



IN THE HIGH COURT OF SIKKIM AT GANGTOK

(CIVIL APPELLATE JURISDICTION)

MAC APPEAL NO. 02 OF 2013

DATED 24-06-2013

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THE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

The Branch Manager,
The New India Assurance Company Ltd.,
Gangtok Branch Office,
M.G. Marg,
Gangtok, East Sikkim. ... **Appellant**

Versus

1. Smt. Chandra Kala Tamang,
 W/o Late Joel Lepcha.
2. Miss Tharchan Dolma Lepcha,
 D/o Late Joel Lepcha.
3. Mstr. Mingure Dorjee Lepcha,
 S/o Late Joel Lepcha.
4. Shri Santosh Rai,
 S/o Panchaman Rai,
 R/o Lower Ghurpisey,
 P.O. & P.S. Namchi,
 South Sikkim.
5. Shri Mahendra Subba,
 S/o Late B. B. Subba,
 R/o Jorethang Road,
 P.O. & P.S. Namchi,
 South Sikkim **Respondents**

FOR THE APPELLANT : MR. SUDESH JOSHI, ADVOCATE

FOR THE RESPONDENT : MR. KUMAR SHARMA, ADVOCATE
NOS.1, 2 & 3

FOR THE RESPONDENT : MR. ANJAN SHARMA AND MR. CHEWANG
NO.4 NORBU LEPCHA, ADVOCATES

FOR THE RESPONDENT : MR. CHARLES L. LUCKSOM, ADVOCATE
NO.5

**ORDER (ORAL)**

Wangdi,J

This Appeal is directed against the judgment dated 31.07.2012 passed by the learned Member, Motor Accident Claims Tribunal, South and West Sikkim at Namchi in M.A.C.T. Case No.01 of 2011, by which death compensation amounting to Rs.11,94,300.00 was awarded in favour of the Respondents No.1, 2 and 3, who are the legal heirs and successors of the deceased, Joel Lepcha, who had died in an accident that took place at Karfectar Dara between Jorethang and Namchi, in the night of 22.04.2010, while travelling in the accident vehicle, a Maruti Van bearing No.SK-02/3784.

2. The Appeal was accompanied with an application for condonation of delay since there was delay of 160 days in filing the Appeal.

3. On 15.04.2013, when notice was issued by this Court, it had been made clear that before considering the merits of the Appeal, the point of limitation shall be taken up first. The four respondents have put in appearance today, notices having been served upon them in terms of the directions of this Court contained in its orders dated 10.05.2013, 28.05.2013 and 07.06.2013.

4. Mr. Sudesh Joshi, learned Advocate appearing on behalf of the Appellant, while placing the application for



condonation of delay, submitted that after receipt of the certified copy of the judgment 31.07.2012 on 02.08.2013, the entire file concerning the case was sent to the Divisional Office of the New India Assurance Company Ltd., at Siliguri for further steps to be taken in the matter. The Divisional Office after seeking legal advice took a decision to challenge the judgment of the learned Claims Tribunal and accordingly, the Appeal was filed with a delay of 160 days.

5. I have considered the grounds for condonation of delay set out in the application. We may reproduce the relevant paragraphs for convenience below: -

“3.That the application for certified copies of the Judgment was made on 01/08/2012 and the same was obtained on 02/08/2012. Thereafter, the entire file was sent to the Divisional Office of the New India Assurance Co. Ltd. at Siliguri for necessary orders/directions.

4.That the Divisional Office of the New India Assurance Co. Ltd., thereafter sought legal advice as to whether the judgment of the Ld. Tribunal could be challenged in the Hon’ble High Court of Sikkim.”

6. The above are the only two paragraphs in the application that contain the reasons, if we may call it so, for delay in filing the Appeal. As is apparent from its bare reading, the averments do not state anything whatsoever except to state that the Divisional Office of New India Assurance Co. Ltd. sought legal advice on the question as to whether the impugned judgment should be challenged or not. There is nothing further.



7. Section 173 of the Motor Vehicles Act, 1988 in no uncertain terms mandate that an Appeal should be filed within a period of 90 days after the date of the award. Of course, under the second proviso to Section 173, discretion is vested in the High Court to entertain an Appeal after the expiry of the said period of 90 days, if it is satisfied that the Appellant was prevented by sufficient cause from preferring the Appeal in time.

8. The reasons stated in paragraph 4, far from being considered as sufficient cause, is no cause at all, in view of the nebulous statement set out therein.

9. For these reasons, this Court is of the view that this is not a case where discretion should be exercised in favour of the Appellant and condone the unexplained inordinate delay in filing the Appeal.

10. The Application for condonation of delay is accordingly rejected.

11. The MAC Appeal stands dismissed as barred by limitation.

12. No order as to costs.

13. It is directed that the award passed by the learned Tribunal vide the impugned judgment be paid to the Respondents No.1, 2 and 3 duly computing the interest awarded within a period of 15 days from the date of this order. 50% of the amount shall be kept in fixed



deposit in the name of the minor Respondents 2 and 3, 25% in the fixed deposit in the name of the Respondent no.1, leaving the rest 25% in the hands of the Respondent no.1 to meet her daily expenditure. The fixed deposit shall be made in a Nationalised Bank for a period of not less than 5 years. The Appellant Insurance Company shall submit report of compliance of this direction before the learned Tribunal, South and West at Namchi.

13. Let a copy of this Order be transmitted to the Court of the learned Member, Motor Accident Claims Tribunal, South and West at Namchi for its compliance.

Sd/-

(S. P. Wangdi)
Judge
24.06.2013

Approved for Reporting : Yes / No

Internet : Yes / No

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