

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

I.A. No. 01 of 2016

IN

MAC APP No. 09 OF 2016

The Branch Manager,
United India Insurance Company Limited,
Having its Branch Office at:
Deorali Bazar, Gangtok-737 101,
East Sikkim.

... Applicant/ Appellant.

versus

Smt. Lily Ongmu Lepcha,
Daughter of Late Loden Tshering Lepcha,
Resident of Upper Burtuk,
P.O. & P.S. Gangtok,
East Sikkim.

... Respondent/ Claimant.

Appearance:

Mr. Dinesh Chawhan, Advocate for the Applicant/
Appellant.

Mr. Umesh Ranpal, Ms. Kessang Choden Tamang, Ms.
Sashi Rai, Ms. Kimti Gurung and Ms. Sanju Gupta,
Advocates for the Respondent/Claimant.

J U D G M E N T

(21.04.2017)

Satish K. Agnihotri, CJ

This is an application seeking condonation of delay in filing the appeal against the Judgment and Order dated 31.12.2015, rendered by the Motor Accidents Claims Tribunal, East District at Gangtok in MACT Case No. 16 of 2015 (Smt. Lily Ongmu Lepcha vs. The Branch Manager, United India Insurance Co. Ltd.), whereunder and whereby the appellant herein was directed to pay total compensation of Rs.88,83,000/- (Rupees Eighty-eight Lakh Eighty-three Thousand) with interest @ 10% per annum from the date of filing of the petition, i.e. 08.05.2015, until its full realization. It was further directed that the appellant herein would be entitled to deduct a sum of Rs.50,000/- (Rupees Fifty Thousand) from the total compensation as paid earlier by way of interim compensation.

2. After pronouncement of the judgment on 31.12.2015 no steps were taken by the applicant/appellant herein to make an application for certified copy of the judgment and order till 29.01.2016, which was ready and available on 02.02.2016.

3. Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") provides for filing of

an appeal against an award of Claims Tribunal, by any person aggrieved therein, the limitation period is ninety days from the date of award. The second proviso contemplates for maintaining the appeal after expiry of said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. The appellant could not file the appeal within the limitation period of ninety days. Thus, the instant application seeking condonation of delay of 200 days, as the appeal was filed on 22nd October, 2016. The reasons assigned by the appellant are absence of local advocate and thereafter seeking opinion from the legal department. Further, the file travelled from one department to other and also delay in engaging a counsel for preferring the appeal.

4. The respondent/claimant has strongly objected to the reasons stated that the appellant has not established *bona fide* and due diligence. The appellant has not taken sincere and reasonable efforts to prefer the appeal in time.

5. I have examined the pleadings and submissions advanced by both the parties.

6. Requirement for condonation of delay under the provision of Section 173 of the Act of 1988, is that the appellant must establish that the appellant was prevented by sufficient

cause from preferring the appeal in time. Movement of file without giving specific reason came up for consideration in ***Postmaster General and others vs. Living Media India Limited and another***¹, wherein the Supreme Court has observed as under: -

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage or various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

1 (2012) 3 SCC 563

7. The aforestated observation of the Supreme Court has been referred with approval subsequently in ***State of Rajasthan and another vs. Bal Kishan Mathur (Dead) through Legal Representatives and others***² and ***State of Uttar Pradesh through Executive Engineer and Another vs. Amar Nath Yadav***³.

8. On examination, the applicant/appellant has failed to establish that the appellant was neither negligent nor was there any deliberate inaction on the part of the officers of the appellant. The applicant/appellant also does not disclose any reason to prove that the appellant was prevented by sufficient cause from preferring the appeal in time. The reasons stated by the applicant/appellant are casual, cavalier and insincere that the file moved from counsel/legal advisor to officers from one table to other table. The applicant/appellant had also not given steps indicating the diligent effort taken and further there was no negligence on their part.

9. The stated object of the scheme of Motor Vehicles Act is to render immediate assistance to the unfortunate victims or the

2 (2014) 1 SCC 592

3 (2014) 2 SCC 422

dependents of the victims befallen on account of motor accidents. The scheme of the Act provides for interim compensation also. Thus, limitation prescribed therein cannot be taken lightly and liberal view may not be adopted when the compensation amount is needed by the victims and its dependants at the earliest. In the case on hand, no steps were taken by the appellant to take necessary steps to prefer an appeal within the prescribed time as mandated under Section 173 of the Act of 1988.

10. For the reasons mentioned hereinabove, I do not find any substantive reason to condone the unexplained inordinate delay of 200 days in preferring the appeal. Thus, the application is rejected.

11. Consequently, the MAC App. No. 09 of 2016 is also dismissed.

Chief Justice
21.04.2017

jk

Approved for Reporting : Yes/No.
Internet : Yes/No.