

GAHC010068732022



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

**Case No. : I.A.(Civil)/1091/2022**

UNITED INDIA INSURANCE CO. LTD.  
A COMPANY REGISTERED AND INCORPORATED UNDER THE COMPANIES  
ACT, 1956 AND HAVING ITS HEAD OFFICE AT 24 WHITES ROAD, MADRAS  
AND REGIONAL OFFICE AT GS ROAD, CHIBBER HOUSE, GUWAHATI  
ASSAM

VERSUS

MD. NUR ISLAM AND ANR  
S/O LATE NUR HASAN  
RESIDENT OF VILLAGE DAMPUR, PO DAMPUR, PS HAJO, DIST KAMRUP ,  
ASSAM

2:NUR JAMAL ALI  
S/O LATE NUR HASAN  
RESIDENT OF VILLAGE DAMPUR  
PO DAMPUR  
PS HAJO  
DIST KAMRUP  
ASSA

**Advocate for the Petitioner : MR. S DUTTA**

**Advocate for the Respondent : MR. A T SARKAR**

Linked Case :

UNITED INDIA INSURANCE CO. LTD.

VERSUS

MD. NUR ISLAM AND ANR

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Advocate for :

Advocate for : appearing for MD. NUR ISLAM AND ANR

**BEFORE  
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**17.05.2023.**

1. Heard Mr. B. C. Das, learned Senior Counsel assisted by Mrs. S. Roy, learned counsel for the applicant. Also heard Mr. A. Hussain, learned counsel for the respondents/claimants.
2. This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 132 days in preferring the connected appeal against the Judgment and Award dated 06.12.2018 passed by the learned Member, MACT, Kamrup (M) at Guwahati in MAC Case No. 896/2014. The cause of delay is explained at paragraphs- 4 and 5 of this application.
3. The explanation given discloses that the delay was caused basically for the reason that the learned conducting counsel for the Insurance Company met with an accident and could not recover for almost five months. Thereafter the appeal was filed, after obtaining opinion by the head office.
4. The learned counsel for the claimants/respondents while opposing the

application submits that the explanation given cannot be said to be sufficient inasmuch as the explanation itself shows that the applicants were negligent. In support of his contention, the learned counsel relies on the judgment of the Hon'ble Apex Court in the case of ***State of West Bengal –Vs- Administrator, Howrah*** reported in ***AIR 1972 SC 749***.

5. The learned counsel for the claimant/respondent further contends that the procedural red tapism has been discarded while condoning the delay by the Hon'ble Apex Court time and again and in the present case also delay has been caused due to procedural red tapism on the part of the applicant Insurance Company. In support of such contention, he relies the judgment of the Hon'ble Apex Court in the case of ***Office of the Chief Post Master General and Ors –Vs- Living Media India Ltd. and Anr*** reported in ***2012 3 SCC 563***.
6. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
7. In ***State of West Bengal –Vs- Administrator, Howrah*** (supra) relied on by the learned counsel for the respondent, the Hon'ble Apex Court in no unambiguous term laid down a ratio that sufficient cause should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. In the case in hand, as discussed hereinabove, the delay basically was caused due to the fact that the counsel conducting the claim case before the Tribunal on behalf of the company met with an accident and due to serious injury, she was bed ridden for almost five months, for which delay was caused in

getting the certified copies. Therefore, delay on such count, in the given facts of the present case, in the considered opinion of this Court, cannot be treated as negligence on the part of the applicant Insurance Company.

8. Coming to the ratio laid down in the ***Office of the Chief Post Master General and Ors*** (supra), the Hon'ble Apex Court has deprecated the practice of the instrumentalities of the State in moving the files from table to table and the red tapism and opined that delay should not be condoned in aforesaid background. However, as held herein above in the present case, it is not a case of red tapism rather it is a case of unfortunate contingencies which prevented the applicant in preferring the appeal within the prescribed period of limitation. Therefore, ***Office of the Chief Post Master General and Ors*** (supra) is not applicable in the given facts of the present case.
9. Considering the submission of the learned counsel for the respondents as well as the pleadings made in the paragraphs- 4 and 5 of this application, this Court is of the opinion that the present applicant was prevented by sufficient cause in preferring the connected appeal within time.
10. Accordingly, the delay is condoned.
11. IA stands disposed of.
12. Registry to register the connected appeal, if same is not defective and list for Admission showing the name of Mr. A. Hussain, learned counsel for the respondents/claimants in the cause list. In the meantime a copy of the appeal memo be served to Mr. A. Hussain, learned counsel.

**JUDGE**

**Comparing Assistant**