



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 19th MAY, 2016

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

I.A. No.01 2016

in

MAC App. No.03 of 2016

- Appellants-Opposite Parties** : 1. The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
Gangtok Branch,
Mundra Building, 5th Floor,
M. G. Marg,
P.O. & P.S. Gangtok,
East Sikkim.
2. The General Manager,
ICICI Lombard General Insurance Company Ltd.,
House No.414,
Veer Savarkar Marg,
Near Sidhi Vinayak Temple,
Prabhadevi,
Mumbai – 400 025.

versus

- Respondents-Claimants** : 1. Mr. Pema Namgyal Bhutia,
S/o Late Nima Namgyal Bhutia,
Aged about 54 years
2. Mrs. Wangchuk Doma Bhutia,
W/o Mr. Pema Namgyal Bhutia,
Aged about 48 years
3. Ms. Sonam Peden Bhutia,
D/o Mr. Pema Namgyal Bhutia,
Aged about 23 years



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4. Ms. Diki Doma Bhutia,
 D/o Mr. Pema Namgyal Bhutia,
 Aged about 22 years

All residents of Rongpa PW,
 Near Block Administrative Centre,
 Kabi-Tingda GPU, Kabi,
 P.O. & P.S. Phodong,
 North Sikkim.

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

Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellants.

Mr. Ashok Pradhan, Advocate for Respondents.

ORDER

Meenakshi Madan Rai, J.

1. The Appellants-Opposite parties have preferred an Appeal against the impugned Judgment and Award dated 29-06-2015 passed by the Learned Member, Motor Accidents Claims Tribunal, North Sikkim at Mangan, (for short "the Claims Tribunal"), in MACT Case No.21 of 2014, wherein the Appellants were directed to pay a sum of Rs.3,46,650/- (Rupees three lakhs forty six thousand six hundred and fifty) only, with interest @ 10% per annum, on the said sum, to the Respondents-Claimants, from the date of filing of the

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Claim Petition, i.e., 12-09-2014, till full and final payment. The Appeal is delayed by a period of 183 days, hence the prayer for condonation of delay.

2. It is submitted by Learned Counsel for the Appellants, that after the impugned Judgment and Award was passed on 29-06-2014, the Appellants applied for certified copy on 07-08-2015 which was made available, on the same day. The limitation period for presenting the Memo of Appeal was on or before 27-09-2015, i.e., 90 days, from the date of the impugned Judgment and Award. However, the delay occurred as Learned Counsel for the Appellants sent the certified copy to the Office of the Appellants at Siliguri, West Bengal, where all decisions concerning legal matters are taken. After examining it for a few days, the impugned Judgment and Award was forwarded to its Office at Kolkata, West Bengal, on receipt of which, the Office at Kolkata decided to prefer an Appeal before this Court, thereafter the file was returned to its Siliguri Office with necessary directions. That, there are two analogous cases arising out of the same accident registered as MAC App. Nos. 19 and 20 of 2015, pending disposal before this Court and this Appeal was kept in abeyance, in anticipation of the Judgment of this Court. The Memo of Appeal was finally ready on 24-03-2016 and filed on 29-03-2016 and hence, the prayer for condonation of delay.

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3. On the other hand, it was argued by Learned Counsel for the Respondent that in the first instance the Appellants took time in applying for certified copy of the impugned Judgment and Award as evident from the submissions put forth. Thereafter, the Appellants have failed to give "sufficient cause" as no explanation on account of the delay, on a day to day basis, has been forthcoming. That there was no reason for this Appeal to have been kept in abeyance merely on the ground that MAC App. Nos.19 and 20 of 2015, arising out of the same accident were filed before this Court earlier. Hence, the Application be dismissed as the Appellants have failed to provide "sufficient cause" for the delay.

4. I have heard the Learned Counsel for both the parties at length and given due consideration to their rival contentions. I have carefully perused the impugned Judgment and Award.

5. 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*¹, referred to the decision in *Arjun Singh* vs. *Mohindra Kumar*², 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

1. (2013) 14 SCC 81

2. AIR 1964 SC 993

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every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that 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] "

6. On the same aspect, in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others*³ referring to *Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corpn.*⁴, the two-Bench decision held as follows;

"14. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. "

7. It may be added here that in a catena of decisions the Hon'ble Apex Court has cautioned that, the Courts, should not have a

3. (2013) 12 SCC 649

4. (2010) 5 SCC 459

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pedantic approach towards limitation but judicial discretion, if exercised in favour of the Appellant, should be founded on objective reasoning.

8. Based on the parameters culled out hereinabove, on consideration of the Application before me, I find that the Appellants have grossly failed to put forth any grounds which tantamount to "sufficient cause" for condonation of the delay. The facts reveal that in the first instance there was a gross delay in applying for certified copy of the impugned Judgment. It is not the case of the Appellants that the Judgment was not ready or that there was a delay in the supply of the copy. Merely because the certified copy of the Judgment and Award travelled from Office to Office of the Appellants, for which of course, the Appellants have deigned it fit not to furnish details of dates or days, cannot be said to be adequate or "sufficient cause". This Application appears to have been filed harbouring the notion that the Court will be quick to condone the delay, merely considering the fact that the Appellant's Company is unwieldy giving rise to a slow decision making process. Why this Appeal should be kept in abeyance while two others on the same cause of action have been filed is beyond comprehension and without doubt, a flimsy ground. It may be noted that both the Appeals have since been disposed of on 20-04-2016.

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9. As held in *Esha Bhattacharjee*³ (*supra*), there is an increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner which requires to be curbed, of course, within legal parameters.

10. In the instant matter while carefully considering the grounds put forth, I find that there is complete negligence and inaction on the part of the Appellants, coupled with lack of *bona fides*, resulting in the unexplained delay.

11. Consequently, this Application deserves no consideration and is dismissed and disposed of accordingly.

(Meenakshi Madan Rai)
Judge
19-05-2016

Approved for reporting : **Yes**

Internet : **Yes**