



HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

C.M. Appl. No. 73 of 2015

In

MAC Appeal No. 06 of 2015

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN

RAI, JUDGE

The Branch Manager,
Reliance General Insurance Co. Ltd.,
Himalaya House, 8th Floor,
31-A National Highway,
38-B, J.L.Nehru Road,
Kolkata – 700 071.

Applicant/

Appellant

Versus

1. Shri Rajat Modak,
S/o Late Gagan Chandra Modak,
R/o Soreng Bazar,
P.O. & P.S. Soreng,
West Sikkim.

2. Smt. Dipti Modak,
W/o Rajat Modak,
R/o Soreng Bazar,
P.O. & P.S. Soreng,
West Sikkim.

Respondents/

Claimants

3. Shri Ram Bahadur Tamang,
S/o Shyam Bahadur Tamang,
R/o Singling Busty,
P.O. & P.S. Soreng,
West Sikkim.

4. Shri Punya Prasad Sharma,
L.R. of Dhan Pati Sharma,
S/o Pushpa Lall Sharma,
R/o Pelling Road, Dentam,



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P.O. Dentam, P.S. Kaluk,
 West Sikkim.

Respondents

Application under Section 173(1) of the Motor Vehicles Act, 1988
Read with Section 5 of the Limitation Act, 1963.

Appearance : Mr. Manish Kumar Jain, Advocate for the Applicant/Appellant.
 Mr. Trisit Sur, Manager-Legal, Reliance General Insurance Co.Ltd. in person.

Mr. Kumar Sharma and Mr. Ashok Pradhan, Advocates for Respondents No.1 and 2.

Respondent No.3, Mr. Ram Bahadur Tamang present in person.

Respondent No.4 (Since Deceased), represented by her son, Mr. Punya Prasad Sharma present in person.

ORDER
 (03.07.2015)

Meenakshi Madan Rai, J.

1. The Appellant has filed this Application under the Second 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 85 days in filing the Appeal, assailing the Judgment of the Motor Accidents Claims Tribunal, South Sikkim at Namchi, in **MACT Case No. 06 of 2012** dated **24.03.2014**.

2. It is averred that the Judgment in MACT Case No. 06 of 2012 was pronounced by the Learned Member, Motor Accidents Claims Tribunal, South Sikkim at Namchi on 24.03.2014. That the Appeal ought to have been filed on or before 17.12.2014, but was filed only



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on 26.03.2015, after the Appellant came to know of the impugned Judgment on 16.09.2014 when the office of the Appellant received a copy of the Execution Proceedings. Thereafter, on receipt of the same, a copy was forwarded to its office at Kolkatta seeking further instructions. The Branch Office of the Company then sought legal advice as to whether the Judgment of the Learned Tribunal could be challenged in this Court. Other necessary documents were sought from its Investigator. It is submitted that the delay of 85 days has been caused due to the time taken in the movement of File and seeking legal opinion, hence the prayer for Condonation of Delay.

3. On the other hand, Mr. Kumar Sharma, learned Counsel for the Respondents No. 1 and 2, contended that the Appellant in the first instance has no *locus standi* to file the Appeal, as the award was passed against the Branch Manager, Reliance General Insurance Co. Ltd., at Siliguri, whereas the Appellant is the Branch Manager of the concerned Insurance Company at Kolkatta. It is also contended that the conduct of the Appellant is not one that requires sympathetic consideration, since it has failed to appear before the Motor Accidents Claims Tribunal at Namchi, despite service of Notice.

4. The chronological details pertaining to the matter was submitted by Learned Counsel, Shri Kumar Sharma. It is submitted that on 01.05.2012 vide the Judgment of the same date, the Claim Petition was initially dismissed by the Learned Tribunal. On Appeal against the impugned Judgment before this Court, the matter was remanded back for a *de novo* trial. Before the High Court, when the Appeal was heard, the Appellant had made an appearance as would be evident from the Order of this Court dated **28.10.2013** in **MAC Appeal No.09 of 2013 - Shri Rajat Modak and Another - Appellants vs. The**

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Branch Manager and Others - Respondents. After the matter was remanded back to the Learned Motor Accidents Claims Tribunal, South, the first Notice issued to the Appellant for appearance therein was not returned. A second Notice was issued on 09.12.2013 which the Respondents No. 1 and 2 sought to serve and was accordingly served by 'dasti'.

