

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF FEBRUARY, 2015

BEFORE

THE HON'BLE MR. JUSTICE N.K.PATIL

M.F.A. NO.566/2015(MV)

BETWEEN:

SRI. MANJUNATHA M.N.
S/O LATE NARAYANAPPA
AGED ABOUT 30 YEARS,
RESIDING AT
MALLA SETTYPURA VILLAGE,
SIDLAGHATTA TALUK,
CHIKKABALAPURA DISTRICT

...APPELLANT

(By Sri. GOPALKRISHNA N, ADV.,)

AND:

1. SMT. JAYAMMA
W/O KRISHNAPPA S G
MAJOR IN AGE,
RESIDING AT KALLAHALLI VILLAGE,
KESARAMADU POST,
KYATHASANDRA POST,
KYATHASANDRA,
TUMKUR DISTRICT
2. THE NEW INDIA ASSURANCE
COMPANY LTD
REGIONAL OFFICE,
UNITY BUILDING ANNEXE,
MISSION ROAD,
BANGALORE-560027
REP BY ITS MANAGER
3. ROYAL SUNDARAM ALLIANNCE
INSURANCE CO LTD
SUODHARAMI TOWERS,

45 & 46, WHITES ROAD,
CHENNAI-600014
REP BY ITS MANAGER

4. K N SREENATH
S/O CHIKKANANJUNDAPPA,
KARENAHALLI VILLAGE,
KHYNOUR POST,
KOLAR DISTRICT.

...RESPONDENTS

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 7.12.2011 PASSED IN MVC NO.8897/2009 ON THE FILE OF THE VIII ADDL. JUDGE, MEMBER, MACT, COURT OF SMALL CAUSES, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This is a claimant's appeal against the impugned judgment and award dated 07.12.2011 passed in MVC No.8897/2009, by the Member, VIII Additional Judge, Motor Accident Claims Tribunal, Bangalore (for short 'Tribunal'), for enhancement of compensation.

2. Along with the appeal, appellant has also filed I.A.1/2015, seeking condonation of delay of 1029 days in filing the appeal.

3. Heard learned counsel appearing for appellant.

4. The delay of 1029 days in filing the appeal has been explained in paragraphs-2 and 3 of the affidavit dated 16.01.2015 accompanying the application, which reads thus:

“2. The Tribunal below granted inadequate compensation not properly appreciating the evidence on record and erroneously absolved the insurer of its liability, in the judgment and award under appeal, passed in the claim petition, filed seeking compensation in respect of grave personal injuries sustained by me in the motor vehicle accident. Trial lawyer had advised me to file appeal, seeking enhancement, within 90 days from the date of pronouncement of judgment, period of limitation for filing appeal. I submit that I had no money to pay the fee and filing expenses as claimed by the lawyer for filing appeal. I am not able to work and earn now due to accidental injuries and existing disabilities. My savings exhausted in paying medical and incidental expenses incurred in taking treatment. Under the circumstances, I had decided to file appeal after the payment of compensation from the Tribunal. I have come to know that 1st respondent on whom liability has been fastened, has no means to satisfy the award. Under the circumstances with much and prolonged persuasion I could borrow money from my friends in the month of June 2012. Thereafter, immediately when I started

collecting all the necessary papers for filing appeal, to my shock I could not trace the certified copy of judgment and award kept at my home. I could not trace that judgment and award copy in spite of my continuous and through search. I was under the impression that without same set of certified copy of judgment and award it was not possible to file appeal because I do not have knowledge in legal proceedings.

3. I submit that in the last week of December 2014, when I was searching for some my land documents, fortunately I found certified copy judgment and award with those land documents. Immediately I had been to my lawyer with that copy of judgment and entrusted filing of appeal. I have come to know through my lawyer that I could obtain fresh certified copy of judgment and award and filed appeal in time. I regretted in not consulting my lawyer and seeking his advice in this behalf. As per the instructions of the lawyer to day I have come to this Hon'ble Court and signed the appeal papers and appeal is being filed. Thus, delay of about 1029 days caused in filing the appeal was on account of the aforesaid bonafide reason. I have got a good case on merits and if the delay is not condoned great hardship and inconvenience will be caused to me."

5. After careful perusal of the statements made in Paragraphs-2 and 3 of the affidavit, it emerges that, there is an inordinate delay of 1029 days in filing the appeal. The said delay has not been explained satisfactorily by appellant by assigning cogent and valid

reasons. The explanation offered is in a very casual manner. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the said delay. As there is an inordinate delay of 1029 days in filing the appeal, the appellant is bound to explain each day's delay in filing the appeal by assigning cogent and valid reasons. Much credibility cannot be given to the explanation offered by the appellant for condoning the said delay. Hence, in view of non-explanation of inordinate delay in filing the appeal, in a satisfactory manner, I am of the view that delay cannot be condoned nor the appellant has made out a good case to condone the delay. Hence, for the foregoing reasons, I.A.1/2015 is liable to be dismissed as misconceived and accordingly, it is dismissed. Consequently, the appeal filed by the appellant is also dismissed on the ground of delay and latches.

SD/-
JUDGE

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