

(2008) 12 MAD CK 0063

In the Madras High Court

Case No : C.R.P. (NPD) (MD) No. 2017 of 2008 and M.P. (MD) No. 1 of 2008

Azeez

APPELLANT

Vs

Achiammal and Others

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 55, 81
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 147, 157, 29A, 31, 50

Citation : (2008) 12 MAD CK 0063

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : S.C. Herold Singh, for the Appellant; N. Sivakumar, for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—The petitioner is second respondent in M.C.O.P. No. 77 of 1995 on the file of the Motor Accident Claims Tribunal,

(Additional District Judge-Cum-Chief Judicial Magistrate), Nagercoil. The first respondent in the M.C.O.P. is said to be a transferee of the vehicle

belonging to this petitioner. The claim petition was filed for grant of award of compensation of Rs. 1,00,000/- from these petitioners on account of

the death of a boy who was the son of the first respondent. The seventh respondent by name, A. Ramesh, a minor, expired and it is represented by

the learned Counsel for the petitioner that since he is the son of the first respondent, no steps to implead legal representatives for him need be taken

and the mother namely, the first respondent, may be treated as his legal representative.

2. The claim petition was dismissed for default on 07.07.1996 and the same was

restored on the file on 11.09.1997.

3. The Tribunal passed an ex parte award on 18.02.1998 setting the respondents ex parte and awarding the compensation as claimed in the claim

petition. Thereafter, the claimants levied execution proceedings in E.P. No. 41 of 2005 for arrest and on receipt of the notice from the E.P. only he

came to know of the court proceedings and it is stated that the petitioner had no knowledge about the passing of the ex parte award. He filed an

application to set aside the ex parte award along with the application to condone the delay of 3235 days u/s 5 of the Limitation Act.

4. In the affidavit filed by the petitioner, he has affirmed that only on receipt of notice in execution proceedings, he came to understand that an ex

parte award was passed on 18.02.1998. He has transferred the ambassador car bearing No. KET 5691 belonging to him, which allegedly caused

the accident, in favour of the first respondent in the claim petition on 07.01.1991 itself. He was hospitalized for severe heart pain and was taking

treatment for three years and the same was informed to his Advocate, as his treatment has been continuing for about ten years. Since, he was ailing

from the heart disease, he could not contact his Advocate and file the application in time. Added further, he had no knowledge about the passing of

the ex parte award and hence, the delay may be condoned.

5. In the counter filed by the respondents the respondents denied the averments found in the affidavit.

6. The learned Additional District Judge-Cum-Chief Judicial Magistrate, Nagercoil, after hearing both sides, dismissed the application on

25.08.2008, by stating that the cause mentioned in the affidavit does not constitute ""sufficient cause"" as provided in the provision.

7. The learned Counsel for the petitioner Mr. S.C. Herold Singh, laboured hard to convince this Court to explain the delay caused in filing the

application. He says that, as evidenced from the medical records, the petitioner was suffering from heart ailment right from 1995 and still he is

continuing the treatment to get it cured. He has produced a copy of the discharge card issued by Dr. Jeyasekharan Hospital and Nursing Home,

Nagercoil, in which it is mentioned that he suffered from Hypertension Unstable Angina and he was also given treatment for the said complaint. The

said discharge card was issued in the year 1995. He has also produced another

medical record issued by Dr. Morris Mathias Hospital, Nagercoil, in which it is shown that he has undergone various examinations for ascertaining the gravity of heart ailment.

8. Adverting to the allegation that the petitioner did not have knowledge about the passing of ex parte award, the learned Counsel for the petitioner

says that in the application for restoration of the claim petition, no notice was given to him and in fact, the effect of the restoration of the claim

petition was also not informed by his Advocate. It is the further allegation in the affidavit that the Advocate has not informed him about the stages

of the case. The learned Counsel for the petitioner also states that the mistake on the part of the lawyer in communicating the stages of the case to

the party can constitute a good ground for showing sufficient cause for condoning the delay. To substantiate his contention, he garnered support

from a decision of the Orissa High Court reported in Ghantasala Raghunath Rao Vs. Ghantasala Savitri, . The relevant portion containing the

principles laid down by the Hon"ble Apex Court is as follows:

5. As has been held in Punjab National Bank Ltd. Vs. Shri Vikram Cotton Mills and Another, in some circumstances, mistake of a lawyer can be

a sufficient cause for condoning delay. To AIR 1961 SC 1400 (Rafiq v. Munshilal) absence of a lawyer when the appeal was called for hearing

was held to be a sufficient cause since the appellant in that case had nothing more to do than to hand over the brief. Reliance on a lawyer who

committed the mistake was found to be a sufficient cause.

