

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 16th JUNE, 2017

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No.01 of 2017 in MAC App. No.07 of 2017

- Appellants** : 1. The Branch Manager,
National Insurance Company Limited,
Damber Chowk,
Reshi Road,
Kalimpong,
District : Darjeeling,
West Bengal.
2. The Branch Manager,
National Insurance Company Limited,
National Highway 10,
P.O. & P.S. Gangtok,
East Sikkim.

versus

- Respondents** : 1. Smt. Meena Chhetri,
W/o Late Anand Chettri
2. Mr. Dipesh Chetti,
S/o Late Anand Chettri
3. Mr. Dinesh Chettri,
S/o Late Anand Chettri
All residents of House No.11,
Lower Paiyong, Melli P.W.,
Near ICDS, Mellidara,
Paiyong G.P.U.,
P.O. & P.S. Melli,
South Sikkim.
4. Mr. Tara Kumar Chettri (Owner),
S/o Late Jit Bahadur Chettri,
R/o Kubinday Busty,
P.O. & P.S. Melli,
South Sikkim.

Application under Proviso to Section 173(1)
of the Motor Vehicles Act, 1988, read with
Section 5 of the Limitation Act, 1963.

Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellants.

Mr. Ajay Rathi, Mr. Pramit Chhetri and Mr. Sailesh Rai, Advocates for the Respondents No.1 to 3.

None for the Respondent No.4.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. By filing this Application, the Appellants seek condonation of delay of forty-five days in filing of the Appeal. The grounds put forth for the delay are as follows;

- (a) The Judgment/Award under Appeal was pronounced by the Motor Accidents Claims Tribunal, East Sikkim, at Gangtok (for short "Learned Claims Tribunal"), in MACT Case No.01 of 2016, on 23-11-2016.
- (b) The certified copy of the Judgment/Award was sought by the Appellants on 03-02-2017, after the Winter Vacation and was made available on the same day.
- (c) The Appeal ought to have been filed on 20-02-2017, i.e., ninety days, from the date of the Judgment/Award. However, it was filed "today".
- (d) That, the delay of forty-five days has occurred inadvertently on the part of the Appellant-Company.
- (e) After receiving the certified copy of the Judgment/Award on 03-02-2017 the Counsel delivered it to the Divisional Office at Gangtok, on 09-02-2017.
- (f) This was in turn forwarded to the Kalimpong Branch Office, situated at Damber Chowk, Kalimpong, West Bengal, as the Policy was issued from their said Branch.

The Branch Manager, National Insurance Company Limited and Others vs. Smt. Meena Chhetri and Others

- (g) From there the Case File along with the certified copy of the Judgment/Award was sent to the Divisional Office at Siliguri.
- (h) From Siliguri, it was forwarded to the Regional Office at Kolkata, where the decision to prefer an Appeal before this Court was approved.
- (i) On such decision, the Case File made its way back from the Regional Office at Kolkata, to the Divisional Office at Siliguri, with a direction to instruct the Office at Gangtok to appoint a Counsel for preferring an Appeal before this Court.
- (j) The Divisional Office at Gangtok on receipt of the Case File, appointed the Counsel vide Appointment Letter dated 06-03-2017 to prepare an Appeal.
- (k) Thereafter, the Divisional Office also directed the Investigator to obtain the entire certified copies relating to MACT Case No.01 of 2016.
- (l) The Appellant-Company then took some time to issue the Cheque of Rs.25,000/- (Rupees twenty five thousand) only, as required under the Proviso to Section 173 of the Motor Vehicles Act, 1988 (for short "Act"), for the purpose of preferring an Appeal. The Cheque is dated 15-03-2017.
- (m) Consequent thereto, the Appeal was filed.

Thus, the entire aforesaid process contributed to the delay which may accordingly be condoned, as the Appellant-Company is a Central Government Undertaking requiring collective decisions and the sanction of various Departments prior to preferring an Appeal.

2. In rebuttal, Learned Counsel for the Respondents No.1 to 3 while referring to the Application seeking condonation of delay

The Branch Manager, National Insurance Company Limited and Others vs. Smt. Meena Chhetri and Others

exhorted that, the Appellant sought for certified copy of the Judgment/Award seventy-two days after the pronouncement of the Judgment/Award. That apart, although the Learned Claims Tribunal may have observed Winter break, the Registry therein remains open and any filing or certified copies can be obtained. The Application reflects that after the certified copy was made over on 03-02-2017 an additional period of six days was taken by the conducting Counsel to deliver the Judgment to the Divisional Office which is situated in Gangtok. That, although the Office in Gangtok is a "Divisional Office", it is incomprehensible as to why the Case File would be forwarded to a "Branch Office" in Kalimpong. That, after the decision was made on 06-03-2017 to file an Appeal, the Cheque in terms of the provision of law was only submitted on 15-03-2017, more than a week, after the decision to Appeal. Thus, the grounds put forth reveal no *bona fides* of the Appellant-Company and the Application requires no consideration which may accordingly be rejected.

