

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(MACApp.) No. 15 of 2022

Date of Order: 05.07.2023

M/s Oriental Insurance Co. Ltd. Vs. Smti. Rakhi Chaudhari

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Khan, Adv.
For the Respondent(s) : Mr. N.M. Mansuri, Adv.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

ORAL:

1. An appeal against an award passed vide judgment and order dated 22.11.2019 passed in MAC Case No. 44 of 2012 (new MAC Case No. 246 of 2013) and also a judgment dated 31.01.2022 passed in MAC Review Application No. 1 of 2020 by the learned Member, Motor Accident Claims Tribunal, Shillong has been filed before this Court.

2. Apparently, there has occurred a delay in filing of the said appeal, for which the applicant has approached this Court with an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 1035

days in preferring the said appeal.

3. Heard Mr. A. Khan, learned counsel for the applicant who has submitted that from the date when the impugned award under judgment and order dated 22.11.2019 was passed, the applicant/Oriental Insurance Company Limited has filed a review application before the self-same Tribunal, which was eventually filed on 27.01.2020, though there had been a delay of 66 days in filing of the said review application, the same was on account of the fact that since 23.12.2019 when the limitation period for filing the review expired, the actual review application was filed after the winter vacation when the civil courts were closed.

4. Again, the review application was finally disposed of on 31.01.2020 which took the learned Tribunal 734 days for the same. On the date the appeal was filed before this Court, there was another period of delay of about 325 days, that is, with effect from 01.02.2022 till 22.12.2022. Therefore, the learned counsel has submitted that what could be considered as the actual delay is only 325 days.

5. The learned counsel has further submitted that an explanation for the delay is that the certified copy of the impugned judgment was obtained only on 18.04.2022 which took about 63 days. Thereafter, the counsel for the applicant had prepared the papers for the appeal to be filed only in the month of April, 2022. However, since the draft appeal and the related

papers have to be corrected and vetted by the Regional Office of the applicant/Insurance Company, the same was sent to the said Regional Office to be vetted by a counsel therein. This process has also taken considerable time and finally, when the final draft was received by the Divisional Office of the applicant/Insurance Company at Shillong, it was already in the month of October, 2022.

6. In the month of October, in fact, on 10.10.2022, the daughter of the counsel for the applicant/Insurance Company was injured as a result of an accident, for which she has to be hospitalized and the counsel having to visit the doctor and hospital regularly, he could not prepare the memo of appeal expeditiously.

7. The grounds indicated hereinabove are good grounds on sufficient cause being shown, therefore, the learned counsel has submitted that this Court in the interest of justice may be pleased to allow this application and to condone the delay as indicated. In support of his submission, the case of *Mandal, Revenue Officer, Vishakapatnam v. Senapati Appalanaidu: 2012 (4) SCALE 43* was cited, wherein the delay of 295 days in preferring a writ appeal before the High Court was condoned by the Apex Court.

8. Mr. N.M. Mansuri, learned counsel for the respondent opposing the application and the submission made by the learned counsel for the applicant, would submit that the applicant has not been able to show

sufficient cause for the said delay to be condoned, inasmuch as, the grounds given in the application is that delay was caused due to filing of a review application before the learned Tribunal, secondly, that because of procedural requirements within the organization of the applicant/Insurance Company which requires vetting of the draft memo of appeal and as a result of which a certain amount of delay was caused and thirdly, that on the ground of personal inconvenience or difficulty of the particular counsel, the said memo of appeal could not be filed in time, cannot be the reason or good grounds for this Court to consider the said application.

9. The learned counsel has further submitted that on the passing of the impugned judgment and award, a valuable right has accrued upon the respondent/claimant herein and which right cannot be lightly brushed off on account of the fault of the applicant herein.

10. The learned counsel has also submitted that even the fact that the review application was filed, which application was bereft of merits and the same being rightly rejected, the tactics of the applicant to delay satisfaction of the award is very apparent.

11. In support of his contention, the learned counsel has relied upon the following decisions:

- i) ***M/s Purnima Trading Company v. Sri. Sankar Sarkar:***
S.B. IA No. 1/2017 in MAC APP. No. 72/2017, High Court

of Tripura;

ii) National Insurance Co. Ltd. v. Nanda Kanai Pegu & 2

Ors: I.A. (Civil)/3/2021, para 10, Gauhati High Court and

iii) New India Assurance Company v. Jitendra Kumar & Ors:

MAC APP 301/2010, para 2.

