



THE HIGH COURT OF SIKKIM : GANGTOK  
(Civil Appellate Jurisdiction)

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

MAC App. No.18 of 2014

Appellant- Insurer : The Branch Manager,  
National Insurance Company Limited,  
Gangtok Branch,  
M. G. Marg, Gangtok,  
East Sikkim.

versus

Respondent-Claimant : 1. Smt. Mon Maya Gurung,  
W/o Late Tika Ram Gurung,  
R/o Upper Yang Yang Busty,  
P.O. Yang Gang,  
P.S. Ravangla,  
South Sikkim.

Respondent-Vehicle Owner : 2. Shri Dorjee Tshering Bhutia,  
S/o Late T. R. Bhutia,  
R/o 31A, National Highway,  
P.O. Gangtok & P.S. Gangtok,  
East Sikkim.

Appeal under Section 173 of the Motor  
Vehicles Act, 1988

Appearance

Mr. Manish Kumar Jain, Advocate with Mr. Kishor  
Kumar Subba, Administrative Officer of the Appellant-  
Insurance Company.

Mr. R. C. Sharma, Advocate for the Respondent No.1.

None for Respondent No.2.



## **J U D G M E N T (ORAL)**

(6<sup>th</sup> May, 2015)

### **Wangdi, J.**

1. At the outset, it is relevant to note that service of notice upon the Respondent No.2, the owner of the accident vehicle, was not completed due to the failure on the part of the Appellant-Insurance Company to furnish the correct address despite opportunities given to them. Although by order dated 08-04-2015 in CM Appl No.350 of 2014, prayer on behalf of the Appellant-Insurance Company for leave to serve by substituted service was allowed and the case adjourned to 21-04-2015 with a direction for taking appropriate steps during the interregnum, however, on 21-04-2015, the matter was again adjourned to 06-05-2015 due to the inability of the Learned Counsel for the Appellant-Insurance Company to be present but, on the condition that no further adjournment shall be granted. When the matter was taken up today, it was conceded on behalf of the Appellant-Insurance Company that still no steps had been taken in compliance to the order dated 08-04-2015 for affecting notice upon the Respondent No.2 by substituted service.



**2.** In the above facts and circumstances, it was decided that the application for condonation of delay shall be heard and disposed of first since the question as to whether the delay should be condoned or not, is purely a matter of discretion to be exercised by this Court and the presence of the Respondents at this stage would not be mandatory. This would be apparent from the Second Proviso to Sub-Section (1) of Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"), which lays down 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"*.

**3.** On the anvil of the above, the application for condonation of delay is taken up for consideration.

**4.** Heard.

**5(i).** The deceased, Tika Ram Gurung, husband of the Claimant-Respondent No.1, died when the Maruti Car 800 bearing registration number SK 02 A 0333 driven by him met with an accident at Satam cliff on 28-08-2010 while proceeding towards Yang Gang, South Sikkim, with his friends. Claim for death compensation of ₹ 5,04,300/- (Rupees five lakhs four thousand and three hundred) only



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was preferred by his widow, the Claimant-Respondent No.1, against the Appellant-Insurance Company and the Respondent No.2-Owner of the vehicle, before the Motor Accident Claims Tribunal, East Sikkim at Gangtok (for short the "Claims Tribunal") in MACT Case No.16 of 2012.

*(ii)* On completion of the proceedings, the Claims Tribunal, by judgment dated 13-09-2013, awarded a sum of ` 6,27,300/- (Rupees six lakhs twenty seven thousand and three hundred) in favour of the Claimant-Respondent No.1 as compensation with interest @ 10% per annum from the date of filing of the Claim Petition, i.e., 23-04-2012, until its full and final satisfaction, to be paid by the Appellant-Insurance Company as the vehicle was found to have been duly insured by them under a Policy of Insurance. It is against this, that the present Appeal has been preferred.