3. I have heard Learned Counsel for the parties *in extenso* and given careful consideration to their submissions.

4. Section 173 of the Motor Vehicles Act, 1973, provides for filing of Appeal. Section 173(1) of the Act affords the Appellant a period of ninety days from the date of the Award to prefer an Appeal to the High Court. The First Proviso to the said Section lays down that the person who is to pay the Award shall deposit a sum of Rs.25,000/- (Rupees twenty five thousand) only, or 50% of the amount so awarded, whichever is less, in the manner directed by

The Branch Manager, National Insurance Company Limited and Others vs. Smt. Meena Chhetri and Others

the High Court, before an Appeal can be entertained. The Second Proviso lays down that the High Court may entertain the Appeal after the expiry of the period of ninety days, if it is satisfied that the Appellant was "prevented by sufficient cause" from preferring the Appeal in time.

5. The Law thus having been laid down, we may proceed on the anvil of the said Provisions. It needs no reiteration that the Judgment/Award was pronounced on 23-11-2016. The certified copy was applied for only on 03-02-2017. It is not disputed that the Registry of the District Courts remains open and can be accessed for obtaining certified copy of any Judgment or Award. Even after the delay of seventy-two days in obtaining the Judgment/Award for which no reasons are forthcoming, Learned conducting Counsel has made it over to the Divisional Office in Gangtok itself, only after six days. It is not disputed that Learned conducting Counsel before the Learned Claims Tribunal and the Divisional Office are stationed in Gangtok. No explanation for this delay has been rendered. It was clarified by Learned Counsel for the Appellants that the Case File was forwarded to the Kalimpong Branch Office as the Insurance was obtained from the said Office. Nevertheless, I am constrained to point out that the Application is devoid of the date on when it was forwarded to the Kalimpong Branch Office, besides which I cannot help but remark that the application bears various dates of filing and although an effort was made to explain away the errors, I find that it is sheer carelessness on the part of the Appellant-Company. Subsequent to that, although it was urged that the Case File had to be forwarded to the Regional Office at Kolkata, there is no date of

The Branch Manager, National Insurance Company Limited and Others vs. Smt. Meena Chhetri and Others

the event or reasons put forth as to when the Case File made its journey to Kolkata or what transpired in the interim. It is also unfathomable as to why when a decision to file the Appeal was reached on 06-03-2017, the Cheque of Rs.25,000/- (Rupees twenty five thousand) only, should follow a week later. Once again, no reasons are forthcoming.

6. In such circumstances, it is clear that the Appellant-Company has been lackadaisical in its approach, leading to the delay. This Court has time and again in several Orders pertaining to condonation of delay filed by the Appellant-Company held that they cannot harbour the belief that delay is a non-serious matter. A delay whether of ten days or ten years has to be explained sufficiently without which no party as of right can claim condonation. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***¹, the Hon'ble Supreme Court while culling out the broad principles for condonation of delay was of the opinion that—

"22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

¹. (2013) 12 SCC 649

The Branch Manager, National Insurance Company Limited and Others vs. Smt. Meena Chhetri and Others

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters.”

7. The Appellant-Company has given the principles a go by, fraught as the Application is with errors depicting different dates for one particular event, i.e., date of filing. While on the question of condonation of delay, we cannot lose sight of the fact that the Motor Vehicles Act is a benevolent piece of legislation which makes an attempt to compensate in pecuniary terms the loss of a human life although there is no question that life is invaluable. A bereaved member of the victim’s family approaches the Tribunal and after the Award is pronounced the Appellant instead of taking steps either way within time, drags its feet to file the Appeal with a prayer for condoning the delay. I am afraid this ought not to be the attitude neither should it be understood that the Courts will adopt a liberal approach to delay and that an Application for such delay would suffice.

8. We may usefully refer to the decision in ***Oriental Aroma Chemical Industries Limited vs. Gujarat Industrial Development Corporation and Another***², the two-Judge Bench decision of the Hon’ble Supreme Court held as follows;

“14. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.”

². (2010) 5 SCC 459

The Branch Manager, National Insurance Company Limited and Others vs. Smt. Meena Chhetri and Others

9. This Court is of the firm belief that when the provision of Law exists, it has to be followed to the letter unless sufficient grounds are put forth or the party is prevented by sufficient cause from preferring the Appeal on time. The mere reason that the Appellant-Company is unwieldy and collective decisions lead to the delay cannot be countenanced, as MACT matters are not few and far between. Infact, accident rates are appear to be limitless and by now the Appellant-Company ought to have an well-oiled machinery in place for dealing with such matters.

10. The aforesaid discussions with clarity indicate that no such grounds have been put forth which would enable this Court to exercise the discretion it is clothed with and condone the delay.

11. Accordingly, finding that the Application is bereft of *bona fides* and that no ground reveals that the Appellant was "prevented by sufficient cause" for the delay, the Application is rejected and consequently the Appeal.

Sd/-
(Meenakshi Madan Rai)
Judge
16-06-2017

Approved for reporting : **Yes**

Internet : **Yes**