

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 17th September, 2018

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

I.A. No.01 of 2018 in MAC App. No.08 of 2018

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

versus

Respondents : Dik Bir Damai and Others

and

I.A. No.01 of 2018 in MAC App. No.09 of 2018

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

versus

Respondents : Bhoj Kumar Chettri and Others

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

Appearance

Mr. Yadev Sharma and Mr. Dilip Kr. Tamang, Advocates for the
Appellant-Insurance Company.

Mr. Ashok Pradhan, Advocate for the Respondents-Claimants.

Ms. Pritima Sunam, Advocate for the Respondent-Owner.

O R D E R (ORAL)

Meenakshi Madan Rai, ACJ

1. Since the grounds put forth for the delay in the two
Petitions are identical and arise out of the same accident they are

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being disposed of by this common Order. It is pertinent to mention here that the Learned Motor Accidents Claims Tribunal, West Sikkim, at Gyalshing (for short "Learned Claims Tribunal"), passed two separate Judgments being MACT Case No.36 of 2016 and MACT Case No.33 of 2016, both dated 28-12-2017 as the Respondents-Claimants were different families in the cases *supra*.

2. The Appellant/Applicant is before this Court seeking condonation of fifty days' delay in filing both the Appeals. The grounds being put forth for the delay are *inter alia* as under;

- (i) The impugned Judgment was pronounced on 28-12-2017, copies thereof were forwarded to the Appellant-Company through the Learned Claims Tribunal on 29-12-2017 via e-mail. After receiving the said e-mail, the Appellant immediately applied for the certified copies on 03-02-2018, which were ready on 06-02-2018.
- (ii) The Kolkata Branch on receipt of the copies thereof forwarded the matter to the Jaipur Head Office for preferring the Appeals.
- (iii) As per the internal procedure, the Jaipur Head Office again sent back the Files to the Kolkata Division Office for appointing an Advocate for defending the cases.
- (iv) Due to other practical problem, the Files took considerable amount of time to reach the Kolkata Branch and finally the Appellant appointed the Counsel for defending the same.

3. That the reasons assigned constitute sufficient cause and there being no deliberate delay, it is urged that this Court take a liberal approach in condoning the delay. That, it is a settled

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proposition of law that Government and Government Undertakings have been permitted some flexibility in case of condonation of delay and the Hon'ble Supreme Court as well as High Courts have upheld the said view in condoning delay. That, the Appellant has a good case and will suffer irreparable loss and injury if the delay in filing the Appeals are not condoned.

4. Learned Counsel for the Respondents-Claimants while vehemently objecting to the Petitions would contend that in the first instance although the delay was of "fifty days" the Appellant has in a most negligent manner computed the delay to be of "fifteen days" in the Petitions indicating their utter callousness in the matter. That, although it is true that the Court can exercise its discretion in condoning delay, nevertheless delay is required to be explained sufficiently as laid down by the provision of law invoked by the Appellant. In the instant matters, the Appellant has failed to put forth any substantial grounds for the occurrence of the delay and has also not specified the dates pertaining to the movement of the Files to enable assessment of the authenticity of the claims. That, in other matters pertaining to the same accident, the Appellant has released the amounts due to the Claimants, but has adopted a merciless attitude in the instant matters shorn of reasons. That, the legislation being beneficial, the Claimants ought not to suffer despite the compensation having been granted to them, and the grounds taken in the Petitions being frivolous, deserve a dismissal.

5. Learned Counsel for the Respondent-Owner advanced no submissions.

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6. I have considered the opposing submissions of Learned Counsel for the parties and also perused all documents on record.

7. The cardinal point in condoning delay is that the Court ought to be satisfied that the Appellant was prevented by sufficient cause in preferring the Appeal on time. It is also settled law that the Appellant has to put forth *bona fide* grounds for the delay besides establishing that there was no negligence on their part in initiating steps. The length of the delay is not the consideration while exercising discretion by the Courts, in certain circumstances, a delay of one day may not be condoned lacking acceptable explanation, whereas in other cases inordinate delays can be condoned if the explanation afforded is satisfactory. In other words, each case is distinguishable from the next and must exhibit some *bona fides* and grounds for exercise of discretion by the Court tilted in favour of the Appellant/Petitioner. In a plethora of Judgments the Hon'ble Supreme Court has held that sufficient cause should be given a liberal interpretation to ensure that substantial justice is done, but that is only so long as negligence, inaction or lack of *bona fides* cannot be imputed to the party concerned. That, while considering a Petition for condonation of delay it is relevant to bear in mind that the expiration of the period of limitation prescribed for making an Appeal gives rise to a right in favour of the decree-holder. That, this right which has thus accrued should not be lightly disturbed on account of a lapse of time.