9. Following the principles laid down by the Hon"ble Supreme Court, it has to be observed that the lapse on the part of a lawyer in communicating

the stages of the case to the party can be considered to be a valid and sufficient ground in the matter of condonation of delay.

10. The next leaf of contention of the leaned Counsel for the petitioner is pertaining to the transfer of his Ambassador car to the first respondent by

name, R. Selvaraj. He has produced a copy of the endorsement made on the Registration Certificate for the vehicle, which shows that as early as

on 07.01.1991, the vehicle was transferred in the name of R. Selvaraj by the petitioner and the said endorsement has been made by the Assistant

Registering Authority, Tirunelveli on 08.01.1991. Bearing in mind the date of accident which reportedly took place on 09.09.1991, the learned

Counsel contended that the accident had occurred after the transfer was effected and hence, at no stretch of imagination, it could be stated that this petitioner is liable to compensate the claimants.

11. The learned Counsel for the petitioner, assailing the observations contained in the order passed by the Tribunal, would contend that as per the settled propositions of law, no responsibility is on the party to explain the delay for each and every day and if a sufficient cause is shown, which is satisfactory to the Court, it is enough and it is also his contention that the length of delay does not matter but the gravity and the merits of the matter have to be assessed by the Court while considering the condonation of delay. For these propositions of law, he placed much reliance upon two different decisions of the Hon'ble Supreme Court which are as follows:

(i) Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, .

3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the

Courts to do substantial justice to parties by disposing of matters on "merits". The expression ""sufficient cause"" employed by the legislature is

adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for

the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted

in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is

adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As

against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. ""Every day's delay must be explained"" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's

delay? The doctrine must be applied in rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the

other side cannot claim to have vested right in injustice being done because of non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does

not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of

removing injustice and is expected to do so.

(ii) 1999 1 L.W. 739, N. Balakrishnan v. M. Krishnamurthy

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can

be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes

delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range

can be condoned as the explanation thereof is satisfactory.

12. Following the ratio laid down by the Supreme Court, it ought to be held that there is no need to a party to make explanation for each and

every day, but the duty cast upon him is to establish that he has been prevented by sufficient cause in filing the application in time and that whatever

be the length of time it is not the criteria but the other attending circumstance which should also contribute to the favourable consideration in the

condonation of delay. In order to advance substantial justice, the Court has to bear in mind the settled principles of law and then approach the

pleadings of the party in any matter, particularly in the matter in condoning the delay. If any good cause is available and ascertained by the Court,

then there could be no legal embargo for it to pass an order in favour of the applicant.

13. Repelling and resisting those contentions, the learned Counsel for the respondents/claimants would submit that even though the respondent (this

petitioner) is not the owner of the vehicle, still no particulars are furnished thereon with reference to the fact of transfer and it has to be ascertained

whether such transfer is a valid one satisfying the statutory requirements.

14. The learned Counsel for the respondent also took much pains in convincing the Court that unless the stand of transfer stated by the petitioner is

proved to be in accordance with the provisions and Rules framed in Motor Vehicles Act, there could not be any material in his favour that that

should also be considered for condonation of delay. He draws attention of this Court to Rule 55 of Central Motor Vehicles Rules 1989, which

enumerate responsibilities anchored on the owner of a vehicle, who transfers his vehicle to other person, has to fulfil certain requirements. They are

as follows:

55. Transfer of ownership.-(1) Where the ownership of a motor vehicle is transferred, the transferor shall report the fact of transfer in Form 29 to

the registering authorities concerned in whose jurisdiction the transfer and the transferee resides or has their place of business.

