

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 8th MAY, 2019

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

IA No.01 of 2018 in MAC App. No.05 of 2018

Appellant : The Branch Manager, Reliance General Insurance Co. Ltd.

versus

Respondents : Jarun Maya Rai and Others

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

Appearance

Mr. Manish Kr. Jain, Advocate for the Appellant.

Ms. Yanzee Pinasha, Advocate for Respondent No.1.

Mr. Ajay Rathi, Advocate (Legal Aid) for Respondent No.2.

Ms. Panila Theengh and Ms. Tashi Doma Bhutia, Advocates for Respondents No.3 and 4.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner/Appellant-Insurance Company, seeks condonation of 107 days delay in filing the Appeal, which assails the Judgment and Award of the Learned Motor Accidents Claims Tribunal, South Sikkim, at Namchi (hereinafter, Claims Tribunal), in MACT Case No.01 of 2016 (*Branch Manager, Reliance Insurance Co. Ltd. vs. Smt. Jarun Maya Rai and Others*) and MACT Case No.11 of 2014 (*Deki Lepcha vs. Bir Bahadur Rai and Others*). The Petition is purported to be under Section 173(1) of

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the Motor Vehicles Act, 1988 (hereinafter, MV Act), read with Section 5 of the Limitation Act, 1963 (hereinafter, Limitation Act).

2. The grounds averred in the Petition for delay which was filed on 24-05-2018 are as follows;

“.....

1. That this day, the petitioner/Appellant has filed an Appeal challenging the judgment and Award passed by the Learned Member, Motor Accident Claim Tribunal, South Sikkim at Namchi, in MACT case No.01 of 2016 (Branch Manager Reliance General Insurance Co. Ltd versus Smt. Jarun Maya Rai and others) along with the impugned judgment of MACT Case no.11 of 2014 (Deki Lepcha versus Bir Bahadur Rai and Others).
2. That the judgment in the aforesaid case was pronounced by the Ld. Claim Tribunal (sic) on **11/9/2017** as such the appeal challenging the said judgment ought to have been filed by the petitioner appellant on or before the **11/12/2017**. The appeal was filed on the said date and there was no delay initially in filling (sic) the appeal before this Hon'ble Court.
3. That on the said date the said memo could not be registered due to certain defects which were cleared and re-filed before this Hon'ble Court on **01/02/2018**. The delay in curing the defects was due to the sending the entire file again to its regional office at Kolkatta, taking legal opinion and sending the same for filling (sic) before this Hon'ble Court.
4. That on the said date there were again defects stating that the memo of appeal have to filed along with the petition of condonation of delay petition, hence this petition has been filed today.
5. That the application for certified copies of the judgment was made on **16/12/2013** and the same was obtained on **28/12/2013** when the information was given by its investigator. Thereafter, the entire file was sent to the Kolkatta for seeking it legal opinion in the instant matter (sic).
6. That thereafter the advocate informed the company about the said facts and finally the Appellant company had taken decision to file the appeal along with the petition of condonation of delay. There has been a delay of 107 days in filling (sic) the instant appeal before the Hon'ble High Court. There has been delay in filling (sic) the

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appeal but same was on account of circumstances beyond the control of parties mentioned herein above.

7. That this petition praying for condonation of delay of 107 days has been filed bonafide for the ends of justice.
8. That the accompanying memo of appeal may be read as part and parcel of this petition and the appellant may be allowed to refer and rely upon the same during the time of hearing of the petition.
9. That the appellant state that the memo of appeal has been filed on account challenging the false and fabricated insurance policy which has not been issued by the appellant company and the Learned Member Tribunal have wrongly fastened the liability upon the Appellant.

.....”

It was thus prayed that the delay be condoned.

3. While making his verbal submissions before this Court, Learned Counsel for the Appellant admitted to some errors in the averments made in the said Petition, viz., the dates pertaining to application for certified copy of the Judgment having been made on **16-12-2013** and obtained on **28-12-2013**, whereas challenge was to the Judgment in **MACT Case No. 11 of 2014, dated 30-05-2015**. It was further urged that the errors may be ignored by the Court which are inadvertent. That, this Court may kindly consider the pith and substance of the Petition inasmuch as 107 days delay has been explained in the averments and that the delay be condoned in the larger interest of justice.

4. Learned Counsel for the Respondent No.1 objected to the Application for delay and contended that a Review Application had been filed before the Learned Claims Tribunal on 19-03-2016 against the impugned Judgment dated 30-05-2015,

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of which the Order was pronounced on 11-09-2017. Thus, a period of 262 days had lapsed in the interim which has not been addressed by the Appellant in his Petition. Consequently, the delay has not been computed correctly, besides which no provision for review emanates in the MV Act and the Petition deserves a dismissal.

