

(1994) 10 KL CK 0024
In the High Court Of Kerala
Case No : M.F.A. No. 268 of 1994-B

K.M. Mathew

APPELLANT

Vs

M. Murukanandan and Others

RESPONDENT

Date of Decision : 03-10-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(3)

Citation : (1995) ACJ 971 : AIR 1995 Ker 150

Hon'ble Judges : V.V. Kamat, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : K. Jagadisachandran Nair, for the Appellant; K. Chandrasekharan, V.I. Joseph and Jacob Murikan, for the Respondent

Judgement

Kamat, J.—Section 166 of the Motor Vehicles Act 1988 prescribes the period of six months and imposes restriction on the entertainment of an application if not made within the said period of six months. This is with a proviso that the tribunal may entertain after the said period of expiry of six months but at any rate not later than 12 months and that too on the satisfaction that the applicant was prevented by sufficient cause from making the application in time.

2. The present appeal is against the impugned order dated September 17, 1993 of the Tribunal throwing out the application itself holding that it was not filed within a period of 12 months, either within the period of limitation or within the extra period provided by the proviso. The short and relevant facts are that the accident occurred on March 18, 1992 and as held by the tribunal "the petition for compensation along with the application for condonation of delay was filed on March 19, 1993 as per the endorsement on the application. By the impugned order, the tribunal held that even excluding the date of accident the filing of petition on March 19, 1993 would not be covered by the proviso to Section 166(3) of the Motor Vehicles Act, 1988. The petition for condonation of delay is dismissed and as a consequence thereto the application for compensation is also thrown out.

3. We have to consider as to whether the application could be stated to have been filed on March 19, 1993 or on the earlier day on March 18, 1993. If it is held that the application was filed on March 18, 1993 there is no dispute that the proviso to Section 166(3) of the Act would apply and the petition for condonation of delay could be considered on its own merits. In support of the appeal an affidavit of the clear (M. B. Sreekumar) of the learned Advocate appearing for the appellant/applicant before the tribunal is filed on our record.

4. For the purpose of this appeal it would be necessary to quote paragraphs 2, 3 and 4 of the said affidavit which are as follows :--

2. The claim petition in O.P.(MV) 138/93 of the Motor Accidents Claims Tribunal Thodupuzha was prepared and filed by Advocate Benny Kurian. I was entrusted with the original records of OP/MV/138/93 at Kottayam and asked to take it to Thodupuzha and to file it in the Tribunal. I proceeded at 2 p.m. from Kottayam to Thodupuzha.

3. I reached Thodupuzha Motor Accident Claims Tribunal by about 3.30 p.m. on 18-3-1993 and according to the practice of the court deposited all the signed records and signed papers in the tray kept for the purpose. As it was past 3 p.m. I told the concerned officer who was sitting near the tray that it has to be filed on the same day itself. He asked me to leave it in the tray and told me that it will be filed in due course. I do not have much experience in the courts and hence I thought that the papers will be sealed the same day.

4. Subsequently when I went to Throdu-puzha to find out the number and posting of the case it was noticed that the case was seen as filed only on 19-3-1993. I was till then under the bona fide belief that the original petition having been presented on 19-3-1993 was duly recorded as filed on that date itself. It is then urged in the said affidavit that the clerk personally deposited it in the tray kept for filing papers in the same day at about 3.30 p.m.

5. Additionally in support of the appeal the learned counsel for the appellant urged that under the Motor Vehicles Act 1988 the tribunal functions not as a Civil Court and therefore is not guided by the rules of civil practice requiring the litigants to file their papers before the stipulated time of practice. The learned counsel urged upon us to accept the affidavit of the clerk of the Advocate in this context that the papers were in fact filed on 18th March, 1993, within the extended period of six months which could be condoned on the basis of sufficient cause. Reading the affidavit and taking into consideration the submission of the owner and the insurance company that the said affidavit is being filed for the first time in this Court in this appeal, we do not find any reason to discard the said affidavit.

6. In this context unequivocal guidance is available from the Supreme Court, Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, When it is pointed out that ordinarily a litigant does not stand to benefit by lodging a proceeding late. In fact refusing to condone the delay or to entertain

the application can result in a meritorious matter being thrown out at the very threshold and cause of injustice being defeated. The doctrine must be applied in a rational common sense in a pragmatic manner keeping in mind that nobody has any particular interest to approach the court after the period of limitation especially when the other side cannot claim to have vested right in injustice being done because of non-deliberate delay. It is also observed that a litigant does not stand to benefit by reasoning to delay and on the contrary he runs a serious risk. A stronger warning is to be kept in mind by the Courts 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 it is expected to do as could be possible in each matter. The approach has to be justice-oriented. Both the learned counsel for the owner as well as the Insurance Company urged upon us not to accept the affidavit of the clerk of the Advocate. We can understand the owner but it is difficult to understand the insurance, company. Accepting the clerk's affidavit we hold that the present petition for condonation of delay was filed on March 18, 1993.

7. Next would be the logical extension of the principles enunciated by the Supreme Court hereinbefore. In the application for condonation of delay a statement is made by the petitioner/appellant that as an after effect of the accident he was under treatment of doctors and could not consult a lawyer to conduct the cause in time. Learned counsel also in this context urged that the question may be left open for the tribunal. We have before us the claimant who has suffered in the accident which occurred on March 18, 1992 and has yet to be on the first step of the ladder of the litigation. We must be aware of the position that the accident cases also have its own life before the tribunal. The claim for compensation is the aspect of social justice to be meted out to the man who has suffered. Taking all these aspects into consideration, in the lights of the observations of the Supreme Court, to avoid other inevitable innings in the matter, as is apparent, we accept the cause for condonation of the delay as pleaded and condoned the said delay on the facts and circumstances of this case and the peculiarity of this litigation which is yet to start with regard to an accident of March 18, 1992.

8. For the above reasons we hold that the application for condonation of delay is filed on March 18, 1993, we accept sufficient cause pleaded in the application for condonation of delay and consequently, direct the tribunal to proceed with the merits of the accidents claim as expeditiously as possible keeping in mind our above observations with regard to the time factor of the situation. The appeal is thus allowed. The impugned order in I. A. 444/93 in O. P. 138/93 of the Motor Accident Claims Tribunal, Thodupuzhais quashed and set aside and the proceedings of the O. P. No. 13/93 are remitted to the tribunal for decision according to law as expeditiously as possible.