



CRP.No.1080 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.1080 of 2025 &

CMP.No.6146 of 2025

M/s.National Insurance Company Ltd.,
Motor Third Party Claims Office,
No.751, Anna Salai, Chennai – 600 002.

... Petitioner

Versus

1. Vijaya

2. Kannan

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the Order in M.P.No.1 of 2024 in MCOP No.4265 of 2014 dated 10.12.2024 on the file of the learned VI Judge, Court of Small Causes at Chennai and to allow the Revision.

For Petitioner : Mr.R.Ravichandran

For Respondents : Mr.F.Terry Chellaraja
Mr.K.Sivakumar – R1



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ORDER

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Challenge has been made to the dismissal of the application filed to condone the delay of 747 days in filing an application to set aside the exparte award passed by the Motor Vehicles Claims Tribunal, the present Civil Revision Petition has been filed.

2. The award has been passed by the Motor Vehicles Claims Tribunal on 04.01.2022 for a sum of Rs.3,54,000/- for the disabilities suffered by the claimant. In the said proceedings, the revision petitioner had remained exparte. Therefore, based on the evidence produced by the injured, the compensation has been arrived by the Tribunal. Thereafter, a petition has been taken out in M.P.No.1 of 2004 by the revision petitioner to condone the delay of 747 days to set aside the exparte Order. The reason assigned in the application is that though notice has been served to the revision petitioner, since no claim petition had opened in their office, they had not appeared before the Court in time. However, it is their submission that as the claimant has not produced any driving license before the police authorities, the same leads to the inference that he has no driving license to

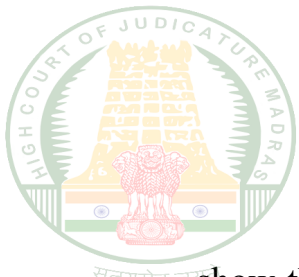


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drive the subject vehicle. Therefore, sought to condone the delay of 747 days. The trial Court, however, dismissed the petition on the ground that as against the award passed by the Tribunal, an appeal has been filed by the injured in CMA.No.1819 of 2023 before this Court, However, this Court by a judgment dated 17.08.2023 dismissed the appeal at the admission stage itself and directed the insurance company to pay the compensation amount. The trial Court taking note of the fact that the appeal has been filed, has held that the award passed by the Tribunal has merged with the judgment passed by this Court, therefore, the petition under section Order IX Rule 13 of Code of Civil Procedure is not maintainable.

3. The learned counsel appearing for the petitioner would mainly submit that explanation to Order IX Rule 13 of Code of Civil Procedure will not be applicable to the facts of the case. Since the insurance company has not filed any appeal and the appeal has been filed only by the claimant, the bar contained under Order IX Rule 13 of Code of Civil Procedure will not be applicable to the revision petitioner. Further, it is their contention that as sufficient reasons have been assigned, one more chance may be given to the revision petitioner to contest the claim application, atleast to



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show that they can recover the money from the person after satisfying the award amount.

4. Whereas, the learned counsel appearing for the first respondent would contend that absolutely there is no bonafide reason or sufficient cause shown in the affidavit filed to condone such a huge delay.

5. I have perused entire materials available on record. As far as the contention of the insurance company, to condone such a huge delay is concerned, except contending that the claim file has not opened in their officer and hence, they could not appear in time, there is no other convincing reason given in the affidavit. The Insurance company official must be more vigilant and having received summons, they cannot file the application in a lethargic and casual manner, that too after almost two years. The reasons assigned in the affidavit is not sufficient to extend any benefit or liberal approach to them.

6. Yet another contention raised in the affidavit is that since the driving license has not been exhibited, it leads to the inference that he is not



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having valid license to drive the subject vehicle. Merely on the basis of the inference of the insurance company, when they themselves have not appeared in the Court, that itself is not sufficient to condone such a huge delay.

7. As far as the contention of the trial Court that since an appeal has already been filed, the application filed by the insurance company is not maintainable is concerned, a careful reading of the explanation to Order IX Rule 13 of Code of Civil Procedure, which reads as follows

“Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.”

The above provision makes it very clear that only the defendant against whom the ex parte decree is passed can file an appeal. A careful reading of the entire provision makes it clear that the defendant has an option either to file an appeal to set aside the ex parte decree or to seek to set aside the ex parte decree under Order IX Rule 13 of Code of Civil Procedure



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before the same Court. Once an appeal against a decree passed exparte under this Rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie to set aside the exparte decree. Only in that context, the explanation is appended. Therefore, when the defendant has not filed any appeal and the appeal has been filed by the claimant or the applicant, the explanation contained in the statute cannot be put against the defendant who has not file an appeal. At any event, considering the nature of reasons assigned in the affidavit, I am not inclined to interfere with the Order of the Execution Court.

8. In this regard, it is relevant to refer to the judgment of this Court in **The State Of Tamil Nadu and two others vs Melvisharam Muslim Educational Society** in **CMP.No.3897 of 2018 in W.A.SR.No.5947 of 2018**, wherein, I had an occasion to deal with the similar issue. The relevant portion of the said Order is extracted hereunder :

“Though the delay is condoned by the Court normally in a liberal manner, the said approach cannot be extended mechanically without any plausible explanation. What is pitted against an ordinary litigant is also pitted against the



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Government before Court of law to establish a particular fact. Though the word _sufficient cause_ has to be given a liberal approach, to exercise discretion for such liberal approach, there must be necessary facts in the affidavit filed in support of the same. But, on a perusal of the affidavit, we do not find plausible explanation for such delay except stating that there is an administrative delay. Such vague and bald explanation cannot be accepted mechanically. When Courts are extending such liberal approach mechanically, it has become a routine affairs of the Government Departments to file the appeals against every order passed by the Court. The present day scenario in filing the appeal, challenging every order by the Government Departments, clearly exhibits shirking responsibility of the Department Heads. In fact, now the tendency has developed among the Department Heads, not to take any risk and to avoid any question relate to the litigant and only in order to avoid any query, the administrative side file these type of appeals,



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though there is no merit in the appeal.

5. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself.

9. In such view of the matter, I do not find any merits in this revision. The revision petitioner is directed to deposit the entire compensation amount along with interest, if already not deposited, immediately and on such deposit, the first respondent is permitted to withdraw the amount by filing necessary application before the Court concerned.



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10. With the above directions, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.07.2025

Index : Yes/No

Internet : Yes/No

vrc

To,

The VI Judge,
Court of Small Causes, Chennai.



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N.SATHISH KUMAR, J.

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