5. Objecting to the Petition, Learned Counsel for the Respondent No.2 for his part contended that the period of limitation started to run from 30-05-2015, the date of pronouncement of the impugned Judgment and Award in MACT Case No.11 of 2014, hence the delay has been wrongly calculated as the Appeal before this Court was filed only on 24-05-2018. That, no right accrues under Section 173 of the MV Act to file a Review Petition, which was however resorted to by the Appellant before the Learned Claims Tribunal culminating in the Order rejection by the Tribunal, dated 11-09-2017. That, the Petition has been drafted with no attention to detail, hence if the averments were to be considered, the application seeking a copy of the impugned Judgment has been made before its pronouncement, which is indeed congruous. For the reason that the Petition details no sufficient grounds for the delay, has been filed carelessly with no attention to the averments made therein, the Petition ought to be dismissed.

6. Learned Counsel for the Respondents No.3 and 4 also objected to the Petition *inter alia* submitting that the

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Petition neither satisfies nor falls within the ambit of Section 173(1) of the MV Act read with Section 5 of the Limitation Act. Hence, the Application is not maintainable.

7. Careful consideration has been afforded to the rival contentions of Learned Counsel for the parties and records before this Court perused meticulously.

8. Having considered the entire materials placed before me and the submissions of Learned Counsel for the parties, I deem it essential to narrate the matter with clarity herein. The Appellant is assailing the Judgment dated 30-05-2015 in MACT Case No.11 of 2014 (*Deki Lepcha and Others vs. Bir Bahadur Rai and Others*) of the Learned Motor Accidents Claims Tribunal, South Sikkim, at Namchi (Learned Claims Tribunal). Evidently, this matter had been filed before the Learned Claims Tribunal and Judgment as already stated pronounced on 30-05-2015. Against this Judgment and Award, the Appellant-Insurance Company preferred a Review Petition before the same Learned Claims Tribunal being MACT (Review) Case No.01 of 2016. The Order of the Learned Claims Tribunal came to be pronounced on 11-09-2017 rejecting the Review Petition. It thus transpires that the Appellant now assails both the Judgment *supra* and Review Petition *supra*. Neither the averments made by the Petitioner nor the verbal submission of Learned Counsel for the Petitioner have articulated these circumstances with clarity.

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9. Following this is the anomaly that arises in Paragraph 5 of the averments in the Petition wherein the Appellant has stated that he had made an application for certified copy of the Judgment on **16-12-2013** which was obtained on **28-12-2013** when information was given by its Investigator. It is indeed appalling that such a blatant error obtains in the averments and it is incomprehensible as to how certified copies of the impugned Judgment could be sought for in December, 2013, when the impugned Judgment was pronounced only on 30-05-2015. What information the Investigator has given, who the Investigator averred to in the said paragraph was, also remains a mystery and which copy was obtained on 28-12-2013 compounds the already mysterious circumstances. The Appellant has also while seeking condonation of 107 days failed to explain the date from which he has computed the period of limitation.

10. The grounds given for the delay are nothing short of pathetic since all that emerges therein besides the above anomalies is that the File went from Gangtok to Kolkata and back. The Appellant has exhibited a lackadaisical attitude while filing the Petition and dealt with it not only in a routine manner, but by harbouring the notion that the Courts are without doubt to adjudicate for justice dispensation and thereby perforce to condone the delay.

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11. In this context, we may now refer to the observations of the Hon'ble Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***¹ while referring to various authorities on condonation of delay has summarised guiding principles for condonation or otherwise *inter alia* as follows;

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.

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."

12. These principles are to be the guiding light for the Courts while considering delay Petitions in addition to the other points laid down in the Judgment. The conduct and confidence that the Appellant exudes reflects the belief that the Court has no other option but to condone the delay as the *lis* is to be

¹ (2013) 12 SCC 649

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adjudicated on merits, this attitude is indeed misplaced. The Petition has been filed with nary a care to detail nor was any light thrown to explain the delay, therefore resulting in failure to enumerate sufficient grounds. Besides, as pointed out by Learned Counsel for the Respondents No.3 and 4, the Appellant has invoked the incorrect provision of law for condonation of delay, inasmuch as Section 173(1) of the MV Act lays down that subject to the provisions of Sub-Section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an Appeal to the High Court. It is infact the second proviso to Section 173 of the MV Act which is the relevant provision which is to be invoked and the High Court may entertain the Appeal after the expiry of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from preferring the Appeal in time. No such grounds have been put forth as obtains from the discussions which have ensued hereinabove.

13. Hence, in conclusion, in view of the totality of the facts and circumstances, the Petition for condonation of delay deserves no consideration and is accordingly dismissed as also the Appeal.

(Justice Meenakshi Madan Rai)
Judge

08-05-2019

Approved for reporting : **Yes**

Internet : **Yes**