

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE C.S.DIAS**

**FRIDAY, THE 22<sup>ND</sup> DAY OF JULY 2022 / 31ST ASHADHA, 1944**

**OP(C) NO. 281 OF 2022**

**AGAINST THE ORDER/JUDGMENT IN OPMV 178/2010 OF MOTOR**

**ACCIDENT CLAIMS TRIBUNAL , NEYYATTINKARA**

**PETITIONER/S:**

RAJESH CHANDRAN, AGED 39 YEARS, S/O.RAMACHANDRAN  
NAIR, CHANNANKADU MEKKUMKARA VEEDU, ANACODE,  
VEERANAKAVU, NEYYATTINKARA, THIRUVANANTHAPURAM,  
PIN - 695575

BY ADVS.  
R.V.SREEJITH  
G. Maheswary

**RESPONDENT/S:**

- 1 M.R. GOPALAKRISHNAN NAIR, S/O.RAMAN PILLA, HOUSE  
NO. 3-805, GEETHA BHAVAN, IRUMBA, ARUVIKKARA P.O  
THIRUVANANTHAPURAM, PIN - 695564
- 2 MANOJ KUMAR, MAHESH BHAVAN, MANIKANTESWARAM  
PEROORKADA P.O., THIRUVANANTHAPURAM, PIN -  
695013
- 3 THE BRANCH MANAGER, M/S. ROYAL SUNDARAM ALLIANCE  
INSURANCE COMPANY LTD., PATTOM  
THIRUVANANTHAPURAM, PIN - 695004

BY ADV Panicker V.P.K.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON  
22.07.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**JUDGMENT**

The original petition is filed to set aside the common order dated 05.10.2021 passed by the Motor Accidents Claims Tribunal, Neyyattinkara (in short 'Tribunal') in I.A.Nos.4451/2019, 4452/2019, 3/2021 and 4/2021(Ext.P8) in O.P.(MV) No.178/2010.

2. The skeletal facts, relevant for the determination of the original petition, are: the petitioner is the applicant in the above claim petition, filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- from the respondents, on account of the injuries sustained to the petitioner in an accident on 16.12.2005. The claim petition was dismissed on 24.04.2012 for non-prosecution. The petitioner had filed Ext.P2 application, to restore the claim petition, with Ext.P3 application, to condone the delay in filing Ext.P2 application. However, Exts.P2 and P3 applications

were dismissed on 10.02.2014. Then, the petitioner filed Exts.P4 to P7 applications to restore Exts.P2 and P3 applications and to condone the delay in filing the subsequent applications. The Court below, by the impugned Ext.P8 order, dismissed Exts.P4 to P7. Ext.P8 is erroneous and wrong. The petitioner was a Maison. He is still suffering on account of the injuries sustained to him in the accident. He had entrusted the matter to an Advocate. He was under the bonafide belief that the claim petition was being diligently prosecuted by his counsel. The Court below, without considering the applications in its proper perspective, dismissed the applications by Ext.P8 common order. Hence, the original petition.

3. Heard; Sri.R.V.Sreejith, the learned counsel appearing for the petitioner and Sri.VPK.Panicker, the learned counsel appearing for the 3<sup>rd</sup> respondent. Service is complete on the 1<sup>st</sup> respondent. I have

dispensed with notice to the 2<sup>nd</sup> respondent.

4. Sri. R.V.Sreejith argued that the Tribunal has on hyper technical grounds dismissed Exts.P2 to P7 applications. The Tribunal ought to have borne in mind that the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, on account of the serious injuries sustained to the petitioner in a road accident. The petitioner had entrusted the matter to an Advocate in Neyyattinkara. He reposed full faith and confidence in his counsel and believed that the case would be properly contested. It is after coming to learn that the case was dismissed for default, that he filed Exts.P2 and P3 applications to restore the claim petition and to condone the delay of 519 days in filing the restoration petition. Subsequently, those applications were also dismissed. Thereafter Exts.P4 to P7 applications were filed, which were also wrongly dismissed. The learned counsel relied on the decision

of this Court in ***Kshemanidhi Kuries & Loans (P) Ltd. v. Ashokan*** [2008 (4) KLT 744] to fortify his contention that the expression “sufficient cause” is an adequately elastic term and has to be meaningfully applied by the Courts to subserve the ends of justice. He also placed reliance on the decision in ***Indian Oil Corporation Ltd. And Ors vs. Subrata Borah Chowlek and Ors.*** [2010 (14) SCC 419] to canvass the position that while construing “sufficient cause”, the Courts should take a liberal approach, particularly when there is no negligence, inaction or malafides against the litigant. He further drew the attention of this Court to the decision in ***Ram Nath Sao Alia Ram Nath Sahu and Ors. vs. Gobardhan Sao and Ors.*** [(2002) 3 SCC 195], wherein, the Honourable Supreme Court has held that the Courts should not reject an application for restoration/setting aside the ex-parte decree in slipshod manner order, in the over-jubilation of disposal drive, and also should not take a

pedantic and hyper technical view of the explanation furnished by the party and reject the application causing enormous loss and irreparable injury to the party. Instead, the Courts should strike a balance between the resultant effect of the order on the parties either way. He argued that the Tribunal has, without following the ratio in the above precedents, in a casual manner dismissed all the applications. Hence, Ext.P8 common order may be set aside and OP(MV) No.178/2010 may be restored to file.

