



**HIGH COURT OF SIKKIM, GANGTOK**  
(Civil Appellate Jurisdiction)

**CM. Appl. No. 2 of 2015**  
**IN MAC App. No. 1 of 2015**

**APPLICANT**  
**/ APPELLANT**

1. The Branch Manager,  
National Insurance Company Limited,  
Siliguri Branch Office,  
Pratap Market, 2<sup>nd</sup> Mile, Sevoke Road,  
Siliguri, District Darjeeling, West Bengal.

**Versus**

**RESPONDENTS**

1. Babita Gurung (Manger),  
W/o Late Gagan Manger (Thapa),  
R/o Gurung Gaon, P.O. Nandugaon,  
P. S. Jorethang, South Sikkim.
2. Avinash Manger,  
S/o Late Gagan Manger (Thapa),  
R/o Gurung Gaon, P.O. Nandugaon,  
P. S. Jorethang, South Sikkim.
3. Bimla Manger,  
D/o Late Gagan Manger (Thapa),  
R/o Gurung Gaon, P.O. Nandugaon,  
P. S. Jorethang, South Sikkim.
4. Rajendra Tamang,  
(Owner of Maruti Wagon R, bearing  
registration No. SK-04-T-0024)  
S/o M. B. Tamang,  
R/o Boomtar, P.O. Namchi, South Sikkim.

An Application praying for condonation of delay in filing the Appeal.

**Appearance:**

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

Ms Mukun Dolma Tamang and Ms Radhika  
Gautam, Advocates for Respondents No. 1,  
2 & 3.

Mr. Nirmal Kumar Bardewa, Advocate for  
Respondent No. 4.



**ORDER**  
(06.05.2015)

Following Order of the Court was delivered by  
**MEENAKSHI MADAN RAI, JUDGE.**

1. The Appellant by filing an application under the second proviso to Section 173 (1) of the Motor Vehicles Act, 1988 seeks condonation of delay of 163 days in filing the Appeal against the impugned Judgment and Award of the Motor Accidents Claims Tribunal, South Sikkim at Namchi, in MACT Case No. 11 of 2013 dated 30.04.2014.

2. Learned Counsel for the Appellant contended that the Appellant was prevented by sufficient cause for not preferring the Appeal within the Statutory Period of Limitation of 90 (ninety) days. On this account, the submissions put forth were that after the Judgment and Decree were passed on 30.04.2014 by the Motor Accidents Claims Tribunal, South Sikkim at Namchi, the application for the certified copies of the impugned Judgment was made on 30.05.2014 and copy made ready on 31.05.2014. After receiving a copy of the impugned Judgment and Award from the Advocate, the Branch Manager, Gangtok Branch forwarded it to the Senior Divisional Manager at Siliguri Division Office, who after examining the same forwarded it to the Regional Office at Kolkata for obtaining approval to file the Appeal. The matter was then sent to the Legal Cell of the Regional Office, where it was decided to prefer the Appeal before this Court against the impugned Judgment. The Regional Office then returned it to the Divisional Office with relevant instructions, who in turn



forwarded it to the Branch Office at Gangtok, consequent to which the Counsel was instructed to file the Appeal. It is also put forth that certain clarifications while preparing the Appeal were required, hence request was made to the Branch Office at Gangtok which took some time. On receipt of the necessary papers, Memo of Appeal has been filed along with the application for condonation of delay. It is also stated that the appeal is to be decided on merits since there is an illegality in the impugned Judgment and hence the petition for condonation of delay be allowed.

**3.** *Per contra* it was argued by Learned Counsels for the Respondents that the Appellant has failed to provide a day to day explanation for the delay in filing of the appeal. That when such grounds are not forthcoming, the delay has remained unexplained and accordingly the petition be dismissed. Learned Counsels for the Respondents have placed reliance on the decision of this Court in CM. Appl. No. 256 of 2014 in MAC Appl. No. 12 of 2014 where this Court has dismissed the application of the Appellant seeking condonation of delay, *inter alia* on grounds that no cause at all had been shown for the inordinate delay in filing the Appeal.

**4.** The rival contentions put forth by the Counsels were heard at length and given anxious consideration. I have also perused the Order relied on by the Learned Counsels for the Respondents No. 1, 2 and 3.



5. Section 173 of the Motor Vehicles Act, 1988 provides for filing of appeal before this Court. The second proviso thereof requires that the High Court may entertain the 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. Thus, the requirement of the proviso is that the Court is to be satisfied that the Appellant was “prevented by sufficient cause” from preferring the appeal on time.

6. After hearing the submissions of Learned Counsels for the Appellant, it is evident that the averments made by the Appellant in his application are in very general and vague terms. No explanation for the delay on a day to day basis has been given. Infact no dates whatsoever have been placed before this Court to account for the delay save for the one month delay in obtaining the copy of the impugned Judgment. For this too, the blame cannot be laid at the door of the Motor Accidents Claims Tribunal, South Sikkim at Namchi, as it is admitted that copy of the impugned Judgment was sought only after a month of the pronouncement of the Judgment. The facts put forth leaves this Court in no manner of doubt that the Appellant has failed to make out good grounds for the delay of 163 days. The explanation offered that the File moved from one office to the next and then to the Counsel is not a ground to establish that the Appellant was “prevented by sufficient cause” from preferring the Appeal.



7. Accordingly, in the absence of any substantial explanation or for that matter any worthwhile explanation to explain the delay, I am of the considered opinion that the application for condonation of delay deserves no consideration. It is accordingly dismissed.

8. CM. Appl. No. 2 of 2015 disposed of accordingly.

Sd/-  
**(Meenakshi Madan Rai)**  
**Judge**  
06.05.2015

Approved for Reporting : ~~Yes~~/ No  
Internet : Yes / ~~No~~