*6(i).* On a perusal of the application for condonation of delay filed under Second Proviso of Sub-Section (1) of Section 173 of the Act, the grounds set out as "reasonable cause" that prevented the Appellant-Insurance Company from preferring the Appeal in time are as under:-

"2. That the judgment in the aforesaid case was pronounced by the Ld. Claim Tribunal on



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13/9/2013 as such the appeal challenging the said judgment ought to have been filed by the petitioner appellant on or before the 14/12/2013. The appeal being filed today is delayed by 341 days as on 18/1/2014 (sic)

3. That the application for certified copies of the judgment was made on 24/7/2014 and the same was obtained on 24/7/2014 when the information was given by its investigator. Thereafter, the entire file was sent to the Branch Manager Gangtok, East Sikkim seeking its opinion in the instant matter. Thereafter the file was sent to its Divisional Office, Siliguri for seeking directions in the instant matter.
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 thereafter the entire file was sent to its office at Kolkatta.
5. That the delay of 341 days has been caused due to the time taken in movement of the file and seeking legal opinion."

*(ii)* As would appear from paragraphs 2 and 3 above, admittedly the impugned judgment was pronounced by the Claims Tribunal on 13-09-2014 but, the application for certified copies was made only on 24-07-2014 and received on the same day. Quite obviously, steps to apply for the certified copies was taken only on 24-07-2014 which is after more than 10 (ten) months. No explanation whatsoever has been given as to why such delay had occasioned.

*(iii)* Thereafter, although it has been averred that the entire file was sent to the Branch Manager at Gangtok



for opinion, it has not been mentioned as to who and when it was sent to the Branch Manager. It is then stated that the file was then sent to the Divisional Office at Siliguri for seeking direction. As would be apparent from the paragraph 3 of the application reproduced above, it has again not been stated as to who and when it was sent to the Divisional Office at Siliguri. The Branch Office, i.e., the Appellant, then sought legal advice as to the feasibility of filing the Appeal after which the entire file was said to have been sent to its Office at Kolkata. Thereafter, there is nothing further.

*(iv)* The pleadings, as would be obvious, are bereft of any material particulars and are absolutely vague and nebulous. In my view, this cannot constitute "sufficient cause" as provided in Second Proviso of Sub-Section (1) of Section 173 of the Act.

*(v)* Even otherwise also the conduct of the Appellant-Insurance Company does not appear to be beyond reproach but, is found rather recalcitrant not only before this Court but even before the Claims Tribunal.

*7(i).* On a perusal of the records, it appears that the Appellant-Insurance Company had been quite negligent



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even during the original proceedings and had been proceeded *ex parte* on 01-07-2013 when none appeared on its behalf. No steps at all appear to have been taken to participate in the proceedings thereafter. As a consequence, they neither adduced any evidence nor did they cross-examine the witnesses for the Claimant.

*(ii)* In this Appeal also, the conduct of the Appellant-Insurance Company, to state the least, has been most casual and derelict.

*(iii)* Coupled with the above is the vagueness of the pleadings reproduced above which when considered leads this Court to irresistibly conclude that the Appellant-Insurance Company has failed to convince and satisfy that they were prevented by "sufficient cause" in preferring the Appeal in time.

**8.** For these reasons, the application for condonation of delay stands rejected and consequently, the Appeal is also dismissed as being barred by the law of limitation.

**9.** The compensation awarded by the Claims Tribunal shall be paid by the Appellant-Insurance Company within 15 (fifteen) days from today.



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**10.** In the facts and circumstances, the Appellant-Insurance Company shall also pay cost of ` 50,000/- (Rupees fifty thousand) only to the Claimant-Respondent No.1.

**11.** A report of compliance of the directions shall be filed by the Appellant-Insurance Company on or before the expiration of the period as stipulated by this Court.

**12.** Let a copy of this judgment be transmitted to the Motor Accident Claims Tribunal, East Sikkim at Gangtok, forthwith for its due compliance.

Sd/-  
( S. P. Wangdi )  
**Judge**  
06-05-2015

Approved for reporting : **Yes**

Internet : **Yes**