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CMP.26872, 26874, 26877 of 2023
in CMA.No.596 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 03.01.2025

Delivered On: 29.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CMP.Nos.26872/2023, 26874/2023, 26877/2023
and 18386/2023,
in CMA.No.596 of 2020

The Manager (Claims)
Cholamandalam MS General Insurance Co.Ltd.,
No.9, First Floor, Rajaji Road
State Bank of Travancore
Upstairs, Peramanur,
Salem 636 007

... Petitioner/Appellant

VS.

1.Ashok (deceased)
2.Sivakumar..
3.Gouramma
4.Srinivas
5.Rani
6.Chandrasekar
7.Sathish Kumar

... Respondents 3 to 7/
Legal representatives of
the deceased 1st respondent.
Proposed respondents 3 to 7

Prayer in CMP.No.18386 of 2023: Petition filed under 41 Rule 19 of CPC,
praying to restore the above CMA No.596 of 2020 which was dismissed on



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13.04.2023 on its file.

Prayer in CMP.26872 of 2023: Petition filed under Section 5 of Limitation Act, to condone the delay of 1242 days in filing the petition to set aside the abatement caused due to the death of 1st respondent – Ashok in the above CMA.

Prayer in CMP.No.26874 of 2023 : Petition filed under Order XXII Rule 9 of CPC, praying to set aside the abatement caused due to the death of 1st respondent-Ashok in the above CMA.

Prayer in CMP.No.26877 of 2023 : Petition filed under Order XXII Rule 4 of CPC, praying to bring on record the legal heirs of the deceased 1st respondent/Ashok as Respondents 3 to 7 in the above CMA.

For Petitioner : Mrs.R.Sreevidhya

For respondents : Mr.Mukund R.Pandiyar

COMMON ORDER

J.NISHA BANU, J.

CMP.No.18386 of 2023 is filed to restore the CMA.No.596 of 2020 which was dismissed on 13.04.2023.

CMP.No.26874 of 2023 is filed praying to set aside the abatement caused due to the death of 1st respondent-Ashok in the CMA.

CMP.No.26677 of 2023 is filed to bring on record legal heirs of the deceased 1st respondent.

CMP.No.26872 of 2023 is filed to condone the delay of 1242 days in filing the



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petition to set aside the abatement caused due to the death of 1st respondent in the CMA.

2. A perusal of records would go to show that CMA.No.596 of 2020 was presented on 01.11.2019 and the same was taken on file on 14.02.2020. The matter was taken up for admission on 18.02.2020 and notice was ordered. In the notice papers, it is recorded that R1-died and R2-Unclaimed as early as on 27.11.2020. Thereafter, the matter was listed before the court on 15.12.2023 and the court directed counsel to take steps. Hence, for taking steps, the matter was adjourned to 05.01.2023. Again, on 27.01.2023, for the same reason, the case was adjourned to 13.02.2023. Again on 23.03.2023, the court directed that if steps are not taken by the appellant within three weeks, appropriate orders will be passed on that date. Accordingly, on 13.04.2023, this court recorded that though several opportunity were given to the appellant to bring legal heirs of the deceased/first respondent, no steps have been taken by the appellant to bring the legal heirs of the deceased first respondent; in view of the above, the appeal stands dismissed as abated on 13.04.2023.

3. The appellant filed CMP.No.26872 of 2023 on 22.11.2023 to condone the delay of 1242 days in filing the petition to set aside the abatement caused



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due to the death of 1st respondent in the CMA. Along with the said petition, CMPs to restore the CMA, to set aside the abatement caused due to the death of the 1st respondent and to bring on record the legal heirs of the deceased 1st respondent were filed.

4. In the affidavit filed in support of the above petitions, it is stated that only when the service of notice was returned due to expiry of 1st respondent, they come to know about the said fact and thereafter immediately appointed an Investigator to gather the details. The investigator informed that death certificate of the 1st respondent and legal heirship certificate were not issued to the family and only after the said documents were received by the mother of the deceased/injured claimant in MCOP, the same will be given to appellant insurance company.

5. It is further submitted by the appellant that 1st respondent expired on 24.01.2020. To set aside the abatement, the petition is filed only on 15.11.2023 and only due to the reasons that death certificate and legal heir certificate been issued only on 20.09.2023, the petition to set aside the abatement was filed belatedly and therefore sought to condone the delay of 1242 days.



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6. It is seen that the 1st respondent/claimant died on 24.01.2020 and legal heir certificate was issued on 20.09.2023. The legal heirs of the 1st respondent/claimant are 1.Gouramma, aged 62 / mother of the deceased, Srinivas [40], Rani[38] , Chandrasekar[35] and Sathish Kumar[32] are the brothers and sister of the deceased.

7. The appellant/insurance company has challenged the award dated 26.06.2019 passed in MCOP.No.348 of 2017. The 1st respondent/deceased was the claimant in the said MCOP who filed the said petition praying for compensation of Rs.50,00,000/- for the injuries he suffered in the accident occurred on 09.05.2016.

8. The learned Judge, Tribunal, held that during the time of accident, the policy insured with the appellant-insurance company was in force that is in respect of the offending vehicle which caused the accident, therefore, the 2nd respondent/insurance company is liable to pay compensation to the petitioner/claimant on behalf of 1st respondent-owner of vehicle. The learned Judge, Tribunal granted compensation of Rs.27,55,790/- with interest at the rate



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of 7.5% per annum from the date of petition till date of realization.

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9. Even on merits, we find no error in the award passed by the Tribunal.

The learned counsel for the appellant has not taken any steps to file petition to bring legal heirs of the claimant on record. After several opportunities given to the appellant counsel, finally on 13.04.2023, the appeal was dismissed as abated. The delay of 1242 days in filing the petition to set aside the abatement caused due to the death of claimant, is too enormous and the reasons stated is not satisfactory to the court. Further more, when the award of the Tribunal is just and proper, this court is not inclined to allow the above CMPs as the same would serve no purpose.

10. In the light of the above reasonings, the petitions are dismissed.

[J.N.B.,J.] [R.S.V.,J.]
29.01.2025

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**J.NISHA BANU , J.
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