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8. In *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others*¹ the Hon'ble Supreme Court while enunciating the principles applicable to an application for condonation of delay would *inter alia* hold as hereinbelow extracted;

"21. From the aforesaid authorities the principles that can broadly be culled out are:

.....

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

.....

21.7. (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

.....

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

.....

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.

....."

¹ (2013) 12 SCC 649

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9. On the bedrock of the aforesaid principles, we may now examine the grounds put forth by the Appellant. Admittedly, the impugned Judgments were pronounced on 28-12-2017. It is also undisputed that the Judgments were forwarded to the Appellant through the Learned Claims Tribunal on 29-12-2017 via email. Certified copies of the Judgment were however applied for by the Appellant on 03-02-2018, after thirty-five days of pronouncement. No explanation issues for such delay, despite copy being available to the Appellant through email giving them sufficient notice to enable initiation of steps. That having been said, the next ground urged was that the Kolkata Branch Office forwarded the same to the Jaipur Head Office. Pausing here for a moment, it is apparent that no date pertaining to this aspect has been revealed before this Court. Thereafter, according to the Appellant, as per the internal procedure the Files were sent back to the Kolkata Division by the Jaipur Head Office for appointing an Advocate which also took some time. No dates or days are forthcoming herein as well. It is not denied by Learned Counsel for the Appellant that he was representing the Appellant before the Learned Claims Tribunal and was in the know of the facts in dispute, therefore why the delay occurred in engaging a Counsel is inexplicable in the absence of details. The date of appointment of the Counsel has also not been stated. That apart, practical problems that arose on various dates or the number of days that elapsed while taking such steps are devoid in the explanation furnished to this Court. It is not disputed that the impugned Judgments granted compensation to the Respondents-Claimants being the parents and other dependents of the deceased

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who was earning and was contributing to the family expenses. It is also not denied that the Respondents-Claimants were entitled to compensation. If the Appellant was aggrieved by the alleged wrong findings of the Learned Claims Tribunal on account of deductions made and addition of future prospects the alternative open to the Appellant was to approach this Court on time, and if done belatedly furnish sufficient and *bona fide* reasons for the delay. Relying on precedents concerning Government Departments appears to be sans reason as the Appellant has not put forth any ground to establish that it is a Government Organisation or a Public Sector Undertaking. By mere fact that it is an unwieldy Organisation and decision-making process cumbersome does not entitle the Appellant to expect the Court to exercise discretion in their favour, when even the Petition which ought to mention delay of "fifty days" has been reflected as "fifteen days" showing haphazard drafting of the Petition with no attention to what is infact the pivotal point. The grounds for delay lack in *bona fides* and do not reveal as to how the Appellant was prevented by sufficient cause in approaching the Court or how the circumstances were beyond the control of the Appellant. Indeed the legislation invoked by the Respondents is benevolent and for the welfare of the family/dependents of the deceased/victim and, in my considered opinion, should not be kept in limbo for the inaction of the Appellant manifesting as injustice to the Respondents-Claimants when compensation for the loss of a member of the family has been computed and granted.

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10. In view of the gamut of facts and circumstances put forth for the delay, it is but relevant to opine that the Petitions have been filed with a nonchalant attitude reflecting negligence, inaction and lack of *bona fides* and being devoid of merit do not deserve the indulgence of this Court. Consequently, I am not inclined to exercise the discretion vested in this Court, in favour of the Appellant.

11. Petitions for condonation of delay are rejected and disposed of as also the Appeals.

12. No order as to costs.

13. Records be remitted forthwith.

Sd/-
(**Meenakshi Madan Rai**)
Acting Chief Justice
17-09-2018

Approved for reporting : **Yes**

Internet : **Yes**