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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: May 17, 2010

+ CM 8445 of 2010 in MAC APP 301/2010

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New India Assurance Company
Through: Ms. Ambika Roy, Advocate

17.05.2010
...Appellant

Versus

Jitender Kumar & Ors.
Through: nemo

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORAL

1. This application under Section 5 of Limitation Act has been filed by the appellant for condonation of delay of 162 days in filing the present appeal by the appellant insurance company. The grounds of condonation of delay as given in the application are that the mother of appellant's counsel was seriously ill and had to be hospitalized in Mumbai for necessary treatment. The counsel for appellant had to be present in Mumbai for this reason. The other ground is that sometime was required by the investigator of the insurance company to acquire license details of the driver from the Department of Transport.

2. None of the two grounds are available to the appellant for condonation of delay. It is not that driving license verification is to be done after award is passed. The verification of driving license of the driver, if any, was required to be done by the insurance company when claim was filed. The insurance company was supposed to bring on record the outcome of its investigation regarding driving license during trial. If the appellant failed to

prove before the Tribunal about the driving license being fake this ground for condonation of delay in filing the appeal is not available to the appellant. Similarly, Section 5 of Limitation Act does not envisage the inability of advocate to file appeal due to his personal reasons as a ground for condonation of delay. The insurance company could have contacted any other advocate available for filing the appeal. In fact, the insurance company even in this High Court has many advocates on its panel. If one advocate is ill or his mother was ill, any other panel advocate could have filed the appeal or a new advocate could have been engaged. I, therefore, find no force in this application for condonation of delay. The application is hereby dismissed.

MAC APP 301/2010

Since the application for condonation of delay in filing the appeal has been dismissed, this appeal is barred by limitation and is hereby dismissed as such.

May 17, 2010
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SHIV NARAYAN DHINGRA J.