



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 23rd May, 2017

Single Bench : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI,
JUDGE

I.A. No.1 of 2017
in
MAC App. No. 5 of 2017

Appellant : The Branch Manager,
National Insurance Company limited,
N.H. 10, Tourism Department,
Gangtok,
P.O. & P.S. Gangtok, East Sikkim.

Versus

Respondents : 1. Mr. Nathuni Mansuri,
S/o Late Ainul Mansuri.

2. Mrs. Sairun Khatoon,
W/o Md. Nathuni Mansuri.

3. Mrs. Kausar Khatoon,
W/o Late Anisu Rahman.

4. Mr. Sahid Ekbal,
S/o Late Anisu Rahman.

5. Master Sadam Hussain,
S/o Late Anisu Rahman,
W/o Late Binod Bhujel alias
Dol Bahadur Shivabhakti,
All the above named Claimants are
R/o Rinzing Namgyal Marg,
Near Little Flower School,
P.O. & Ps. Gangtok, East Sikkim.

6. Mrs. Sunita Rai,
W/o Mr. Dhan Bahadur Rai,
R/o West Pendam, Singleybung Busty,
Sikkim Fire Services,
P.O. & P.S Gangtok, East Sikkim.

Appearance:

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

Mr. Ajay Rathi, Mr. Rahul Rathi and Ms. Phurba Diki Sherpa, Advocates for
the Respondents No.1 to 5.

Mr. Ashok Pradhan, Advocate for the Respondent No. 6.



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O R D E R

Meenakshi Madan Rai, J.

1. The Appellant/Petitioner seeks condonation of delay of twenty-two days in filing the instant Appeal, *inter alia*, on the following grounds;

The Judgment was pronounced on 16.12.2016, in MACT Case No. 37 of 2015 by the learned Member, Motor Accidents Claims Tribunal, East Sikkim at Gangtok (for brevity "learned Tribunal"), for which the Petitioner applied for a certified copy on 01.03.2017, which was ready on 02.03.2017. On receipt of the impugned Judgment, it was delivered to the Divisional Office at Gangtok vide letter dated 09.02.2017 (sic), which in turn sent it to the Regional Office at Kolkata. The decision to prefer an appeal was approved and the File rerouted back with instructions to the Divisional Office at Gangtok to appoint an Advocate for preferring an appeal before this Court. The Divisional Office appointed their Counsel on 06.03.2017, which was communicated vide letter of the same date and received by the Counsel on 15.03.2016. The Appeal was then filed, leading to a delay of twenty-two days. Sufficient grounds having thus been put forth, the delay be condoned.

2. *Per contra*, it was vehemently argued by the opposing Counsel that on account of insufficient grounds being placed before this Court, the Petition deserves a dismissal.



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3. I have given careful consideration to the rival contentions of the learned Counsel.

4. It is evident from the grounds put forth by the Petitioner that the Judgment was pronounced on 16.12.2016, by the learned Tribunal but copy of the Judgment was sought for only on 01.03.2017, which was promptly made available on 02.03.2017. Thereafter, the learned conducting Counsel took about seven days to deliver the same to the Divisional Office at Gangtok. It is not denied that the Tribunal and the Divisional Office are both located in Gangtok, no explanation is afforded for this unseemly delay. Thereafter, the Case File along with copy of the Judgment was sent to the Regional Office at Kolkata. No date of such forwarding has been averred in the Petition or verbal submissions. The Regional Office, Kolkata returned the File to the Divisional Office at Gangtok with a direction to appoint an Advocate for preferring an appeal. On this count also, no date issues. Thereafter, the Divisional Office at Gangtok, allegedly issued appointment letter appointing counsel to file appeal on 06.03.2017, which again took around nine days to reach the counsel i.e. on 15.03.2017. Both the Divisional Office and the Counsel are undisputedly stationed in Gangtok. It is evident that the Petitioner has taken its own time to take the required steps. What stares one in the face, is the fact that the Judgment was pronounced on 16.12.2016 and the conducting Counsel for the Petitioner took the decision to apply for a copy only in the month



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of March 2017. Undoubtedly, the Petitioner has adopted a laid back and lackadaisical attitude. The fact that both the Counsel and the party took time to deliver the correspondence within Gangtok itself also points to their nonchalant attitude. The Judgment of the learned Tribunal concerns the compensation awarded on the death of one Anisu Rahman, the deceased son of Respondents No. 1 and 2, husband of Respondent No.3 and the father of Respondents No.4 and 5. The deceased provided for his family. Without a doubt, in his absence, the family would be struggling to make ends meet. In such a situation, if the Petitioner was aggrieved with the Order, they ought to have taken steps on time. The grounds put forth lack *bona fides*.

5. After an overall consideration of the facts and circumstances and grounds for delay, I am of the considered opinion that the Petition does not deserve the indulgence of this Court, neither am I inclined to exercise the discretion vested in this Court in favour of the Petitioner in the given circumstances.

6. Consequently, the Petition for Condonation of Delay is rejected and disposed of, as also the Appeal.

Sd/-
(**Meenakshi Madan Rai**)
Judge
23 -05-2017

Approved for reporting : **Yes**
Internet : **Yes**