(2) An application for the transfer of ownership of a motor vehicle under sub-clause (i) of Clause (a) of Sub-section (1) of Section 50 shall be

made by the transferee in Form 30, and shall accompanied by-

(i) the certificate of registration;

(ii) the certificate of insurance; and

(iii) appropriate fee as specified in Rule 81.

15. It is further contention of the learned Counsel for the respondent that as per the rules, within a time frame, the petitioner should have produced

the insurance policy also before the authority concerned and it has not been stated specifically in the counter filed by him and hence, the transfer is

not at all a valid one. He also gains support from a decision of the Hon''ble Supreme Court reported in G. Govindan Vs. New India Assurance

Co. Ltd. and Others, , wherein Their Lordships, while elaborately dealing with Sections 147 and 157 of the Motor Vehicles Act, 1988 (prior to

amendment) and the Rules framed therefor, have held that till the transferor fulfils the statutory obligations u/s 31, he is liable to pay compensation

to the claimants and his liability is continuing. The operative portion of the judgment goes thus:

...The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the

vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the

vehicle is composite one covering the risks for his person, property (Vehicle) and the third party claim, on passing of title the transferee cannot

enforce his claim in respect of any loss or damage to his person and vehicle unless there is novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Sections 29-A and 31 read with Section 94 of the Act. Till he complies with the requirement of Section 31 of the Act the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of Section 31, the liability of the transferor subsists and the policy is in operation so far it relates to the third party risks. We answer the second question accordingly

16. Section 31 in the old Act has been replaced by the new Act by means of Section 50, which deals with the transfer of ownership and in the matter of transferring of a Motor Vehicle, the transferee has to follow certain formalities and if those formalities are not fulfilled by him, then it could be definitely held that the transfer will not hold good.

17. The learned Counsel for the respondent also says that the petitioner has miserably failed to show before the Tribunal that he has validly transferred the vehicle in favour of R.Selvaraj and in this regard his contention wriggle out from consideration. As regards the merits and the effect of the transfer involved in the transactions, which took place between both the respondents in the claim petition, cannot be gone into at this stage, the recording of oral evidence of both parties is very much necessary and the Tribunal below has to draw the oral accounts of both the parties in the presence of the documents produced by them and this Court cannot come out with any finding with respect to the validity of transfer as pleaded by both parties.

18. As for the circumstances that whether the petitioner has shown sufficient cause to the satisfaction of this Court, the allegations in the affidavit have to be looked into. It is no doubt true that the petitioner has not entered into the witness box and supported his allegations in the affidavit by deposing that he was suffering from specific ailments. In the considered view of this Court, that cannot be a sole ground for throwing his claim for

condonation of delay especially when he comes forward with certain reasons coupled with some merits of the case which are in his favour. As

already stated, the merits of the matter have to be scrutinised by the Tribunal, but this Court sees that some relevant materials have been shown

before this Court to evidence that he has transferred the vehicle much earlier to the date of the accident.

19. Having produced the medical records before this Court to show that he is suffering from heart ailments, his request for the excusing delay

cannot be refused. As per the dictum laid down by the Hon'ble Supreme Court, the Court cannot and need not expect to explain the delay for

every day. Since he was prevented by sufficient cause namely, the absence of communications then and there from his Advocate and his heart

ailments, this Court is of the opinion that the delay has been explained before this Court sufficiently and the petition has to be allowed. However,

the relative hardships experienced by the other party shall also be taken note of by this Court. Hence, for the inconvenience caused to the

claimants, particularly while considering that the claim petition has been pending from 1992 onwards, fixing of adequate cost payable to them will

meet the ends of justice.

20. In the result, the Civil Revision Petition is allowed on payment of cost of Rs. 15,000/- by the petitioner to the claimants/respondents 1 to 6 on

or before 12.01.2009 in default, the petition shall stand dismissed automatically without further reference to this Court. As per the request of the

learned Counsel for the petitioner, the petitioner is permitted to take Demand Draft for Rs. 15,000/- in the name of the first respondent,

Achiammal and to tender the same to the learned Counsel for her, who is appearing before the Tribunal. Consequently, connected miscellaneous

petition is closed.