

**HIGH COURT OF SIKKIM, GANGTOK**

( Civil Appellate Jurisdiction )

**CM. Appl. No. 11 of 2015**

**In**

**MAC Appeal No. 3 of 2015**

**APPELLANTS/INSURER**

1. The Branch Manager,  
National Insurance Company Limited,  
Damber Chowk,  
Kalimpong,  
District Darjeeling, West Bengal.
2. The Branch Manager,  
National Insurance Company Limited,  
N. H. 31 A, Near Police Headquarters,  
Gangtok, East Sikkim.

**RESPONDENTS**

1. Shri Passang Ringzing Sherpa,  
S/o Late Lhakpa Sherpa,  
R/o Deu Damthang,  
P.O. Damthang, P.S. Temi,  
South Sikkim.
2. Smt. Nim Phuti Sherpa alias Ming  
Phuti Sherpa,  
W/o Passang Rinzing Sherpa,  
R/o Deu Damthang,  
P.O. Damthang, P.S. Temi,  
South Sikkim.

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

**Appearance:**

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

Mr. J. B. Rai with Mr. Kumar Sharma,  
Advocates for the Respondents.

**ORDER**  
(30.04.2015)

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

1. Heard.
2. Appellant/Insurer filed an appeal against the Judgment and award dated 30.05.2014 passed by the Learned Member, Motor Accidents Claims Tribunal, South Sikkim at Namchi in MACT Case No. 6 of 2013. The Appeal was accompanied by a petition under Section 173 (1) of the Motor Vehicles Act 1988, seeking condonation of delay.
3. The Appeal is barred by a period of 123 days.
4. Mr. Thupden G. Bhutia, Learned Counsel for the Appellant, submitted that the delay occurred on account of several formalities required from various offices of the Appellant Company before the Appeal could be filed. To buttress his submissions he has placed reliance on ***State of Assam & Ors. Vs. Susrita Holdings Private Limited*** : ***AIR 2014 Supreme Court 2307*** and advances the argument that mere delay should not be held against the Appellant as it deals with public money and therefore an opportunity should be afforded to the appellant. That in view of the grounds put forth in the petition the delay be condoned.

5. *Per contra*, Learned Counsel for the Respondents, Shri J.B. Rai submitted that the Appellant has failed to give specific reasons for the delay, leaving the delay of 123 days unexplained. That the Appellant ought to have given a day to day explanation for the delay caused as required by Law which has not been done and on this ground the petition be dismissed.

6. To fortify his submissions, the Learned Counsel for Respondents No. 1 and 2, has placed reliance on the decisions of this Court in MAC Appeal No. 12 of 2014 dated 17.03.2015 and MAC Appeal No. 20 of 2013 dated 24.06.2013 where petitions for condonation of delay were rejected, the delay having been unexplained.

7. I have heard the rival contentions and given careful consideration to the same. I have also perused the Judgment relied on by the Appellant and the Orders of this Court (*supra*).

8. The sequence of facts and dates in the instant matter are as follows:-

- (a) The impugned Judgment was pronounced on 30.05.2014 being MACT Case No. 6 of 2013.
- (b) The Appellant applied for a copy of the Judgment on 02.06.2014. Copy of Judgment was ready on 04.06.2014.
- (c) The Counsel for the Appellant took the copy on 10.06.2014.

- (d) On receipt of the Certified Copy of the Judgment and award, the Branch Manager, Gangtok Branch, examined it and after a few days forwarded the same to the Branch Manager, Darjeeling Branch.
- (e) The Darjeeling Branch in turn after verification of the policy papers forwarded it to the Siliguri Division Office.
- (f) The Siliguri Division Office sought the opinion of their Counsel who gave his opinion on 21.07.2014.

**9.** From the above, it is evident that the dates when the certified copy of the impugned Judgment was forwarded from one office to the next till it reached the Counsel of the Appellant has not been detailed.

**10.** The opinion of the Advocate dated 21.07.2014 was forwarded with the impugned Judgment to the Regional Office at Kolkata to obtain approval for filing of an appeal before this Court.

**11.** The Legal Cell at Kolkata gave their approval which was communicated to the Counsel for the Appellant only on 21.11.2014.

**12.** Once again it emerges that no dates have been furnished as to when the impugned Judgment and opinion of the Advocate was forwarded from the Siliguri Division to the Regional Office at Kolkata. Thus the period from 21.07.2014 to 21.11.2014 remains unexplained as well.

**13.** Subsequently, the Appeal was filed before this Court on 31.12.2014. From the dates and facts narrated above it is clear that

the inordinate delay in filing the appeal has remained unexplained. This Court is aware and seized of the fact that there is usually a labyrinth of official procedural formalities to be completed but it does not afford the Appellant license on this ground to hold the Respondents to ransom while it winds its way unendingly through the process.

**14.** In the Judgment relied by Learned Counsel for the Appellant, the amount involved was a large amount and the government machinery was involved in the decision making process. I am afraid, I cannot agree with the submission of Learned Counsel for the Appellant that this matter should also be considered in the same light, since it involves only the decision making process of the Appellant Company and the amount involved is not as large.

**15.** It appears that there was deliberate inaction on the part of the various Officers of the Appellant Company. "Sufficient cause" undoubtedly should be interpreted liberally provided the Appellant gives some valid grounds for the administrative delay. The Appellant has not given even a week to week explanation for the delay, much less an explanation for the day to day delay.

**16.** The Respondents 1 and 2 have lost their son in the accident on account of which compensation was awarded by the Learned Tribunal at Namchi, which the Appellant seeks to contest.

**17.** It was thus for the Appellant to have diligently pursued their matter if they sought to file an appeal and not conducted themselves in a laid back, lackadaisical and callous manner.

**18.** Condonation of delay is allowed to advance substantial justice but that would be in cases where there is no negligence. The fact that the Motor Vehicles Act 1988, is a benevolent legislation cannot be over emphasized while considering even this petition.

**19.** In consideration of the facts and circumstances discussed above, there is nothing on record to indicate that the Appellant was “prevented by sufficient cause” from preferring the appeal on time.

**20.** Hence, the application for condonation of delay deserves to be and is accordingly dismissed.

**21.** CM. Appl. No. 11 of 2015 disposed of accordingly.

Sd/-

**( Meenakshi Madan Rai )**

**Judge**

30.04.2015