

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

DATED: 9th October, 2018

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

I.A. No. 1 of 2018
In
MAC App. No. 7 of 2018

Branch Manager,
National Insurance Co. Ltd.

..... Petitioner

Versus

Krishna Bahadur Chettri and Others

..... Respondent(s)

**Application under Section 173(1) of the Motor Vehicles Act, 1988
read with Section 151 of the Code of Civil Procedure, 1908.**

Appearance:

Mr. Sudhir Prasad, Advocate for the Appellant.

Mr. Rahul Rathi, Advocate for the Respondents No.1 and 2.

None for the Respondents No.3 and 4.

O R D E R

Meenakshi Madan Rai, ACJ

1. By filing this Application under Section 173(1) of the Motor Vehicles Act, 1988, read with Section 151 of the Code of Civil Procedure, 1908, the Appellant seeks Condonation of 64 days delay in filing the Appeal.

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2. The grounds put forth for the delay are that, pursuant to the Judgment pronounced by the learned Motor Accidents Claims Tribunal, East Sikkim at Gangtok, in MACT Case No. 38 of 2016 on 28.11.2017, copy thereof was made over to the Appellant on 29.12.2017. After receiving a certified copy of the Judgment and Award from the concerned Advocate at Gangtok Court, the Branch Manager of the Appellant at Gangtok examined the Judgment. On verification of the policy papers, he forwarded the matter to the Senior Divisional Manager at Siliguri Divisional Office. Pursuant thereto, the matter "... was forwarded to Branch Manager, Gangtok Branch (sic)." The Divisional Office at Siliguri then sought the opinion of the Counsel at Siliguri who advised that the matter was a fit case for preferring Appeal. Mr. Sudhir Prasad, Advocate, was then appointed as Counsel for the Appellant vide letter dated 19.02.2018, to prefer an Appeal before this Court. The appointment letter was received by Mr. Prasad on 22.02.2018. While drafting the Memo of Appeal, certain clarifications were sought from the Appellant Company including additional documents related to the matter. Added to the above grounds was the inexperience of the Counsel in motor accidents appeal matters, thus the Appeal came to be filed on 02.05.2018. That, the above grounds prevented the Appellant from preferring the Appeal within the statutory period of 90 days and is sufficient cause. That, the Appellant Company has a strong *prima facie* case on merits and should the delay not be

condoned, prejudice will be caused to them, hence the prayer for Condonation of delay.

3. Learned Counsel for the Respondents, on the other hand, vehemently objected to the Petition for Condonation of delay, *inter alia*, on grounds that in the first instance, the certified copy of the Judgment, as records would reveal, was ready on 15.12.2017, the Judgment having been pronounced on 28.11.2017. The Appellant Company failed to collect the Judgment from the relevant Section of the Court on 15.12.2017 and cannot lay the blame at the door of the Tribunal. The Claim Petition before the learned Motor Accident Claims Tribunal was under Section 163A of the Motor Vehicles Act, 1988 where compensation of Rs.5,43,650/- (Rupees Five Lakhs, Fourty Three Thousand, Six Hundred and Fifty) only, was granted based on the salary of the victim placed at Rs.3,325/- (Rupees Three Thousand, Three Hundred and Twenty Five) only, per month. There is no error in the Multiplier of 17 adopted by the learned Tribunal as per the Second Schedule to the Motor Vehicles Act, 1988 as the age of the deceased was about 33 years. Besides, the Appeal is filed on a wrong interpretation of the insurance cover as it is clear that the Petition is one under Section 163A of the Motor Vehicles Act, 1988 and as per the conditions of the Insurance Policy, Driver's Clause has been included. The deceased was self-employed and the owner of the vehicle in accident which

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he was driving and as owner he was not barred from driving the vehicle and hence an extra coverage to the tune of Rs.2,00,000/- (Rupees Two Lakhs) only, had been obtained under the Personal Accident Claim benefit. It was mandatory that the Claimants be granted Rs.2,00,000/- (Rupees Two Lakhs) only, under the said claim benefit. Further, the policy issued was a package policy and not limited to Rs.2,00,000/- (Rupees two lakhs) only, as it is also covered by IMT No.15/extra premium of Rs.100/- (Rupees One Hundred) only. Hence, the petition for Condonation of delay is a ruse to prevent the Claimants from obtaining their rightful reliefs under the benevolent legislation and deserves dismissal as also the Appeal.

4. I have considered the submissions of learned Counsel for both parties and perused the Petition seeking Condonation of delay. It is but apposite to pause here and remark that the Petition appears to have been drafted with nary a care to detail, anomalies appearing on the face of the Petition, are extracted herein below:-

"4. That the Branch Manager, Gangtok Branch after verification of the policy papers thereafter forwarded the same to the Sr. Divisional Manager at Siliguri Divisional Office.

5. That thereafter the same was forwarded to Branch Manager, Gangtok Branch.

6. The Divisional Office at Siliguri then sought the opinion of their Counsel, at Siliguri on

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the Award passed by the Ld. Tribunal, East Sikkim at Gangtok and he opined that his is a fit case for preferring an appeal.”

