

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 19th NOVEMBER, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No.01 of 2016
in
MAC App. No.08 of 2016

Appellant : The Branch Manager,
National Insurance Company Limited,
Gangtok Branch,
NH 31-A, Gangtok,
P.O. & P.S. Gangtok,
East Sikkim.

versus

Respondents : 1. Mr. Om Prakash Chettri,
Aged 43 years,
S/o Indra Bahadur Chettri

2. Mrs. Bhuwan Kumari Chettri,
Aged 30 years,
W/o Mr. Om Prakash Chettri

Both residents of Upper Deythang,
Near Deythang School,
P.O. & P.S. Ravangla,
South Sikkim.

3. Mr. Iswar Lal Gurung (Driver),
S/o Sidhi Man Gurung,
R/o Niz Ramang, Bermoik,
P.O. Bermoik Tokal,
P.S. Temi,
South Sikkim.

4. Mr. Ashok Kumar Jain (Owner),
S/o Late K. C. Jain,
R/o Rangpo Bazar,
P.O. & P.S. Rangpo,
East Sikkim.

Appearance

Mr. Thupeden G. Bhutia, Advocate for the Appellant.

Mr. Kumar Sharma, Advocate for the Respondents No.1 to 2.

Respondents No.3 and 4 in person.

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O R D E R

Meenakshi Madan Rai, J.

1. The instant Appeal has been preferred against the Judgment and Award dated 31-03-2016, passed by the Learned Motor Accidents Claims Tribunal, South Sikkim at Namchi, in MACT Case No.07 of 2015, directing the Appellant Company/ Opposite Party No.3, to pay Rs.10,35,000/- (Rupees ten lakhs, thirty five thousand) only, with interest @ 9% per annum, to the Respondents No.1 to 2/Claimants, from the date of filing of the Claim Petition till final realisation.

2. The Appeal is accompanied by an Application under the proviso to Section 173(1) of the Motor Vehicles Act, 1988, read with Section 5 of the Limitation Act, 1963, seeking condonation of delay of 66 days. The grounds for delay as made out by the Appellant are that, the impugned Judgment and Award was passed on 31-03-2016 and the Appeal ought to have been presented before 29-06-2016. That, the copy of the impugned Judgment received on 06-05-2016 was delivered to the Branch Office at Gangtok from where it was sent to the Divisional Office at Siliguri, West Bengal. Thereafter, the Divisional Office in turn forwarded the case file along with the impugned Judgment and Award to their Regional Office at Kolkata, which approved the proposal to prefer an Appeal before the High Court. That, consideration may be extended to the fact that the Appellant Company is a Central Government Undertaking which, therefore, results in procedural delays. On receipt of the papers, the

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Counsel took some time to prepare an Appeal and hence, the delay of 66 days.

3. *Per contra*, it was vehemently contended by Learned Counsel for the Respondents No.1 and 2 that no sufficient grounds have been put forth for condoning the delay, merely stating that, the file moved from one Office to the next, does not tantamount to sufficient delay and the Application requires no consideration and be rejected.

4. I have heard Learned Counsel at length and given due consideration to their rival contentions.

5. The grounds put forth for the delay of 66 days is that, the file was sent from one Office to the next, i.e., from Gangtok to Siliguri to Kolkata and made its return journey also accordingly. The grounds also indicate that although the impugned Judgment and Award was pronounced on 31-03-2016 the copy was obtained by Counsel for the Appellant only on 06-05-2016, more than a month after its pronouncement. No dates have been given with regard to the number of days that each Office took in making its decision. The mere ground that the Company is a large Organisation in which administrative delays occur is no ground for condoning the delay. The Appellant ought to be able to put forth *bona fides* while seeking condonation of delay which is significant and relevant.

6. In ***G. Ramegowda, Major and Others*** vs. ***Special Land Acquisition Officer, Bangalore***¹ it was held that;

1. (1988) 2 SCC 142

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"14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : *Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.* [AIR 1962 SC 361]; *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575]; *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [(1979) 4 SCC 365]; *Lata Mata Din v. A. Narayanan* [(1969) 2 SCC 770], *Collector, Land Acquisition v. Katiji* [(1987) 2 SCC 107] etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

7. Thus, in view of the observations above, it is clear that although delay can be condoned but the party concerned has to establish that there has been no gross negligence or deliberate inaction or lack of *bona fides* imputable to it. The Law of Limitation is substantive Law and has definite consequence on the right and obligation of the parties. The principles laid down in Law of Limitation have to be adhered to. At the same time, the Courts are clothed with powers to condone the delay provided "sufficient cause" is put forth for availing the remedy within the stipulated time. The grounds put forth by Appellant are merely administrative delays without furnishing the particulars thereof.

8. The question, therefore, would be whether delay is to be condoned in every matter filed by a large Organisation or Central Government Undertaking mechanically merely due to the ground of administrative delay. Would it not amount to prejudice to the Opposite Party, as in the instant case, where a bereaved

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family who has already had to suffer the loss a loved one and perforce had to approach the Learned Claims Tribunal for compensation. The answer obviously would be in the negative. The grounds put forth being insufficient, I find no reason to condone the delay.

9. Consequently, Application for condonation of delay is rejected and disposed of as also the Appeal.

Sd/-
(Meenakshi Madan Rai)
Judge
19-11-2016

Approved for reporting : **Yes**

Internet : **Yes**