

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 3rd July, 2018

S.B. : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, ACTING CHIEF JUSTICE

I.A. No. 01 of 2018
in
MAC APP. No.02 of 2018

Shriram General Insurance Co. Ltd.,

Registered Office :

E-8, EPIP, RIICO Industrial Area,
Sitapura, Jaipur, Rajasthan – 302022,

Regional Office :

53A Rafi Ahamed Kidwai Road, 3rd Floor,
Kolkata – 700 016,

Branch Office :

142/14, Sevoke Road, 1st Floor,

Opposite PAN Card Office,

Beside Raymond Showroom,

Siliguri, Darjeeling – 734 001.

... **APPELLANT/INSURER**

-VERSUS-

1. Mr. Kezang Kazi,
Son of late Pem Singh Kazi,
Resident of House No.45,
Aritar, Near Simick Sangngak,
Duddulling Monastary,
17 Khamdong, Singtam,
P.O. Simik Lingzey,
P.S. Singtam, East Sikkim.

... **RESPONDENT/CLAIMANT**

2. Shri Karma Chezing Bhutia,
Son of Late Phuchung Bhutia,
Resident of Khamdong,
P.O. Simik Lingzey,
P.S. Singtam, East Sikkim.
(Owner of the Vehicle SK-01T/5531 (Wagon R LXI))

... **RESPONDENT/OWNER**

Application under Section 173(1) of the Motor Vehicle Act, 1988

Appearance

Mr. Yadev Sharma and Mr. Dilip Kumar Tamang, Advocates for the Appellant.

Ms. Vidya Lama, Advocate for the Respondent No.1.

Mr. Sushant Subba, Advocate for the Respondent No. 2.

O R D E R

Meenakshi Madan Rai, ACJ

- 1.** The instant Application is filed under Section 173(1) of the Motor Vehicles Act, 1988 (for short, the M.V. Act), seeking condonation of 115 days' delay in filing the Appeal.
- 2.** The grounds, put forth for the delay, are that the impugned award of the Learned Member, Motor Accident Claims Tribunal, East Sikkim at Gangtok in M.A.C.T. Case No. 11 of 2016, was pronounced on 26.04.2017. Pursuant thereto, it was received by the Branch Office at Siliguri and forwarded to the Kolkata Regional Office. The Regional Office sought reasons from the conducting Counsel as to why the Judgment passed was *ex-parte*. Thereafter, copy of the Judgment was forwarded to the Jaipur Head Office for opinion and instructions. The Head Office asked for copies of the deposition, exhibits and other relevant documents which had been forwarded to the Petitioner, in which circumstance, it was not possible for the Petitioner to make a decision about preferring the Appeal. As per internal procedure of the Company, the Jaipur Head Office sent back the file to the Kolkata Regional Office for required

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documents, which the Learned Counsel for the Appellant had applied for on 25.05.2017. The copy was made available on 31.05.2017. After procuring the required documents, the Regional Office sent the file once again to the Jaipur Head Office for further instructions, which, in turn, sent back the file to Kolkata Regional office for appointing an Advocate to prefer the Appeal. On such appointment, the Counsel completed all official formalities following which the Memorandum of Appeal was sent by the Counsel to the Jaipur Head Office for verification and signature, which took a few days. That, in the meanwhile, the Respondent-Claimant had already preferred an Appeal before this Court and before the Appellant could enter an appearance, the Appeal came to be withdrawn. In the meanwhile, the validity of the statutory deposit made by the applicant expired and had to be sent to the Kolkata Regional Office for re-validation and thereafter, to the Jaipur Head Office. Hence, the delay. That, it is a settled position of law that Government and Government undertakings have been permitted some flexibility in case of condonation of delay due to time required for process of the file. Hence, the delay be condoned as it is neither intentional nor wilful but due to sufficient reasons as laid down in the averments.