5. Once the matter was forwarded to the Divisional Office at Siliguri, it is not clear why it was reverted back to the Gangtok Branch sans steps as reflected in paragraph 5 *supra*. It is a clear indication of carelessness in drafting and lack of application of mind which has been derided by the Hon’ble Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***¹. Referring to various authorities on Condonation of delay, the Hon’ble Supreme Court would hold *inter alia* as follows;

“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.

.....

22.4. (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.”

The above observation clearly cautions the party seeking Condonation of delay to desist from such practices.

¹ (2013) 12 SC 649

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6. Now turning to address the grounds furnished by the Appellant for the delay, one such ground urged was belated supply of the copy of the Judgment. Evidently, this is an erroneous statement. As pointed out by learned Counsel for the Respondents, the certified copy of the Judgment was ready on 15.12.2017 and is visible on the stamp affixed by the concerned authority of the District Courts on the copy of the Judgment. The same clearly reveals as follows;

*"Member, MACT
Date of application 28.11.17
.....
.....
Date of ready on 15.12.17
Date of issue/delivery on 29.12.17
Total Number of words Thirty Four Pages
Total Cost paid Rs.34/-"*

The copy remained unclaimed by the Appellant Company till 29.12.2017. In the circumstance, it cannot be said that the delay arose out of belated supply of the Judgment. Apart from the above carelessness, evident from the conduct of the Appellant, it is also evident that the dates or the number of days which each office took to consider the matter lacks mention in the Petition. The Appellant Company has deigned it fit only to state that after the certified copy of the Judgment was received, it was forwarded to the Branch Manager, Gangtok. How many days this exercise involved has not been reflected in the Petition.

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7. It is the next contention of the Appellant that the Branch Manager at Gangtok verified the policy papers and forwarded it to the Senior Divisional Manager at Siliguri Divisional Office. The number of days that such verification required, the date of receipt of the Judgment by the Gangtok Branch or the date on which it was forwarded to the next office is unaccounted for in the Petition. Learned Counsel would further contend that the Divisional Office at Siliguri sought the opinion of their Counsel at Siliguri. No dates have been mentioned on this count as well and no effort has been made to disclose as to how many days it took to obtain the opinion of the Counsel. The date mentioned at para 7 of the Petition, viz. '19.02.2018,' according to learned Counsel was the date on which he was appointed by the Appellant. Thereafter, the Appeal has been filed on 02.05.2018 leading to a delay of 64 (sixty-four) days. No explanation yields as to the delay obtained therein. The Counsel has failed to explain what restrained him from filing the Appeal soon after his appointment, besides submitting that he was a new Counsel and that he had not done motor accidents appeal matters. Surely, this ground would not merit consideration.

8. It has been laid down in **Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others**² that everyday's delay must be explained. This does not mean that a pedantic

² (1987) 2 SCC 107

or hypertechnical approach ought to be adopted but at the same time there has to be a justice-oriented approach adopted by the Court. It is a well-settled principle of law that the rules of limitation are not in place to obliterate the rights of the parties but the rules do not intend that the parties resort to dilatory tactics while seeking remedy. The Court is to adjudicate and advance substantial justice to the parties. This Court is alive to the principle that rules of procedure are the handmaids of justice, nevertheless the Court is to weigh whether the delay prejudices the party opposing the application at the same time whether there are *bona fides* for the delay. The delay has to be sufficiently explained, in sum and substance, this means that Courts are to give priority to meting out even handed justice on the merits of a case.

9. It is essential to point out that "sufficient cause" means that there must be adequate cause for the delay. While explaining "sufficient cause", the Hon'ble Apex Court in ***Basawaraj and Another vs. Special Land Acquisition Officer***³, referred to the decision in ***Arjun Singh vs. Mohindra Kumar***, wherein it was held as follows;

"10. In *Arjun Singh v. Mohindra Kumar* this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that

³ (2013) 14 SCC 81

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the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

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] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195])"

10. In consideration of the grounds put forth and the discussions hereinabove, there is evidently negligence and inaction on the part of the Appellant, the explanation extended is neither reasonable nor satisfactory. The Appellant ought to keep in mind that the Hon'ble Supreme Court has observed in ***Syed Mehaboob vs. New India Assurance Co. Ltd.***⁴, that the "*Motor Vehicle Act is a beneficent legislation intended to place the claimant in the same position that he was before the accident and to compensate him for his loss. Thus it should be interpreted liberally so as to achieve the maximum benefit.*" The Claimants herein are the aged parents of the victim, their son, who they have lost in the tragic accident. If the Appellant herein was of the opinion that the Judgment of the Tribunal was incorrect they ought to have proceeded within time and if they had failed to proceed within time then satisfactory explanation for the delay ought to be put forth which is sadly lacking in the instant matter. Consequently, the application for

⁴ (2011) 11 SCC 625

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Condonation of Delay is rejected and disposed of, as also the Appeal.

(Meenakshi Madan Rai)
Acting Chief Justice
09.10.2018

Index : Yes

Internet : Yes

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