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C.R.P.No.566 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18..06..2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.566 of 2016

Sivakukar

..... Petitioner

-Versus-

1.Amutha

2.Minor Arthi

Rep. by next friend Guardian, the 1st respondent

3.Muniammal

4.Elumalai

5.The Branch Manager,
United India Insurance Company Limited,
Tindivanam District.

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.10.2015 made in I.A.No.316 of 2024 in M.C.O.P.No.9 of 2009 on the file of the learned II Additional District Judge, Tindivanam, Villupuram District.

*For Petitioner : Mr.Sunny Sheen Akkara for
Mrs.V.Srimathi*

For Respondent : Mr.P.Sankaranarayanan for R5

No appearance for RR1 & 2

*RR 3 & 4 Died (Revision petition
against them dismissed vide
court order dated 10.02.2023)*

ORDER



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This revision petitioner is filed by the owner of the offending vehicle, challenging the order dismissing his application under Section 5 of the Limitation Act, 1963. The said application sought condonation of a delay of 1652 days in filing the petition to set aside the ex parte decree dated 28.08.2009 passed against him in M.C.O.P. No.9 of 2009.

2. The revision petitioner is the 2nd respondent in the claim petition and is the insured of the offending vehicle (tractor). The 5th respondent is the insured and owner of the tractor involved in the accident. The respondents 2 to 4 in this revision petition are the legal representatives of the deceased Anandan, namely his wife, minor son, and parents, who have filed the claim petition seeking compensation for his death.

3. The revision petitioner is the owner of the offending vehicle, a tractor. On 22.05.2025, the said tractor, which is alleged to have carried one Elumalai and Anandan, the husband of the 1st respondent, father of the 2nd respondent, and son of the 3rd and 4th respondents gratuitously, met with an accident resulting in the death of Anandan. The legal representatives of the deceased Anandan subsequently filed a claim petition before the Motor Accident Claims Tribunal, Tindivanam, seeking compensation of Rs.10,00,000/- for his death.

4. Before the Tribunal, the insurance company raised a defence that the deceased was travelling as a gratuitous passenger in a tractor meant solely for



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agricultural purposes, which was in contravention of the terms and conditions

of the insurance policy. It was therefore contended that the insurer was not liable to indemnify the insured for the claim arising out of the said accident.

5. The insured, namely the revision petitioner, remained ex parte in the claim proceedings. Upon considering the testimony of P.W.1-Amutha, the 1st respondent, and P.W.2-Mahalingam, along with documentary evidence marked as Exs.P.1 to P.4 and Ex.R.1, the Tribunal found that the deceased Anandan was an unauthorised passenger and that the insurance policy did not extend coverage in such a situation. Accordingly, the Tribunal exonerated the insurer from liability and fastened the liability on the insured, awarding a total sum of Rs.4,17,500/- as compensation to the claimants, by award dated 28.08.2009.

6. Seeking to set aside the ex parte award dated 28.08.2009, the revision petitioner (insured) filed an application to set aside the said award, accompanied by a petition under Section 5 of the Limitation Act, 1963, seeking condonation of the delay of 1652 days in filing the set-aside application. The delay condonation petition was numbered as I.A. No.316 of 2014. According to the petitioner, upon receipt of summons in the claim petition, he had approached his insurer and handed over his signed vakalat, with the expectation that the insurer would take steps to defend the proceedings. However, despite this, both the insurer and the revision petitioner (insured) were set ex parte on



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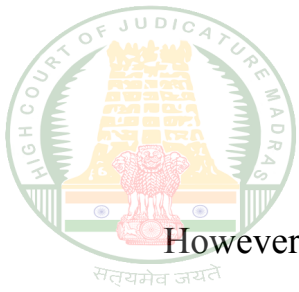
05.12.2007.

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7. Subsequently, the insurer filed an application and successfully had the ex parte order dated 05.12.2007 set aside, and the Tribunal proceeded further in the claim petition, ultimately passing the ex parte award on 28.08.2009. The revision petitioner contended that he was unaware of these subsequent developments and hence was unable to take timely steps, resulting in the delay.

8. The Tribunal dismissed the delay condonation application on two grounds: (i) that sufficient cause for the delay had not been shown; and (ii) that the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 do not provide for the filing of such an application. However, the second ground is legally not sustainable, as Rule 21 of the said Rules expressly incorporates certain provisions of the Code of Civil Procedure, 1908, including Order V, IX, XIII Rules 3 to 10, Order XVI Rules 2 and 21, Order XVII, and Order XXIII Rules 1 to 3, thereby permitting the filing of applications to set aside ex parte orders, and by necessary implication, applications for condonation of delay as well.

9. As regards existence of sufficient cause, it is to be noted that the revision petitioner sought condonation of a delay of 1652 days in filing the application to set aside the ex parte award dated 28.08.2009 passed against him.



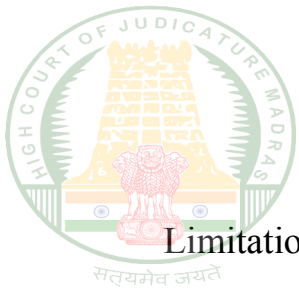
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However, the reason assigned for such an inordinate delay has not been explained satisfactorily. The mere assertion that he had entrusted the matter to the insurer to contest the claim petition on his behalf does not constitute a valid or acceptable explanation for the prolonged delay.

10. It is relevant to observe that, upon receiving summons in the claim petition, it was incumbent upon the revision petitioner (insured) to take necessary steps to defend the proceedings. The revision petitioner has not furnished any convincing explanation as to why he chose to hand over his signed vakalat to the insurer, nor has he demonstrated any due diligence in following up the status of the case thereafter.

11. In the absence of any material evidence to substantiate the petitioner's claim of bona fide conduct, the explanation offered for the inordinate delay falls woefully short of the standard required under Section 5 of the Limitation Act, 1963. The petitioner has neither demonstrated due diligence nor produced any cogent justification to warrant the exercise of discretion in condoning such a prolonged delay.

12. This Court is of the view that the inordinate and unexplained delay of 1652 days cannot be condoned in the absence of sufficient cause being shown. The petitioner has failed to demonstrate any *bona fide* reason or due diligence that would justify invoking the discretionary power under Section 5 of the



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Limitation Act.

WEB COPY 13. Furthermore, it is admitted that the tractor belonging to the revision petitioner (insured) was used to carry passengers gratuitously, which is in violation of the terms and conditions of the insurance policy. As such, even on merits, the insured has no sustainable defence in the claim petition.

14. Though the rejection of the delay condonation application on the ground that the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 do not provide for delay condonation is not legally sustainable, the order is otherwise justified and sustainable in law, as the petitioner failed to offer a sufficient and acceptable explanation for the inordinate delay.

In the result, the civil revision petition is dismissed. No costs.

Index : yes / no
Neutral Citation : yes / no
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18..06..2025

To

1.The II Additional District Judge, Tindivanam, Villupuram District.

N.SATHISH KUMAR.J.,

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