

(1996) 10 MAD CK 0058
In the Madras High Court
Case No : C.R.P. No. 2489 of 1992

M/s Nesamony Transport Corporation Limited	APPELLANT
Vs	
V.M. Mathal and M/s. Oriental Insurance Co. Ltd., Tuticorin, V.O.C. District	RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 14
Motor Vehicles Act, 1988 — Section 166(3), 175

Citation : (1996) 10 MAD CK 0058

Hon'ble Judges : Sathasivam, J

Bench : Single Bench

Advocate : Kala Ramesh, for the Appellant; K.S. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

Sathasivam, J.—The Transport Corporation, which is aggrieved by the order of the Tribunal, condoning the delay of 31 days in filing the claim petition made in I.A. No. 657 of 1991 in M.C.O.P.S.R. No. 3551 of 1991 on the file of Motor Accident Claims Tribunal (District Court, Kanyakumari District at Nagercoil) has filed the present revision before this Court under Article 227 of the Constitution of India. The respondents herein, owner of Car SKCT 6658 as well as Insurance Company have filed O.S. No. 35/90 before the Sub-Court, Kuzhithurai for recovery of a sum of Rs. 24,048/-towards damages sustained to the said car from the petitioner herein (M/s Nesamony Transport Corporation). The accident was caused on 7.7.1989. According to the respondents herein, due to the rashness and negligence of the Transport Corporation bus, the car sustained severe damages and by the letter of subrogation, the 2nd respondent herein has settled the claim of the 1st respondent, hence, has come forward with the suit for recovery of the said amount from the Transport Corporation.

2. In the counter affidavit filed by the Transport Corporation apart from raising

objection with regard to the manner of accident and the quantum of compensation, they also raised an objection that the suit is barred by limitation as well as that the Sub-Court, Kuzhithurai has no jurisdiction to try and dispose of the present suit. In view of the objection raised regarding the jurisdiction of the Civil Court, 1 issue regarding jurisdiction was tried as a preliminary issue. After enquiry and in the light of Sec.175 of the Motor Vehicles Act and after referring to some of the decisions of various Courts, ultimately the Sub-Court came to the conclusion that the Tribunal constituted under the Motor Vehicles Act alone is competent to dispose of the claim in the nature of the present one, ultimately directed return of the plaint, granting one month time to re-present the same before the competent Court.

3. In pursuance of the order of the Sub-Court, Kuzhithurai, the respondents herein re-presented the same before the Motor Accident Claims Tribunal (District Court) Nagorcoil and also filed T.A. No. 657 of 1991 for condonation of 31 days delay in filing the Claims Petition. After considering the fact that the pendency of the suit before the Sub-Court, Kuzhitural and after accepting the plea of the petitioners in their affidavit as well as counter affidavit of the Transport Corporation the Tribunal condoned the delay of 31 days in filing the claim petition. Against the said order, the Transport Corporation has filed the present revision petition before this Court.

4. Mrs. Kala Ramesh, learned counsel appearing for the Transport Corporation contended that the conclusion of the respondents as well as the Tribunal that the delay was only 31 days is incorrect and improper. According to her, actually there was a delay of 672 days. She further submits that if the delay of 672 days was taken into consideration as per Sec.166(3) of Motor Vehicles Act, 1988 the Tribunal has no power to condone the delay beyond 180 days. With these contentions, she prays for interference in this revision petition.

5. On the other hand, Mr. K.S. Narasimhan learned counsel appearing for both the respondents submits that as per the provisions existing on the date of the accident, the Civil Court was competent to try and dispose of the suits relating to damages, however, due to the subsequent developments and in view of the entrustment of the exclusive power only to the Tribunal necessarily the plaint has been returned for being presentation before the competent Tribunal. Hence, as per Sec.14 of the Limitation Act, 1963, the time taken by the Civil Court has to be excluded and if it has been excluded the delay would be only 31 days and the same was rightly condoned by the Court below. He also relied on three decisions viz., 1973 TLNJ 220 (Nambi Konar v V. Vanamamalai Pemmam and others), 1978 TLNJ 198 (Muthiah Chettiar v Muthukumaran and others) and 1983 TLNJ 462 (M. Dhanalakshmi and others v S. Palanivelu and another) in supporter this contention.

6. It is useful to order to refer Sec.14 of the Limitation Act, which is extracted hereunder:-

"14. Exclusion of time of proceeding bonafide in Court without jurisdiction: -

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the application has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it (3)...."

7. The above referred Sec.14 of the Limitation Act provides in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, against the defendant shall be excluded, when the proceedings relates to the same matter in issue and is prosecuted in good faith in a Court Which from defect of jurisdiction or other cause of alike nature is unable to entertain it. In the first decision viz., 1973 TNLJ 320, Justice Ramaswamy as he then was, relying on Sec.14 in a similar situation allowed the plaintiff therein to deduct the period taken by them in an earlier proceeding wherein the plaintiff was prosecuting for the same cause in good faith in the said Court.

8. In 1978 TNLJ 188 Padmanabhan, J. also after referring to Sec.14 of the Limitation Act has formulated three conditions for its application which are extracted hereunder:-

"(a) the plaintiff must have been prosecuting another civil proceeding which he relied upon with due diligence.

(b) the earlier proceedings and the later proceedings must be founded on the same cause of action (c) the former proceeding must have been prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature is unable to entertain it. In another words, if a cause is not determined on merits but is dismissed in limine by reason of defect of jurisdiction or some other technical defect of law or procedure the plaintiff can claim the benefit under Sec.14 of the Act if he had been acting bona fide."

9. Here in this case as rightly pointed out by Mr. K.S. Narasimhan, the plaintiffs were prosecuting another civil proceeding with due diligence. The earlier proceedings and latter proceedings are founded on the same cause of action and the former proceeding was initiated in good faith. The said principles enunciated in the above decision are clearly applicable to the facts of the present case.

10. The very same view has been expressed by Sathiadev, J. also in the decision

reported in 1983 TNLJ 462. In view of the decisions cited above and of the fact that the respondents herein were prosecuting their case in good faith, before the competent Court and it ultimately came to be found that the said Court has no jurisdiction, applying Sec.14 of the Limitation Act, they are entitled to exclude the time taken before the former Court. "In view of the above position, I am unable to countenance the argument of the learned counsel appearing for the petitioner Corporation". Consequently, the Civil Revision Petition fails and is dismissed. However, there will be no order as to costs.