3. Learned Counsel for the Respondent, while objecting to the petition for delay, sought to remind this Court that the M. V. Act is benevolent legislation where compensation/award is granted to the next of kin of the deceased, who succumbed to injuries in an accident. The purpose is to ensure that the family is not reduced to vagrancy on account of death of the deceased. That apart, it was

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also brought to the notice of this Court that the conduct of the Respondent is of callousness towards the loss of family member of the Respondent as well as to the provisions of law. In the first instance, the Appellant failed to enter an appearance before the Motor Accident Claims Tribunal, East Sikkim at Gangtok, despite service of notice, on account of which the matter was proceeded *ex-parte* and Judgment pronounced. Besides, the grounds put forth for condonation of delay deserve no consideration as it lacks details of sufficient cause. No dates of movement of the file have been furnished for the perusal of this Court and although Judgment was pronounced on 26.04.2017, copy was sought for only on 25.05.2017, a month after the pronouncement of the Judgment. Merely because the file was sent from one office to the next is no ground for considering the petition and allowing it. Moreover, the averments are devoid of dates. That, in fact, in view of the grounds put forth, the petition be ordered to be dismissed.

4. I have heard learned Counsel for the parties and considered their submissions.

5. The provisions of Section 173 of the Act of 1988, *inter alia*, provide 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. Thus, what requires consideration is whether the applicant was circumspect while taking steps in filing the appeal, the delay was *bona fide* and has been sufficiently explained.

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6. In *Postmaster General and Others vs. Living Media India Limited and Others*¹, Hon'ble Supreme Court would hold as follows:-

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.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

7. In *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai*², the Supreme Court observed as under:-

25. In cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.”

8. On the bed rock of the above decisions, I now proceed to examine the grounds put forth by the Petitioner. It would be apposite to state here that the M.V. Act is social welfare legislation, a benevolent provision, which seeks to compensate the victim for the loss of not only a family member but the breadwinner therein, within a short span of time sans the procedural technicalities which

¹ (2012) 3 SCC 563

² (2012) 5 SCC 157

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ought not to defeat the benevolent purpose of the M. V. Act. That, having been said when the grounds, as extracted hereinabove for the delay, are carefully perused and considered, it is evident that the conduct of the applicant cannot be said to be beyond reproach. In the first instance, they failed to enter an appearance before the Motor Accident Claims Tribunal during the entire trial, consequently the impugned Judgment came to be pronounced *ex-parte*. Added to this is the fact that they applied for a certified copy of the Judgment a month after its pronouncement. Following this, the file, while seeking opinion of the various officers of the Company, was sent from one table to the next. Curiously, no date is furnished by the Applicant to enable this Court to gauge as to whether there was unnecessary delay at any stage. The Applicant has chosen to keep the various dates on which the file made its journey from one official to the next under wraps. In any event, the grounds have not been sufficiently explained. This Court is conscious of the fact that a plethora of the Judgments of the Supreme Court have laid down that a liberal approach should be adopted in matters of condonation of delay, but at the same time, it may also be mentioned here that the Supreme Court has also observed that there ought to be a justice oriented approach. In my considered opinion, justice does not mean justice only to the Applicant but it means justice to the Respondent as well. Here, we have a Respondent, who has lost a family member and is awaiting compensation on account of his death, which, although being granted to him in material terms, cannot compensate for the void created by the loss of the person. It is only an effort made by legislation to comfort the victim and to

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ensure that they are not reduced to vagrancy due to the loss of a breadwinner.

9. In ***Basawaraj and Another vs. Land Acquisition Officer***³, the Supreme Court would observe as under:

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.”

10. In view of the grounds put forth and the discussions which have ensued hereinabove, it is clear that the conduct of the Appellant has been lackadaisical, firstly none appeared before the Tribunal for the Appellant and thereafter the appeal is being filed belatedly. Considering the purpose of the Act as already detailed hereinabove, there appears to be no reason for this Court to even consider condoning the delay, bereft as the application is of sufficient cause.

³ (2013) 14 SCC 81

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- 11.** In such circumstances, the Application is rejected.
- 12.** Consequently, the Appeal stands dismissed.

**(Meenakshi Madan Rai)
Acting Chief Justice**

03-07-2018

Approved for reporting : **No**
Internet : **Yes**

pm