12. Upon hearing the learned counsels for the parties, the issue to be considered here is whether the reasons and grounds cited by the applicant would constitute sufficient cause for condonation of the delay, whether of 1035 days or 325 days as the case may be. The number of days may not be of relevant consideration herein as much as the cause of delay in filing the appeal in question would be material.

13. As to what is “sufficient cause”, in a catena of judgments by the Supreme Court as well as various High Courts, this term has been explained in details. One of such authority can be found in the case of *Basawaraj v. LAO: (2013) 14 SCC 81*, the Supreme Court at para 9 of the same has held as follows:

“9. ...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 view point 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 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."

14. In the case of Purnima Trading Company (supra) though, reference was made by the High Court to the fact that the applicant therein, had filed a review application against the impugned award of compensation in a Motor Accident Claims case and upon such review application being dismissed, an application for condonation of delay in filing the appeal was preferred before the court, the same was rejected by the court who has looked into the totality of the matter. This may not be so relevant in this case as the review application has since been disposed of and the contention of the learned counsel for the respondent that the same was dismissed as devoid of merits, could not have been gone into by this Court at this point of time. The alleged delay in filing the review application would not have matter much as far as these proceedings are concerned.

15. The ground cited by the applicant that delay was caused due to the processing of the preparation of the memo of appeal, internally, within

the organization of the applicant/Insurance Company may not be a good ground as was observed by the Gauhati High Court in the case of Nanda Kanai Pegu (supra) wherein at paragraph 10 of the same, a number of authorities have been cited by the court to bring home the point that delay as a result of bureaucratic mechanization in an organization cannot be a ground for condonation of the same as far as filing of an appeal is concerned. The relevant extract of para 10 is reproduced herein below:

“10.

...

...24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

(c) CWT Vs. Amateur Riders Club, reported in 1994 Supp (2) SCC 603, wherein Hon’ble Supreme Court of India observed as follows:

“..... There is a point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the

former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.....”

(d) ICICI Lombard General Insurance Co. Ltd. Vs. Rup Nath Brahma Choudhury & Anr., reported in 2017 (2) GLT 487, wherein the Gauhati High Court has observed that the procedure of internal management of the affairs of the applicant company are not statutory procedures and if the applicant devise a procedure of moving the file from one table to another, the applicant does so at their own risk. Hon’ble Court also observed that “except in a few cases majority of insurance claims are generally on preset pattern and the applicant who are in the business of insuring risk is supposed to be equipped with some sort of mechanism to calculate the estimated award expected in a case and, as such, it is for the applicant to devise a way and means to expeditiously challenge those award, to which they do not agree to”.

(e) State of Assam & Others Vs. Gita Rani Kalita, reported in 2017 (2) GLT 1190, wherein the Gauhati High Court has referred to a judgment of Hon’ble Apex Court in “ Office of the Chief Post Master General Vs. Living Media India Ltd.” Reported in AIR 2012 SC 1506, wherein in it was held that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of modern technologies being used and available and that the law of limitation undoubtedly binds everybody including the Government. Relying on aforesaid rulings, Mr. B.N. Sarmah, learned counsel for the respondent no. 1, has submitted that the insurance

companies has taken the law of limitation for a ride in spite of being aware of the statutory period of limitation prescribed by law for preferring an appeal and in the instant case they have miserably failed to show sufficient cause for not approaching the appellate Court within the period prescribed by law.”

16. On the reason cited that the learned counsel for the applicant is indisposed on grounds of personal difficulty on account of his daughter being involved in an accident, this Court is in respectful agreement with the view expressed by the High Court of Delhi in the case of Jitendra Kumar (supra) wherein it was observed that “...Similarly, Section 5 of the 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...”

17. The case cited by the applicant is not applicable to the facts of the case herein since the Supreme Court had condoned the delay of 295 days relevant to the peculiar facts and circumstances of the case before it, which has no similarity to the facts and circumstances of the case in hand.

18. On an overall analysis of the reasons and cause for which the

delay in filing the appeal has occurred as was contended by the learned counsel for the applicant, this Court finds that “sufficient cause” has not been evinced by the applicant to convince this Court to condone the delay in filing the appeal.

19. Accordingly, this application is hereby dismissed as devoid of merit and the same is disposed of. The related memo of appeal is not to be taken on board.

20. No order as to costs.

Meghalaya
05.07.2023
“D. Nary, PS”



Judge