5. That, vide Order dated 19.12.2013 of the Learned Tribunal, it is apparent that the O.P.No.3/Appellant remained absent despite notice being served upon it personally by the Claimants. To fortify this claim, Learned Counsel for the Respondents No. 1 and 2 has filed a "Certified to be True Copy" of the Notice issued to the Appellant, duly received in the office of the Appellant on 09.12.2013 at 02.05 pm by one Subrata Roy. That since the Appellant failed to put in an appearance, they were proceeded *ex parte* vide Order dated 04.02.2014 and the impugned Judgment was passed on 24.03.2014.

6. That since the Appellant had intentionally failed to appear before the Tribunal, they cannot now be heard to say that they were unaware of the pronouncement of the Judgment which they allegedly received and came to know of only on 16.09.2014. The question of a delay of 85 days does not arise, since the delay is actually of 310 days being computed from 24.03.2014. That since satisfactory grounds have not been put forth, this Application and consequently the Appeal be dismissed.

7. Learned Counsel for the Respondents No. 1 and 2 has placed reliance on a catena of decisions pertaining to Condonation of Delay to buttress his submissions.

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8. Respondent No.3, Shri Ram Bahadur Tamang the driver of the vehicle and Respondent No.4 (since deceased), represented by her son, Shri Punya Prasad Sharma who were present in person, submitted that they were in agreement with the submissions of Learned Counsel for the Respondents No.1 and 2.

9. Heard parties at length and perused the relevant orders of the Learned Motor Accidents Claims Tribunal (South) at Namchi (for short 'Tribunal').

10. On traversing the contents in the Application for Condonation of Delay of the Appellant and on considering the rival contentions put forth by Learned Counsels, it is evident that the grounds put forth for seeking Condonation of Delay are peremptory and cryptic. The conduct of the Appellant as evident from the submissions made by Learned Counsel for the Respondents No.1 and 2 does not deserve any consideration, in view of the fact that they chose to appear before this Court during the Appeal detailed *supra*, and consequently were seized of the fact that the matter was remanded back to the Learned Tribunal for *de novo* trial. Subsequently, Notice had been served on them personally by the Respondents 1 and 2 for appearance before the Tribunal. It is not disputed that the Notice was received. They have opted not to appear before the Claims Tribunal as is manifest from the records of the Learned Tribunal. Although it is true that Courts exercise discretion in favour of the person seeking Condonation of Delay in filing an Appeal, however, while exercising this discretion, the Court has to be satisfied that the Appellant was "prevented by sufficient cause" in filing the Appeal as required under the Second Proviso to Section 173 of the Motor Vehicles Act, 1988.

11. On enquiry from the Learned Counsel for the Appellant as to the reason for non-appearance of the Appellant before the Learned Claims Tribunal despite service of notice, it was put forth that he had no instructions on this count.

12. Coming to the computation of limitation, it cannot be computed from 16.09.2014, but is to be calculated from 24.03.2014 when the impugned Judgment was pronounced. . The ground that the Appellant was unaware of the decision of the Learned Tribunal cannot be a sufficient cause and the blame thereof cannot be laid at the door of the Tribunal or that of the Respondents in view of the Appellant's own conduct. It was a conscious decision of the Appellant to remain absent before the Tribunal.

13. That apart, a blanket reason for the delay of 85 days has been given in paragraphs 3 and 4 of the Application which is extracted for convenience below; -

“3. That the appellants came to know about the judgment decree on 16/09/2014 when the office of the appellants received the copy of the Execution Proceeding on 16/09/2014. Immediately, after the receipt of the copy the appellants forward (sic) the same to its office at Kolkatta for seeking further instructions.

4. That the Branch Office of the Company 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 other necessary documents were sought from its investigator.”

14. The delay on a day to day basis or for that matter on a week to week basis has not been submitted. The grounds given in the Petition thus, being inadequate and bereft of details either of File movement or as already stated, the day to day reasons for the delay, deserves no consideration. Consequently, in view of the grounds discussed



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hereinabove, the delay does not appear to be on account of the Appellant being “prevented by sufficient cause” and cannot be condoned in the absence of any reasonable ground.

15. In the result, the Application for Condonation of Delay thus stands dismissed as rejected.

Sd/-

(**Meenakshi Madan Rai**)

Judge

03.07.2015

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

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