



C.R.P(MD)No.2227 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **28.07.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2227 of 2018

A.Jothimary

...Petitioner/Petitioner/
1st Petitioner

Vs.

1.P.Amathul Hameetha

2.The Divisional Manager,
M/s.National Insurance Company Limited,
No.33, Bharathidasan Salai,
Cantonment,
Trichy-1.

...Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.03.2018 in I.A.No.43 of 2018 in M.C.O.P.No.68 of 2015 on the file of the learned Principal District Judge, Tiruchirappalli.

For Petitioner : Mr.N.Sudhagar Nagaraj

For R1 : Mr.V.J.Kumaravel

For R2 : No Appearance



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ORDER

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The present civil revision petition has been filed against the order passed by the learned Principal District Judge, Tiruchirappalli in I.A.No. 43 of 2018 in M.C.O.P.No.68 of 2015, dated 12.03.2018.

2. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

3. The petitioner herein is the first petitioner before the Trial Court. According to the petitioner, on the death of the first petitioner's husband and the father of the petitioners 2 and 3 in a road accident, an application in M.C.O.P.No.68 of 2015 was filed under Sections 140 and 166 of the Motor Vehicles Act, claiming a compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only).

4. It appears that subsequently, on 08.06.2016 on account of the absence of the petitioners herein, the application was dismissed for default. Therefore, the petitioners have filed an application for restoring the application along with the delay condonation application to condone the delay of 530 days. The reason assigned by the petitioner herein is that on 08.06.2016, she was suffering from viral fever and was bed ridden



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and also gone to Chennai to her relative house to take bed rest.

Therefore, she could not able to contact her counsel. In the meanwhile, there was delay of 530 days.

5. It is pertinent to mention here that in the delay condonation application, on behalf of the respondents, no counter statement was filed before the trial Court, and the second respondent, namely, insurance company was set *ex parte*. However, the learned Trial Judge has disbelieved the statement of the petitioner and has ultimately dismissed the application filed under Section 5 of the Limitation Act.

6. I have given my anxious consideration to either side submission.

7. The learned counsel for the respondents would vehemently object this application on the ground that there was no proof submitted before the trial Court so as to justify the delay of 530 days.

8. However, this Court is of the view that when the petitioner has come forward with an application seeking compensation in respect of the death of her husband, and that during the relevant time, there was no limitation to file application claiming compensation under the Motor



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Vehicles Act. It is pertinent to mention here that whenever an application was filed under Section 5 of the Limitation Act in M.C.O.P., the Court must be liberal and that Section 5 of the Limitation Act is elastic enough to provide substantial justice. Therefore, this Court is of the view that the petition is liable to be allowed. However, considering the delay of 530 days, in the event of petitioner would get any award in future, there will not not be any interest for the default period.

9. In the result, this civil revision petition stands allowed. No costs.

28.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The learned Principal District Judge,
Tiruchirappalli.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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