

In the Court of the II Additional District Judge, Thoothukudi.

Present: Tmt. M.Breetha, M.L.,

II Additional District Judge, Thoothukudi.

Thursday, the 11th day of June 2026

I.A. No. 3/2025

In

M.C.O.P. No. 8/2020

1) R. Veerappan

2) R. Alagarsamy

3) R. Nagaraj

4) D. Mariammal

5) S. Ramachandran

...Petitioner/Claimants

.Vs.

1) S. Krishnan (Died)

2) Oriental Insurance Company Ltd.,

Thoothukudi

...Respondents/Respondents

3) Ayyammal

...Proposed Respondent/Respondents

This petition came on 03.06.2026 for final hearing before this court in the presence of Advocate Thiru.E.Nallamaharajan for the petitioner and of Advocate Thiru.Subendran for the 2nd respondent and upon hearing the arguments on the side of the petitioners and respondents and having stood over for consideration till this day, this court delivered the following:

ORDER

1) This petition has been filed by the petitioner under Section 5 of Limitation Act to condone the delay of 1656 days in setting aside the abatement caused on the death of 1st respondent.

2) Brief averments of the petition and affidavit:

The petitioner is the 3rd petitioner in the main petition and has averred that the main petition has been filed seeking compensation for the death of his father in a motor accident and that from the return of summons on 07.10.2020, he came to know that the 1st respondent died and that due to pandemic Covid-19 situation, he couldn't take steps to implead the legal heirs within time and that there is a delay of 1656 days in filing the petition to set aside the abatement caused on the death of the 1st respondent and hence, constrained to file this petition and prays to allow the same.

3) Brief averments of the Counter filed by the 2nd respondent:

The respondent has denied all the averments made in the petition and has contended that the reason stated by the petitioner is not genuine and this petition has been filed to protract the proceedings and prays for dismissal of the petition with costs.

4) In spite of sufficient service of notice, 3rd respondent failed to appear before the court and was called absent and had been set *ex parte* on 29.04.2026.

5) The point for consideration is whether this petition can be allowed or not?

6) Both sides are heard. Records have been perused. The 1st respondent in the main petition died. The petitioner has averred that due to Covid-19 pandemic situation, legal heirs could not be impleaded in time. The main claim petition was abated for non-impleadment of the above said legal heir within the period of limitation. Therefore, there is a delay of 1656 days to set aside the above said abatement.

7) At this juncture, it is just and necessary to find out whether there is sufficient cause to condone the delay of 1656 days? The Hon'ble Apex Court in the

case *Ram Nath Sao Vs. Gobardhan Sao reported in 2002(1) CTC 769*, has held that *sufficient cause, in connection with the delay in filing the application to set aside abatement or similar provision should receive liberal construction so as to advance substantial justice.*

8) In the above said decision, the Hon'ble Apex Court has reiterated that in a petition to condone the delay in filing the application to set aside the abatement, it should be liberally considered, so as to advance substantial justice. On the backdrop of the above said principle, the reason stated by the petitioner herein is considered. The petitioner has stated that due to Covid-19 pandemic situation, there was a delay of 1656 days in filing the petition to set aside the abatement. Though the 2nd respondent has disputed the reason stated by the petitioner, considering the number of days of delay and the relief claimed in the main petition, this court is of the view that in order to advance substantial justice, the above said delay can be condoned. For the reasons stated above and in the interest of justice, the delay of 1656 days is condoned. But, at the same time, considering the hardships caused to the respondents herein, this court is of the view that such hardships may be compensated by terms of costs.

In the result, this petition is allowed on condition that the petitioner shall pay a cost of Rs.1000/-(Rupees One Thousand only) to the 2nd respondent on or before 24.06.2026; failing which, this petition stands automatically dismissed. Call on 24.06.2026.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open Court, this the 11th day of June 2026.

**II Additional District Judge,
Thoothukudi.**

II ADJ, Thoothukudi
Draft/Fair
Order
I.A. No. 3/2025
in
M.C.O.P. No. 8/2020
Dated: 11.06.2026