5. Sri.VPK. Panicker, the learned counsel appearing for the 3<sup>rd</sup> respondent, opposed the above submissions and contended that there is willful latches and negligence on the part of the petitioner in conducting the claim petition. The accident allegedly occurred on 16.12.2005. The claim petition was filed only in the year 2010. The claim petition was dismissed for default on 24.04.2012. Thereafter, the

application to restore the claim petition and the application to condone the delay in filing restoring application were also dismissed on 10.02.2014, for default. It is to restore the restoration application that the subsequent Exts.P4 to P7 applications were filed, which have also been dismissed by the Tribunal, on 05.10.2021, by the impugned Ext.P8 order. It is 17 years after the accident, at this distance of time, the petitioner wants the claim petition to be restored to file, which would cause severe prejudice to the 3<sup>rd</sup> respondent/insurer. Moreover, if ultimately the claim petition is allowed, the insurer may be called upon to pay interest for the period from the date of the claim petition till the date of award, which again would cause substantial pecuniary loss to the insurer, that too for no fault of the insurer. Furthermore, as the claim petition is filed after five years of the accident, the documents that have been relied on by the petitioner may not be available with the insurer. Rule

147 of the Central Motor Vehicles Rules requires the insurer to preserve/keep records for only three years. If at all this Court is inclined to restore the claim petition, the 3<sup>rd</sup> respondent may not be called upon to produce any documents pertaining to the offending vehicle. The onus of proof should be placed on the shoulders of the petitioner to prove the averments in the claim petition. Also, if this Court restores the claim petition, the petitioner should be held to be disentitled for interest from the date of dismissal of the claim petition till the date of its restoration.

6. The point is whether there is any illegality in Ext.P8 order passed by the Tribunal.

7. The petitioner had filed Ext.P1 claim petition, seeking compensation from the respondents, on the ground that the offending vehicle, belonging to the 1<sup>st</sup> respondent, driven by the 2<sup>nd</sup> respondent in a rash and negligent manner and was insured with the 3<sup>rd</sup>



respondent, as per the policy that was valid from 12.01.2005 to 11.01.2006, had hit the petitioner and he suffered serious injuries. Accordingly, the petitioner has claimed from the respondents 1 to 3 a compensation of Rs.10,00,000/-.

8. Undisputedly, Ext.P1 was dismissed for default for non-prosecution on 24.04.2012.

9. Later, the petitioner had filed Ext.P2 application, to restore Ext.P1 claim petition along with Ext.P3 application, to condone the delay of 519 days in filing Ext.P2 application. However, Exts.P2 and P3 were also dismissed for default on 10.02.2014.

10. Later, the petitioner had filed Exts.P4 to P7 applications to restore Ext.P2 application and to condone delay in filing the above applications.

11. The Tribunal, by the impugned Ext.P8 order, has dismissed Exts.P4 to P7 applications on the

ground that there was latches and negligence on the part of the petitioner in prosecuting the claim petition and applications.

12. In ***Jacob Thomas vs. Pandian*** [2005 (4) KLT 545], a Full Bench of this Court, after interpreting Section 166 of the Motor Vehicles Act, 1988 read with Rule 371 of the Kerala Motor Vehicles Rules, 1989, has held that after issuing notice to the respondents, even if the claimant or the respondents are absent, the Tribunal has got power to proceed with the case either by collecting evidence as provided under sub-rule 5 of Rule 378 or to dispose of the claim petition under Order IX of the Code of Civil Procedure, 1908 read with Rule 395 of the Kerala Motor Vehicles Rules. It is further held that, only if the Tribunal is genuinely satisfied that there was contumacious latches on the part of the claimant in prosecuting the claim petition, the Tribunal should dismiss a claim petition under

Order IX Rule 9 of the Code.

13. It is, therefore, trite, that, it is necessary for the Tribunal to arrive at a finding that there was contumacious latches and negligence on the part of the claimant in prosecuting the claim petition.

14. A reading of the affidavit in support of Ext.P2 application would substantiate that the petitioner was bed-ridden on account of the injuries that he sustained in the accident. He has stated that his counsel did not take the necessary steps to prosecute the claim petition. Hence, he sought for the restoration of the claim petition by filing Ext.P2 application. Unfortunately, the application was dismissed for default. The subsequent applications to restore Ext.P2 and the condonation application were also dismissed.

