

**IN THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

DATED : 30-01-2014

CORAM

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

M.A.C.Appeal No. 01 of 2014

The Branch Manager,
National Insurance Company Ltd.,
Gangtok Branch, Gangtok,
East Sikkim. **Applicant/ Insurer**

Versus

1. Smt. Rina Subba (Lama)
2. Miss Amrapali Lama,
Residents of Lodhoma Bazar,
District Darjeeling,
West Bengal.
At present resident of TNA Quarter,
Gangtok, East Sikkim.

..... **Respondents/ Claimants**

3. Shri Amit Jaiswal,
S/o Shri Ashok Jaiswal,
R/o Lodhoma Bazar,
District Darjeeling,
West Bengal.

Owner of Vehicle No.WB-76/ 1116

FOR APPELLANT : MR. MANISH KUMAR JAIN,
ADVOCATE

FOR RESPONDENTS : NONE

ORDER (ORAL)

Wangdi,J.

This Appeal is directed against the impugned judgment of the Motor Accident Claims Tribunal, East



and North Sikkim at Gangtok dated 31.10.2012 in M.A.C.T. Case No. 30 of 2011. The claim had been preferred by the respondents under Section 166 of the Motor Vehicles Act, 1988 seeking compensation from the appellant on account of the death of Arun Kumar Lama, the husband of the first respondent and father of the second respondent in a motor vehicle accident that took place on 17.10.2010.

2. By the impugned judgment, the Claims Tribunal had awarded compensation of Rs.23,89,820/- (Rupees Twenty three lakhs eighty nine thousand eight hundred and twenty) only with interest @ 10% per annum from the date of filing of the claim petition which was 08.11.2011 until its full and final payment with necessary deduction of interim payment of Rs. 50,000/- granted vide order dated 22.05.2012 under Section 140 of the Motor Vehicles Act, 1988.

3. The Appeal is accompanied by an application under consideration which is for condonation of delay of 363 days in filing the appeal on the ground that it was caused due to the time taken in the movement of the file and in seeking legal opinion.



4. Mr. Manish Kumar Jain, learned Counsel appearing for the appellant, submits that the learned Claims Tribunal had committed a serious infraction of law, in as much as, it had failed to consider the question of contributory negligence on the part of the deceased in causing the accident although he fairly submits that no issue had been framed on this and had not pressed the point during the proceedings before the Tribunal.

5. Mr. Jain, has relied upon para 21 of ***Minu B. Mehta vs. Balkrishna Ramchandra Nayan & Another – AIR 1977 SC 1248*** to emphasize the imperativeness to consider the aspect of contributory negligence by the Claims Tribunal.

6. Before we embark upon considering the merits of the grounds raised in the appeal, the appellant is required to cross over the main hurdle of delay in approaching this Court. The circumstance in which delay in filing appeals under the Motor Vehicles Act, 1988 is provided in the second proviso to Section 173 of the Act. We may reproduce the proviso for convenience:-

“173. Appeals-(1).....

.....

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.



.....”

From the above, it is manifest that an appeal filed after the expiry of period of 90 days may be entertained by the High Court only if it is satisfied that the appellant was “prevented by sufficient cause” from preferring it within the prescribed period. It is thus obvious that discretion in condoning delay may be exercised by the High Court only if the appellant is successful in showing that he was prevented by sufficient cause from preferring the appeal in time. Keeping in view this principle, let us examine as to whether in the present case the appellant has been successful in satisfying the aforesaid requirement. For convenience we may reproduce the entire pleadings contained in the application for condonation of delay which reads as under :-

“ ”

1. That this day, the petitioner has filed an Appeal challenging the judgment and Award passed by the Learned Member, Motor Accident Claim Tribunal, East and North at Gangtok, in MACT case No. 30 of 2011.
2. That the judgment in the aforesaid case was pronounced by the Ld. Claim Tribunal on 31/10/2012 as such the appeal challenging the said judgment ought to have been filed by the petitioner appellant on or before the 30th day of January, 2013. The appeal being filed today is delayed by 363 days as on 28/1/2014.
3. That the application for certified copies of the judgment was made on 8/05/2013 and the same was obtained on 18/05/2013. Thereafter, the entire file was sent to Divisional Office at Siliguri only on 22/5/2013 for necessary orders/directions by the concerned counsel.
4. That the Divisional Office of the National Insurance Company 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 and thereafter the entire file was sent to its legal office at Kolkata.

5. That as the Branch Office, Gangtok, had received directions from its office to appeal against the judgment, accordingly it had appointed its panel advocates to prepare an appeal which was to be filed before the Hon'ble High Court of Sikkim.

6. That in the mean time the claimants had filed for execution proceeding and accordingly the next date for the execution proceeding is filed on 1/2/2014 before the Learned Tribunal.

7. That on 28/12/2013 the undersigned counsel was formally appointed for preferring the appeal against the said judgment and hence this appeal has been filed before this Hon'ble Court.

8. That the delay of 363 days has been caused due to the time taken in movement of the file and seeking legal opinion.

9. That this petition praying for condonation of delay of 363 days has been filed bonafide for the ends of justice.

.....”

7. On a perusal of the pleadings as set out above, it is evident from paragraphs 2 and 3 that although the judgment was pronounced by the Claims Tribunal on 31.10.2012, the application for certified copy was submitted only on 08.05.2013, i.e., after more than 7 long months. Even after it was obtained on 08.05.2013, it was sent to the Divisional Office, Siliguri only on 22.05.2013, i.e., after a period of 14 days. There is no explanation at all as to what had prevented the appellant from applying for the certified copy of the judgment promptly and had to wait for such a long time. It is also not explained as why it took 14 days in dispatching the file to the Divisional Office at Siliguri.



8. The matter gets worse when the appellant has failed to indicate as to when it was that the Divisional Office at Siliguri had sent the file to Kolkata Office for seeking legal advice as indicated in paragraph 4 and when it was that the Branch Office at Gangtok had received back the file containing the direction to file appeal against the judgment. It is further not indicated as to when they had appointed the panel of advocates for preparing the appeal to be filed before this Court. The only statement that we find of any substance, if it may be called so, is the fact that the present counsel was formally appointed for preferring the appeal only on 28.12.2013.

9. The application is bereft of any cause, let alone sufficient cause, which prevented them from filing the appeal within time and the pleadings are absolutely vague, nebulous and devoid of any material particulars in order to satisfy the second proviso to Section 173 reproduced above in order to enable this Court to exercise its discretion in condoning the inordinate delay in filing the appeal.

10. For the aforesaid reason, I have no hesitation in holding that the appellant has failed to show that he was prevented by sufficient cause in preferring the



appeal so belatedly. The application for condonation of delay is accordingly rejected.

11. In the result, the MAC Appeal is dismissed.

12. No order as to costs.

Sd/-

(S. P. Wangdi)
Judge

30.01.2014