

GAHC010191532019



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

Case No. : I.A.(Civil)/4030/2019

MUSSTT. MANISHA BEGUM AND 2 ORS
W/O LT PAPU ALI, R/O VILL. BORMANIPUR, JAJORI, P.O. BORMANIPUR, P.S.
MIKIRBHETA, DIST. MORIGAON, ASSAM, PIN-782105.

2: MD. SAMED ALI
R/O VILL. BORMANIPUR
JAJORI
P.O. BORMANIPUR
P.S. MIKIRBHETA
DIST. MORIGAON
ASSAM
PIN-782105.

3: MUSTT. SALEHA BEGUM
(MOTHER OF THE DECEASED)
R/O VILL. BORMANIPUR
JAJORI
P.O. BORMANIPUR
P.S. MIKIRBHETA
DIST. MORIGAON
ASSAM
PIN-782105

VERSUS

UNITED INDIA INSURANCE CO. LTD AND ANR
DIVISIONAL MANAGER, ARUN PRAKASH MANION, FLOOR NO. 1,
BHANGAGARH, G.S. ROAD, GUWAHATI-781018, DIST. KAMRUP (M),
ASSAM. (INSURER OF VEHICLE NO. JH-12C-7586 TRUCK)

2:SRI PARAMJIT SINGH
S/O- LATE LAL SINGH
R/O- A.T. ROAD
KHUTIKATIA

P.O. AND P.S. NAGAON
DIST.- NAGAON
PIN- 782001
ASSAM. (OWNER OF VEHICLE NO. JH-12C-7586 (TRUCK))

Advocate for the Petitioner : MR. A BARUAH

Advocate for the Respondent : MS C BORAH

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 16.06.2023

Heard Mr. J.P.More, learned counsel for the appellant/ petitioner. Also heard Ms. M. Choudhury, learned counsel appearing for the respondent No. 1.

This application under Second Proviso to Section 173 (1) of M.V. Act, read with Section 5 of the Limitation Act, has been filed for condoning the delay of 310 days in preferring the connected appeal.

It is submitted by the learned counsel for the appellant that the ground of delay has been explained in paragraphs 5,6 and 7 of the petition.

The appellant came to know about the judgment and order passed on 02.07.2017 only in the month of September, 2017 when she visited her lawyer at Morigaon and it took 3/ 4 months her family members have received the awarded amount. She could not make any contact with her engaged counsel as she is living with her minor daughter and old parents and there is no any other person to look after her family. Thereafter, the applicant was also busy in renovation of their house which was damaged by storm. Further she was not aware of the procedure of law. She met her engaged counsel and he took some time to obtain certified copy of the judgment and order and thereafter the present appeal has been filed by her engaged counsel. There is no laches and negligence on the part of the applicant in not filing the appeal within the statutory period.

The learned counsel for the respondent submitted that the delay is not well explained in the petition and further in this case as the claimant has already received more than Rs. 13 lakhs from the awarded amount which is sufficient for renovation of the house etc. Accordingly, it is submitted that the grounds mentioned in the petition is not a plausible ground for condoning the delay of 310 days in filing the appeal. In this context, the learned counsel for the applicant submits that poverty is not the sole ground, the main ground is that the applicant is not aware about the provisions of law and the applicant was not advised by her engaged counsel.

Considering the submission of the learned counsel of both the parties and also perusing the grounds mentioned in the petition and also considering the fact that the applicant may not be aware about the provisions of the law, it is felt justified to allow the present petition.

Accordingly, the delay of 310 days in preferring the appeal is condoned.

With the above observation, the Interlocutory application stands disposed of. However, considering the

submission made by the learned counsel, the respondent No. 1 is exempted from paying interest to be accrued for the days of delay which is condoned.

Registry shall register the appeal and number the same and list for admission.

Registry shall reflect the name of the learned counsel for the parties at the time of listing the matter for admission.

List after 4 weeks.

JUDGE

Comparing Assistant