



W.P.(MD)No.10057 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.02.2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)No.10057 of 2024

N.Padmavathy

... Petitioner

vs.

1.The Circuit Bench of the Tamil nadu State  
Consumer Dispute Redressed Commission,  
Madurai.

2.M/s.Bharathi Axa Life Insurance Company Limited,  
rep., by its Authorized Signatory  
Trichy Bench, Having Office at Trichy Junction,  
Trichy-1.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to quash the order dated 14.03.2024 made in C.M.P.No.878 of 2023 in A.No.23110016183 and consequential order made in A.No.23110016183 on the file of the Circuit Bench of the Tamilnadu State Consumer Disputes Redressed Commission, Madurai as illegal.

For Petitioner : Mr.S.I.Muthiah



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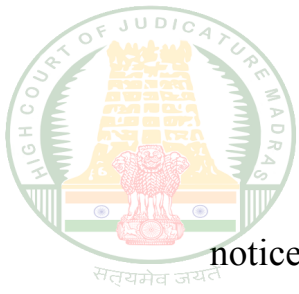
For R2

: Mr.V.Sakthi  
for Ms.P.Priyadharshini

## **ORDER**

The petitioner seeks for writ of certiorari to quash the order in C.M.P.No.878 of 2023 in A.No.23110016183 and the consequential order passed in A.No.23110016183 dated 14.03.2024 on the file of the first respondent. The petitioner is the consumer. She lodged a claim with the second respondent to disburse the sum assured with accrued benefits on her policy. The second respondent rejected the claim. Hence, she filed C.C.No.35 of 2018 on the file of the District Consumer Disputes Redressal Commission at Tiruchirappalli. The said forum dismissed the complaint on 17.08.2023.

2. Aggrieved by the dismissal, the petitioner preferred an appeal before the State Consumer Disputes Redressal Commission, Circuit Bench, Madurai. Since the appeal has not been filed in time, an application was filed to condone the delay of four days in preferring the appeal. The State Consumer Disputes Redressal Commission issued



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notice in the application. The counsel for the petitioner took notice for the hearing date 14.03.2024. The notice was returned with an endorsement 'Not Known'.

3. On the date of hearing, the Madurai District Court Bar Association had passed a resolution stating it is proposing to hold a reference in connection with death of 19 of its members. The Madurai Bar Association requested the learned Principal District Judge at Madurai, to defer hearing at 10.30 am. The petitioner pleads that Courts in Madurai commenced the hearing pursuant to the request made by the Bar Association at 12.00 pm., on the day.

4. However, the sitting of the Tamil Nadu State Consumer Disputes Redressal Commission commenced at 10.30 AM. At the time of calling the matter, as the counsels were attending the reference, there was no representation for the petitioner. Hence, the learned Presiding Judge dismissed the petition to condone the delay for default on the ground that there was no representation and also on the ground that private notice had not been taken.



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5. It is pleaded that the counsel for the petitioner informed the tribunal about the reference of the Madurai Bar Association and requested the learned Judicial Member to recall the order. It is further pleaded that the learned counsel for the petitioner pointed out to the learned Judicial Member that private notice was taken and it was returned, yet the learned Presiding Judge was not inclined to entertain the plea of the counsel. Being left with no other alternative, the petitioner moved this Court by way of the present writ petition.

6. I heard Mr.S.I.Muthiah for the petitioner and Mr.V.Sakthi representing Ms.P.Priyadharshini for the second respondent.

7. The order passed by the State Commission would be appealable to the National Commission only, if it falls under 51(1) or 51(2) of the Consumer Protection Act, 2019. Under Section 51(1), an appeal is maintainable only if the order falls under the categories of 47(1)(i) and 47(1)(ii) of Consumer Protection Act of 2019. An order dismissing the petition to condone the delay of appeal for default does not fall under

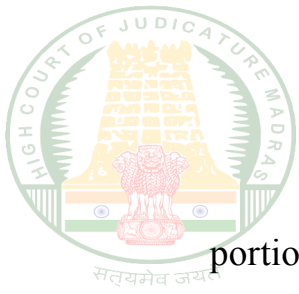


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either category. Since the appeal has been dismissed for default, there is no substantial question of law, on the basis of which, the petitioner can move the National Commission by way of an appeal as required under Section 51(2) of the Act. When no appellate remedy is available to the petitioner as against the order impugned in the present case, a writ petition under Article 226 of Constitution of India is maintainable.

8. On the merits of the case, Mr.V.Sakthi for the second respondent has no serious objection. Both sides agree that death reference was conducted by the Madurai Bar Association on 14.03.2024. The counsel for the petitioner must have been under the impression that the case will be called only at 12.00 pm., as requested by the Madurai Bar Association by its letter to the learned Principal District Judge on 11.03.2024. Hence, he did not present himself before the forum.

9. Two grounds have been given by the learned Judge for dismissing the application. The first ground being the non-appearance and the second ground being non-taking of steps by the petitioner. Insofar as the first aspect is concerned, it is covered in the previous



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portion of this order. With respect to the second portion, the private notice that has been taken by the learned counsel for the petitioner on the second respondent, is clear from pg No.21 of typed set of papers filed along with this writ petition.

10. The practice of parties in this country is to engage a counsel for the purpose of prosecuting the appeal. Due to the default committed by the lawyer, vital rights of a party should not be affected. This position has been settled by the Supreme Court in ***Rafiq and another Vs., Munshilal and another, AIR 1981 SC 1400***. Apart from this fact, as pointed out above, the counsel for the petitioner had taken all the steps and also as seen from the affidavit, had made a mention to the learned Presiding Judicial Member on 14.03.2024.

11. In the light of the above discussion, the impugned order passed in C.M.P.No.878 of 2023 in A.No.23110016183 dated 14.03.2024 and the consequential order made in A.No.23110016183, dated 14.03.2024, are set aside. C.M.P.No.878 of 2023 stands restored to the file of the Circuit Bench of the Tamil Nadu State Consumer Disputes Redressal



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Commission, Madurai. The first respondent is directed to dispose of the petition, after following due process of law.

12. In result, this Writ Petition is allowed. No costs.

Index :Yes / No  
NCC :Yes / No  
Rmk

**26.02.2025**

To

The Circuit Bench of the Tamil nadu State  
Consumer Dispute Redressed Commission,  
Madurai.



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**V. LAKSHMINARAYANAN, J.**

*Rmk*

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