

GAHC010256042014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MC 2634/2014

1:ICICI LOMBARD GENERAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE and HEAD OFFICE AT ICICI BANK
TOWERS, BANDRA KURLA COMPLEX, MUMBAI 400051 ITS ZONAL OFFICE
AT APEEJAY HOUSE, 15 PARK STREET, 7THE FLOOR, KOLKATA 700016 AND
A BRANCH OFFICE AT MAYUR GARDEN, G.S. ROAD, BHANGAGARH,
GUWAHATI 78105 AND REPRESENTED BY THE LEGAL MANAGER,
GUWAHATI OFFICE.

VERSUS

1:MD. NASER ALI and 3 ORS,
S/O LATE SAHAB ALI, R/O VILL. PAMDONGRA, P.O. HABIODONGRA, P.S.
BAGHBAR, DIST. BARPETA, ASSAM.

2:DRA BRAHMAPUTRA CONSORTIUM LTD.
A-7
MAHIPALPUR NH-8
MAHIPALPUR CROSSING
DELHI 110037
HAVING ITS REGIONAL OFFICE AT G.S. ROAD PURBADAI COMPLEX
CHRISTIAN BASTI
GUWAHATI-5

3:PK. JALAN
DIRECTOR
BRAHMAPUTRA CONSORTIUM LTD.
PURBADAI COMPLEX
CHRISTIAN BASTI
GUWAHATI-5

4:UNION OF INDIA
REPRESENTED BY AIRPORT AUTHORITY OF INDIA
AZARA
GUWAHATI

Advocate for the Petitioner : MR.R GOSWAMI

Advocate for the Respondent : MR.M CHOUDHURY

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 28-09-2018

Heard Mr. R. Goswami, learned counsel for the petitioner as well as Mr. D Mondal, learned counsel appearing for the respondent No. 1, Mr. A. Gogoi, learned counsel for the respondent Nos. 2 & 3 and Mr. P. K. Garodia, learned standing counsel for Airport Authority of India, for the respondent No. 4.

By this application under Section 5 of the Limitation Act, the petitioner has prayed for condoning delay of 135 days beyond the period of limitation in filing the connected appeal.

By referring to the statements made in para 5 of this application, it is submitted that the learned Commissioner, Employee's Compensation, Guwahati, had delivered the judgment after eight months from date of conclusion of hearing and therefore the dealing counsel was not aware of the delivering the judgment on 04.02.2014. However, when the Guwahati Office of the petitioner received a copy of the judgment on 18.02.2014, they requested the dealing counsel to give his opinion.

However, the said letter was misplaced and therefore, only when a reminder was re-issued on 11.04.2014, the dealing counsel located the file and gave his opinion on 30.04.2014 and thereafter, the matter was forwarded to the Calcutta Office for further processing and after seeking clarification from the petitioner's counsel at Guwahati, instructions were issued for filing appeal and in the process, there was a delay of 135 days beyond the period of limitation in filing the appeal.

The learned counsel for the respondent No. 1 as well as respondents Nos. 2 & 3 have opposed this application on the ground that the explanations given is a vague and there is no explanation about the delay after the instructions for filing the appeal was given.

It is seen in this application that a part of the blame for causing of the delay was put on the shoulders of the counsel by stating that the counsel had misplaced the letter sent by the applicant. Although the delay on account of loss of letter is below one month, but this Court is of the view that if applicant has concealed the name of the counsel on whom a blame was given for causing delay, the applicant is deemed to accept such delay and therefore, the delay on the account of the counsel would be construed to be lapse of applicant.

However, in view of grounds shown, this Court is inclined to accept the said explanation as good and sufficient cause which had prevented the applicant from filing the connected appeal on time.

Nevertheless for the delay, the respondent No.1 has suffered and he is not able to realize the award till date hence this Court is inclined to impose a cost of Rs.5,000/- on the applicant to be paid by way of cheque to respondent No.1 through his learned counsel appearing before this Court in this application. The said amount be paid within a period of one month from today.

The application stands allowed on imposing a cost of Rs.5,000/- as indicated above.

The office may now register the connected appeal and list the same for admission hearing on 10.10.2018.

JUDGE

Comparing Assistant