Manager,
Reliance General Insurance Company Ltd.,
Kanagu Tower, Thillai Nagar,
10th Cross,
Thriuchirapalli.

... Petitioner / Appellant

Vs.

1.Suresh

2.H.Haja Alavudeen

... Respondents / Respondents

C.M.P.(MD)No.9998 of 2022 filed under Section 173(1) of Motor Vehicles Act, to condone the delay of 2277 days in filing the above Civil Miscellaneous Appeal before this Court as against the award dated 10.03.2016



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passed in M.C.O.P.No.748 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District and Sessions Court, Thanjavur.

C.M.A.(MD)SR.No.11898 of 2022 filed under Section 173 of Motor Vehicles Act, as against the judgment and decree dated 10.03.2016 passed in M.C.O.P.No.748 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District and Sessions Court, Thanjavur.

For Petitioner/
Appellant : Mr.K.Gokul

For Respondents/
Respondents : Mr.V.Pandian for R1

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

The first respondent / claimant has filed a claim petition in M.C.O.P.No.748 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District and Sessions Court, Thanjavur, seeking compensation of Rs.80,00,000/- for the injuries suffered by him, due to the motor accident that



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took place on 06.06.2013. The Tribunal, by a judgment and decree dated 10.03.2016, awarded a sum of Rs.37,73,000/- as compensation with interest at 9% p.a. from the date of filing of the petition till the date of realization of compensation amount. As against the judgment and decree, the petitioner / appellant has filed the instant appeal along with the application for condoning the delay of 2277 days in filing the present appeal.

2. The learned counsel appearing for the petitioner / appellant submitted that since the earlier counsel had misplaced the bundles, he could not be able to file the appeal in time. Hence, there is a delay of 2277 days in filing the present appeal. He further submitted that only aggrieved with the interest awarded by the Tribunal at the rate of 9% p.a., instead of 7.5% p.a., the petitioner / appellant / Insurance Company has filed the present appeal and hence, prays for allowing of this application.

3. We have perused the materials available on record.



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4. On a perusal of the records, it is seen that the Tribunal has passed the judgment and decree in M.C.O.P.No.748 of 2013 on 10.03.2016 and in the condone delay application, there is no sufficient explanation for the period of delay from the date of judgment and decree, till the appeal suit was filed in the year 2022.

5. The Hon'ble Supreme Court of India in the case of ***Majji Sannemma @ sanyasirao Vs. Reddy Sridevi & Ors***, in ***Civil Appeal No.7696 of 2021***, dated 16.12.2021 has held as follows:

“7. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:

7.1 In the case of Ramlal, Motilal and Chhotelal (supra), it is observed and held as under:

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decreeholder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decreeholder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to



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the decreeholder by lapse of time should not be lightly heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

*7.2. In the case of **P.K. Ramachandran** (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.*

*7.3. In the case of **Pundlik Jalam Patil** (supra), it is observed as under:*



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“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing timelimit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

*7.4 In the case of **Basawaraj** (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that*



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each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

7.5 In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights”.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants.



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WEB COPY *Impugned order passed by the High Court is unsustainable both, on law as well as on facts.*

9. In view of the above and for the reasons stated above, the present Appeal is Allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos.1 and 2 herein is hereby quashed and set aside. Consequently, Second Appeal No.331 of 2021 preferred by respondent Nos.1 and 2 herein stands dismissed on the ground of delay. The present Appeal is accordingly Allowed. However, there shall be no order as to costs.”

6. In the light of the aforesaid decisions, we are of the view that in the absence of reasonable, satisfactory or even appropriate explanation, such inordinate delay of 2277 days will not be condoned and therefore, this application is liable to be dismissed.

7. Accordingly, this application is dismissed and consequently, the Civil Miscellaneous Appeal is rejected at the SR stage itself. No costs.



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8. After dismissal of the application, the learned counsel appearing for the first respondent / claimant has no objection for reduction of the interest at the rate of 7.5% p.a., instead of 9% p.a., as awarded by the Tribunal. The aforesaid statement made by the first respondent / claimant is recorded.

[D.K.K., J.] [L.V.G., J.]
23.02.2023

NCC : Yes / No
Index : Yes / No
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To

The Motor Accident Claims Tribunal,
Principal District and Sessions Court,
Thanjavur.



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