

GAHC010208692016



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

Case No. : I.A.(Civil)/1910/2016

PUNAKAN @ PHUKON BORO
S/O SRI KANTESWAR BORO, 1 NO. DONGABORI, GAYAN CHUBURI, P.O.
JAGIROAD, DIST. MORIGAON, ASSAM.

VERSUS

AFIYA KHATOON and 5 ORS,

2:RAHIMA KHATOON

3:SAGBIR HUSSAIN

4:ASIF IQBAL

CLAIMANT NO. 1 IS THE WIFE
CLAIMANT NO. 2 IS THE MOTHER AND CLAIMANT NO. 3 AND 4 ARE THE
MINOR BEING REPRESENTED BY CLAIMANT NO. 1 AND ALL ARE R/O
ALISINGA
P.S. JAGIROAD
DIST. MORIGAON
ASSAM.

5:M/S BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

CENTER POINT BUILDING
OPPOSITE BORA SERVICE STATION
ULUBARI
GUWAHATI-7

6:AJIT MALLIK

S/O SRI HIRENDRA MALLIK
BARPAK
P.S. MAYANG
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR.R KATHKATIA

Advocate for the Respondent : MR.A ACHARYAR-6

BEFORE
HONOURABLE MR. JUSTICE K. SEMA

ORDER

Date : 21-04-2023

Heard Ms. L Sarma, learned counsel on behalf of Mr. SK Goswami, learned counsel for the applicant and Mr. A Bhattacharyya, learned counsel for the opposite party no. 5. Also heard Mr. Nayan Barman, learned counsel for the opposite party no. 6.

2. This application has been filed under Section 5 of the Limitation Act, read with sub-section 1 of Section 173 of the Motor Vehicle Act, 1988 seeking the condonation of delay of 408 (four hundred and eight) days against the judgment and order dated 19.05.2015 passed by the learned Member, Motor Accident Claims Tribunal No. III, Kamrup (M) in MAC Case No. 469/2010 for filing the connected appeal.

3. Ms. L Sarmah, learned counsel for the applicant has taken this Court to paragraphs 4 to 10 of the application wherein the grounds explaining the delay have been cited.

4. Paragraphs 4 to 10 of the application is reproduced as under:

“4. That, after his death, MAC Case No. 469/10 has been filed by the claimants claiming compensation alleging vehicle of the petitioner as an offending vehicle. The Investigating Officer has made a collision with the claimant showing involvement of the petitioner’s vehicle as offending vehicle for the alleged accident.

5. That, after received of the notice from the Tribunal, the petitioner has informed the said fact to the Bajaj Allianz General Insurance Co. Ltd that his vehicle was not

involved in the alleged accident. The representative of the Bajaj Allianz General Insurance Co. Ltd has answered to the petitioner that they will take proper defence before the Tribunal to avoid the liability and on assurance being made, petitioner was in the impression that there will be no liability on the part of this petitioner appellant.

6. That, petitioner being the resident of remote village in Morigaon district for not having any legal procedure was on the impression that there is no question of doing anything on his part as per assurance given by the representative of the Bajaj Allianz General Insurance Co. Ltd.

7. That, suddenly petitioner has received a notice from the Bajaj Allianz General Insurance Co. Ltd demanding an amount of Rs 10,94,470/- and thereafter petitioner has discussed the matter with advocate and came to know that Bajaj Allianz Insurance Co. Ltd has not taken any defence to save the interest of the petitioner appellant but infect petitioner suspect that there may be collision of the claimant with the Bajaj Allianz General Insurance Co. Ltd has not taken any defence to save the interest of the petitioner appellant but infect petitioner suspect that there may be collision of the claimant with the Bajaj Allianz General Insurance Co, Ltd for benefit of the claimant.

8. That, besides this at the time of alleged accident vehicle of the petitioner Tata bearing No. AS-21/B-0564 was proceeding towards the residence of the petitioner after major repairing in a garage without any passenger on board. As such, there is no question of violation policy condition, but Bajaj Allianz General Insurance Co. Ltd take the plea of violation of policy condition for not having permit at the time of accident.

9. That, at the relevant time the vehicle was in Garage for a long period and same was not pied as a passenger carrying vehicle at the relevant period and as such there is no question of having permit in the said period. Vehicle has possesses a valid permit in all occasions when same was pied as a passenger carrying vehicle. As such, there is no question of violation of policy condition of policy condition as alleged.

10. That, petitioner being a laymen and judgment was not communicated to the petitioner till date and as a result petitioner could prefer appeal in time. Immediately after received of the notice from Bajaj Allianz General Insurance Co. Ltd dated 18.08.2016 petitioner applied for certified copy of the award and same was received on 16.09.2016 and immediately thereafter present appeal has been preferred by engaging advocate. As such, there is no international negligence or delay in preferring the connected appeal on the part of the petitioner."

5. Mr. A Bhattacharyya, learned counsel for the opposite party no. 5 has objected to the application for condonation by filing the affidavit-in-opposition and has taken this Court to paragraph 5 of the affidavit-in-opposition incorporating the grounds objecting the condonation application.

6. This Court has heard the learned counsel for the respective parties and has also perused the paragraphs 4 to 10 of the application as well as paragraph 5 of the affidavit-in-opposition filed by the respondent no. 5. On consideration of the case in its entirety, this Court is of the view that the applicant has been able to satisfactorily explain the delay of 408 (four hundred and eight) days in filing the appeal.

7. The delay of 408 (four hundred and eight) is accordingly condoned subject to payment of cost of Rs.2000/- (Rupees Two Thousand) within seven days, to be deposited in the Office of the Registrar General, Gauhati High Court, which shall be disbursed for the welfare of the employees of the Gauhati High Court (Principal Seat).

8. I.A. stands disposed of.

9. The Registry may take necessary steps for registration of the connected appeal on receipt of the said cost and to list the matter after two weeks.

JUDGE

Comparing Assistant