15. The Honourable Supreme Court in ***Collector, Land Acquisition, Anantnag v. Katiji***, [A.I.R. 1987 (S.C.) 1353] has emphatically held that Courts should

take a liberal, justice-oriented, justifiable and reasonable approach in condoning the delay. The Courts have been reminded that a party who, as per the present adversarial legal system, has selected his advocate, briefed him and paid his fees can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate omission or misdemeanor of his counsel.

16. Again, the Honourable Supreme Court in ***Indian Oil Corporation Ltd. And Ors vs. Subrata Borah Chowlek and Ors.*** (supra) has succinctly held thus:

*7. Having heard the learned counsel, we are of the opinion that in the instant case a sufficient cause had been made out for condonation of delay in filing the appeal and therefore, the High Court erred in declining to condone the same. It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in*

*construing sufficient cause, the Courts generally follow a liberal approach particularly when no negligence, inaction or mala fides can be imputed to the party. (See: Shakuntala Devi Jain Vs. Kuntal Kumari & Ors.1; The State of West Bengal Vs. The Administrator, Howrah Municipality & Ors.2; N. Balakrishnan Vs. M. Krishnamurthy3; Sital Prasad Saxena Vs. Union of India & Ors.4)*

17. On a comprehensive consideration of the pleadings and materials on record, the authoritative precedents cited above and the cause that has been averred by the petitioner in the affidavits in support of the applications and also in the original petition, I do not find contumacious latches or negligence on the part of the petitioner, to deprive him of his statutory and legitimate right to prosecute the claim petition, which is filed for compensation on account of the disability suffered in a road accident. I am of the definite view that a lenient consideration is to be given, especially bearing in mind the benevolent nature of the enactment that the claim stems out from, by affording the petitioner one more opportunity to

contest the case on merits. Hence, I hold that the original petition deserves to be allowed subject to the conditions mentioned herein below.

18. Before I conclude, I reminisce the observations made by this Court in ***Saramma Scaria and others vs. Mathai and another*** [(2002) 1 KLJ 594], which was partly overruled in ***Jacob Thomas*** (supra), that the Tribunal has got a paramount duty to render justice to the hapless victims of road accident as well as claimants of the deceased. The Tribunal should show human compassion and sympathy in such a situation and not set them ex-parte and leave them in the lurch.

19. Resultantly, in exercise of the supervisory powers of this Court under Article 227 of the Constitution of India, I allow the original petition in the following manner:

- (i) Ext.P8 common order is set aside.

- (ii) Exts.P2 to P7 applications are allowed.
- (iii) OP(MV) No.178/2010 is restored to file.
- (iv) If OP(MV) No.178/2010 is allowed, the petitioner would be disentitled for interest for the period from 24.04.2012 till today (22.07.2022).
- (v) The Tribunal shall not call upon the 3<sup>rd</sup> respondent to produce the records of the offending vehicle in view of Rule 147 of the Central Motor Vehicles Rules.
- (vi) The onus burden to prove the genuineness and validity of the documents shall solely rest on the petitioner.
- (vii) As the claim petition is of the year 2010, I direct the Motor Accident Claims Tribunal, Neyyattinkara, to consider and dispose of O.P(MV) No.178/2010, in accordance with law,

as expeditiously as possible after affording all parties an opportunity of being heard.

Sd/-

**C.S.DIAS, JUDGE**

rkc/22.07.22



**APPENDIX OF OP(C) 281/2022**

PETITIONER EXHIBITS

- Exhibit1 THE TRUE COPY OF THE O.P.(MV) NO.178 OF 2010
- Exhibit2 THE TRUE COPY OF THE I.A. NO. 4423/2013 IN O.P.(MV) NO.178 OF 2010
- Exhibit3 THE TRUE COPY OF THE I.A. NO. 4475/2013 IN O.P.(MV) NO.178 OF 2010
- Exhibit4 THE TRUE COPY OF THAT I.A. NO. 4451 OF 2019, TO RESTORE EXHIBIT P2, DATED 16.09.2019
- Exhibit5 THE TRUE COPY OF THAT I.A. NO. 4452/2019, TO CONDONE THE DELAY IN FILING EXHIBIT P4, DATED 16.09.2019
- Exhibit6 THE TRUE COPY OF THAT I.A. NO. 3/2021 IN O.P.(MV) NO.178 OF 2010, TO CONDONE THE DELAY IN FILING THE RESTORATION PETITION OF EXHIBIT P3 DATED 08.03.2021
- Exhibit7 THE TRUE COPY OF THE I.A. NO. 4/2021, TO RESTORE EXHIBIT P3
- Exhibit8 THE TRUE COPY OF THAT ORDER DATED 05.10.2021 IN I.A. NO. 4451/2019, 4452/2019, 3/2021 AND 4/2021 IN O.P.(MV) NO.178 OF 2010