

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 26th APRIL, 2019

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

IA No.01 of 2018 in MAC App No.11 of 2018

Appellant : The Branch Manager, National Insurance Company Limited

versus

Respondents : Suk Dhoj Basnett and Others

Application under Section 173(1) of the Motor Vehicles Act, 1988 read with Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908

Appearance

Mr. Sushant Subba and Mr. Madan Kumar Sundas, Advocates for the Appellant.

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

None for Respondent No.7.

O R D E R

Meenakshi Madan Rai, J.

1. By filing this Petition under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter, MV Act), the Appellant Company seeks condonation of 379 days delay in filing the Appeal. The grounds put forth for the delay are as follows;

"a. That the Impugned award was passed by the Learned Member, Motor Accidents Claims Tribunal, East Sikkim at Gangtok in M.A.C.T. Case No.53 of 2015 on 19.06.2017.

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- b. That the Impugned Award was received by the Branch Office at Gangtok. The true copy of the Impugned award was send (sic) to Siliguri Division Office.
- c. That the Division Office after receiving the true copy award/judgment forwarded the same to the Kolkata Regional Office for opinion as well as instruction.
- d. That as per the internal procedure the Regional Office sent back the file to Siliguri Division Office for appointing an advocate for preferring Appeal in the instant case.
- e. That finally the appellant had appointed the undersigned counsel on 20.08.2018 for filling (sic) appeal in the instant case.
- f. That after completion of all official formalities, the Memorandum of Appeal was send (sic) by the applicant counsel to Regional Office for verification.
- g. That the same was taken (sic) few days to verify."

2. It was further contended that due to the aforestated unavoidable circumstances and delay in receiving the approval from the concerned Authorities, the Appeal came to be filed belatedly. Learned Counsel would while reiterating the above grounds further urge that it is a settled position of law that Government and Government Undertakings have been permitted some flexibility when delay is occasioned as it takes time for transaction of official business. That, should the delay not be condoned the Appellant Company will suffer irreparable loss as the impugned Award suffers from serious defects and is against the law laid down by the various Courts. Hence, in consideration of the grounds put forth the delay be condoned and the Appeal admitted.

3. Learned Counsel for the Respondents-Claimants on the other hand would contend that Government Undertakings

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may be afforded some flexibility, but this cannot be interpreted so widely as to include within its ambit those matters where grounds for delay are not explained at all. That, the grounds given by the Appellant Company clearly do not reveal any dates for the delay. There is no reference as to when the certified copy of the Judgment was applied for, obtained and when the official process was initiated for approval from the concerned Siliguri Division Office and the Kolkata Regional Office. The Appellant Company is duty bound to explain the delay in detail in the interest of justice and should there be failure to do so the delay ought not to be condoned. That, in the instant matter, the delay is for more than a year while the Respondents herein who suffered the death of their loved one have had to wait to even receive the compensation granted to them on account of the loss of their bread winner. Hence, in view of the unsatisfactory grounds put forth the Petition deserves no consideration and ought to be dismissed.

4. The rival contentions of Learned Counsel were heard at length and the impugned Judgment and Award perused.

5. Section 173 of the MV Act deals with Appeals which lays down as follows;

"173. Appeals.—(1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he

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has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further 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.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

[emphasis supplied]

6. It is clear from the second proviso *supra* that the High Court may entertain the Appeal after expiry of the period of ninety days if it is satisfied that the Appellant was prevented by "sufficient cause" from preferring the Appeal in time. Thus, the Appellant is required to prove "sufficient cause" for the delay. While explaining what "sufficient cause" entails, the Hon'ble Supreme Court in ***Basawaraj and Another* vs. *Special Land Acquisition Officer***¹ held as follows;

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court

¹ (2013) 14 SCC 81

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exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336], *Mata Dinu. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953], *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629].)

10. In *Arjun Singh v. Mohindra Kumar* [AIR 1964 SC 993] this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only *so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned*, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201].)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to

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quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, p. 266:

“605. *Policy of the Limitation Acts.*— The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510], *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907].)” [emphasis supplied]

7. In the said matter, the Supreme Court was considering Appeals preferred against the Judgment passed by the High Court of Karnataka in ***Basawaraj vs. Land Acquisition Officer***² by which the Appeals of the Appellants under Section 54 of the Land Acquisition Act, 1894, had been dismissed on the grounds of limitation. The parameters discussed in the ratio of ***Basawaraj and Another*** (*supra*) in the context of “sufficient cause” is obviously not fulfilled in the instant matter as obtains from the grounds put forth by the Appellant Company, which have been extracted *supra*.

² MFA No.10766 of 2007, decided on 10-6-2011 (KAR)

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8. We may also beneficially advert to the ratio in ***Syed Mehaboob vs. New India Assurance Company Limited***³ wherein it is clarified that *"The Motor Vehicle Act of 1988 is a beneficent legislation intended to place the claimant in the same position that he was before the accident and to compensate him for his loss. Thus, it should be interpreted liberally so as to achieve the maximum benefit."* The Respondents have lost an earning member of their family thereby cutting into their income and means of livelihood. The object of the MV Act has to be afforded due consideration, which in the instant matter appears to be lacking on the part of the Appellant.

9. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***⁴ the Hon'ble Supreme Court while enunciating the principles applicable to an application for condonation of delay would *inter alia* hold as hereinbelow extracted;

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

.....

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.

.....

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

³ (2011) 11 SCC 625

⁴ (2013) 12 SCC 649

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.....

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.

.....

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.

....."

The principles are to be adhered to by parties as also the Court who is vested with discretion, which obviously has to be exercised judiciously.

10. This Court is conscious that when delay is occasioned at the behest of the Government, it would be difficult to explain the delay on a day-to-day basis as transaction of business in the Government is done leisurely by Officers who evince no personal interest at different levels [see ***Special Tehsildar, Land Acquisition, Kerala*** vs. ***K. V. Ayisumma***⁵]. It is true that adoption of strict standards of proof leads to grave miscarriage of public justice and the approach of the Court thus should be pragmatic but not pedantic. It is also true that the expression "sufficient cause"

⁵ (1996) 10 SCC 634

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should be considered with pragmatism in a justice-oriented approach rather than technical detection of sufficient cause for explaining every day's delay. Nevertheless even on the anvil of the aforecited ratiocination in the matter, it is apparent that the Appellant has grossly failed to put forth even a semblance of the grounds which could tantamount to "sufficient cause" for condonation of delay. Merely pressing the argument that it is a Government Company and stating that the File went from one Office to the next without a semblance of an explanation does not suffice to explain the delay. The grounds are completely bereft of any *bona fides* and reeks of a completely lackadaisical and negligent attitude besides reflecting a cavalier attitude to the circumstance of the Respondents herein.

12. Consequently, I am not inclined to exercise discretion to condone the delay. The Petition deserves no consideration and is dismissed and disposed of as also the Appeal.

13. No order as to costs.

Sd/-
(**Justice Meenakshi Madan Rai**)
Judge
26-04-2019

Approved for reporting : **Yes**

Internet : **Yes**