

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 19th NOVEMBER, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No.01 of 2016
in
MAC App. No.07 of 2016

Appellant : The Branch Manager,
National Insurance Company Limited,
Gangtok Branch,
31-A National Highway,
P.O. & P.S. Gangtok,
East Sikkim.

versus

Respondents : 1. Mrs. Bed Maya Sharma,
Aged 44 years,
W/o Late Dhanpati Sharma

2. Ms. Babita Sharma,
Aged 27 years,
D/o Late Dhanpati Sharma

3. Ms. Anita Sharma,
Aged 23 years,
D/o Late Dhanpati Sharma

4. Ms. Manita Sharma,
Aged 23 years,
D/o Late Dhanpati Sharma

5. Ms. Sapanan Sharma,
Aged 20 years,
D/o Late Dhanpati Sharma

6. Master Youraj Sharma,
Aged 17 years,
S/o Late Dhanpati Sharma
All residents of Sama Sivik,
Lingdum Busty,
P.O. Dhajey, Ranka,
P.S. Gangtok, East Sikkim.

7. Mr. Tashi Pintso Bhutia,
S/o Late Phu Tshering Bhutia,
R/o Lall Market,
P.O. & P.S. Gangtok,
East Sikkim.



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Appearance

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

Mr. Ajay Rathi, Mr. Leada T. Bhutia and Ms. Phurba Diki Sherpa,
Advocates for the Respondents No.1 to 6.

Mr. Ashok Pradhan, Advocate for Respondent No.7.

O R D E R

Meenakshi Madan Rai, J.

1. Assailing the Judgment and Award dated 25-11-2015, passed by the Learned Motor Accidents Claims Tribunal, East Sikkim at Gangtok, in MACT Case No.19 of 2015, directing the Appellant Company/Opposite Party No.1, to pay Rs.11,67,000/- (Rupees eleven lakhs, sixty seven thousand) only, with interest @ 10% per annum, on the said sum, to the Respondents No.1 to 6/Claimants, the instant Appeal has been filed.

2. The Appeal is accompanied by an Application for condonation of delay. The grounds put forth for the delay are that;

(i) A delay of five days occurred while applying for the impugned Judgment, which was then made available on 19-12-2015, thus the limitation period for presenting the Memo of Appeal was on or before 14-03-2016, however, a delay of 174 days have occurred.

(ii) After receiving a certified copy of the impugned Judgment, it was delivered to the Branch Office of the Appellant Company on 22-01-2016 along with the Counsel's opinion.



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- (iii) The said Judgment was forwarded to the Divisional Office at Siliguri, which in turn, forwarded it to the Regional Office at Kolkata, for taking necessary steps.
- (iv) The Legal Cell at the Regional Office at Kolkata approved the proposal for preferring an Appeal. After receiving the approval, the matter was returned to Siliguri Divisional Office from where it was again forwarded to the Gangtok Branch Office with directions to file an Appeal.
- (v) Thereafter, some time ensued in drafting the Appeal, added to which the Appellant Company being a Central Government Undertaking collective decisions and sanctions of various Departments are required, as a result of which, the elapse of time and the consequent the delay.

That, in view of the grounds it is prayed that the delay be condoned.

3. *Per contra*, the grounds put forth by Appellant were vehemently opposed by the Respondents No.1 to 6, *inter alia*, on grounds that the statutory provisions requires that "sufficient cause" has to be made out for the delay, but the Appellant has failed to put forth any sufficient grounds, except stating that the File moved from one Office to the next. No dates save the date on which the impugned Judgment was forwarded to the Branch Office at Gangtok being 22-01-2016 has been revealed. During the process of File movement where the delay actually occurred has not been explained hence, the Application deserves to be dismissed as also the Appeal.



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4. I have heard the submissions put forth by Learned Counsel for the parties and carefully considered the same.

5. The second Proviso to Section 173(1) of the Motor Vehicles Act, 1988, provides 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.

6. It would be useful to consider the conspectus of facts placed before this Court by the Appellant for the present purpose. Although for brevity, the submissions are not being reiterated, it is clear that the impugned Judgment was pronounced on 25-11-2015, copy applied for belatedly on 01-12-2015, copy made available on 19-12-2015, copy forwarded to the Branch Office Gangtok on 22-01-2016 and thereafter to the Divisional Office at Siliguri, subsequently the Memo of Appeal has been filed on 03-09-2016, when by the admission of the Appellant, it ought to have been filed on or before 14-03-2016.

7. The Hon'ble Apex Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***¹ while referring to various authorities on condonation of delay has summarised grounds for condonation or otherwise as follows;

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the

1. (2013) 12 SCC 649



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courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10.(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11.(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12.(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.



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22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters."

8. In view of the principles elucidated hereinabove, no further explanation is required on what grounds the Court should consider condoning or not condoning the delay. On the touchstone of the principles exposited hereinabove, we may look to the grounds put forth by the Appellant. The Appellant has failed not only to furnish details for the delay on a day to day basis, but no explanation is forthcoming for the delay even on a week to week basis. This Court is conscious and aware of the fact that the Appellant is a Central Government Undertaking where collective decisions and sanctions of various Departments are required prior to preferring an Appeal. In other words, being an unwieldy Organisation decision-making process can be cumbersome. But at the same time would it mean that accountability has to be abandoned by the Appellant Company, and merely because the Organisation is unwieldy, does it mean



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that various Departments within it have to be disorganised so as to be unable to take a decision on something as important as filing an Appeal when they are aggrieved by the award of the Learned Claims Tribunal? It should not be so. It is assumed that an Organisation has a separate unit for dealing with such matters which ought to function diligently. There cannot be any mechanical condonation of delay by this Court only on the administrative grounds furnished by the Appellant. If such were to be the case and administrative delay the only ground for condoning delay for every unwieldy or Central Government Organisation then every such Organisation would be able to approach the Court at any belated time and expect the delay to be condoned. I am afraid that the grounds have to be *bona fide* and the cause sufficient, for delay to be condoned. The grounds put forth by the appellant brook no consideration as they appear to be flimsy and without substance.

9. In view of the fact that no sufficient grounds have been made out by the Appellant, it goes without saying that the delay cannot be condoned.

10. The Application is accordingly rejected and consequently the Appeal.

Sd/-
(**Meenakshi Madan Rai**)
Judge
19-11-2016

Approved for reporting : **Yes**

Internet : **Yes**

