



HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

C.M. Appl. No. 10 of 2015

In

MAC Appeal No. 02 of 2015

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI,
JUDGE

The Branch Manager,
National Insurance Co. Ltd.,
Opp. Tourism Department,
31-A National Highway,
P.O. & P.S. Gangtok,
East Sikkim.

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**Applicant/
Appellant**

Versus

1. Shri Dawgey Sherpa,
S/o G. S. Sherpa,
Manul Mangan,
P.O. & P.S. Mangan,
North Sikkim.

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Respondent/

Claimant

2. Smt. Durga Mangar,
W/o Shri C. K. Mangar,
R/o Singhik, Mangan,
North Sikkim.

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**Respondent/
Owner**

An Application under proviso to Section 173(1) of the Motor Vehicles Act, 1988.

Appearance : Mr. Thupden G. Bhutia, Advocate for the
Applicant/Appellant.

Mr. Zangpo Sherpa with Mr. Sangay Gurmay
Bhutia and Mr. Jushan Lepcha, Advocates for
Respondent No.1.



Respondent No.2, Mrs. Durga Mangar in person.

ORDER
(16.06.2015)

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

1. The Applicant/Appellant has filed the instant Application under the proviso to Section 173(1) of the Motor Vehicles Act, 1988, (for short 'MVAct') seeking Condonation of Delay of 98 days. This application has been filed along with an Appeal being MAC Appeal No.02 of 2015, challenging the Judgment and Award of the Learned Member, Motor Accident Claims Tribunal, North Sikkim at Mangan in MACT Case No. 02 of 2014.

2. It is, *inter alia*, submitted by Learned Counsel for the Applicant/Appellant that after the impugned Judgment and Decree was passed on 27.06.2014 and a certified copy obtained, the Branch Manager of the Appellant Company examined the Judgment/Award of the Learned Tribunal and in a few days time, forwarded the certified copy to the Divisional Office at Siliguri.

3. The Divisional Office at Siliguri consulted their Counsel and forwarded the Judgment and Award to their Regional Office at Kolkata, where the Legal Cell examined it, took some time in



studying the matter and opined that it was a fit case for preferring an Appeal. Thereafter, the Regional Office returned the file to the

Divisional Office with the said decision, which was then routed back to the Branch Office and the Memo of Appeal drafted.

4. During the preparation of the Appeal, certain clarifications were required and, hence, the certified copies of the entire documents relating to the matter, was obtained from the Motor Accident Claims Tribunal at Mangan. Hence, the delay.

5. It is submitted that the Application for Condonation of Delay is made bonafide and in the interest of justice. Hence, the delay of 98 days in presenting the Memo of Appeal be condoned.

6. The Learned Counsel for the Opposite Party No.1, vehemently opposing the prayer for Condonation of Delay, submitted that the delay in filing the Appeal has prejudiced his client since he has not been able to avail of the award given by the impugned Judgment. In addition to the above, it is also submitted that the delay has not been explained on a day to day basis and, therefore, there being no substantial ground for considering the petition, it be dismissed.

7. The submissions put forth by the Learned Counsel were heard at length and given due consideration.



8. On going through the relevant provision of the Motor Vehicles Act, 1988 i.e. Section 173(1), it is clear that the statute affords the Appellant 90 days to prefer an Appeal to the High Court, if aggrieved by an award of the Claims Tribunal. The official procedure, therefore, is to be completed within the 90 days and Appeal filed within the said period. In the submissions put forth by the Learned Counsel for the Appellant, no day to day reasons have been set forth explaining the delay in filing of the Appeal within the 90 days or why an additional 98 days was required by the Applicant/Appellant to prefer the Appeal. The mere ground that the File was sent from the office of the Applicant/Appellant in Gangtok, to Siliguri, to Kolkata and returned via the same route, is no ground for condoning the delay. It has to be established by the Applicant/Appellant that he was “prevented by sufficient cause” from preferring the Appeal on time.

9. From the discussions above, it is evident that no such grounds have been put forth for consideration of this Court.

10. In the result, I have reached the finding that the Application for Condonation of Delay not being supported by any substantial explanation, deserves dismissal and is accordingly dismissed.



11. Consequently, MAC Appeal No.02/2015 also stands dismissed.

Sd/-

(**Meenakshi Madan Rai**)

Judge

16.06.2015

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

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