

GAHC030004982023



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

Case No. : I.A.(Civil)/111/2023

The New India Assurance Co. Ltd.
Through its Branch Manager, Aizawl Branch, Chanmari, Aizawl, Mizoram

VERSUS

Smt Lalnilawmi and 5 Ors.
W/o Lalnunsanga (L), Dawrpui, Aizawl, Mizoram

Advocate for the Petitioner : Mr Lalfakawma

Advocate for the Respondent :

Linked Case : MACApp./8/2023

The New India Assurance Co. Ltd

Chanmari
Aizawl
Mizoram

VERSUS

Smt Lalnilawmi and 5 Ors.
W/o Lalnunsanga (L) R/o Dawrpui
Aizawl
Mizoram

2:Sh Lallawmsanga
S/o Lalnunsanga (L)

Dawrpui
Aizawl
Mizoram

3:Sh Lalnunhlua
S/o Lalnunsanga (L)
Dawrpui
Aizawl
Mizoram

4:Smt Zodingliani
D/o Lalnunsanga (L)

Dawrpui
Aizawl
Mizoram

5:Sh R.Lalchhanhima
R/o Venghlui
Mamit District

6:Eleazer Remruatkima
S/o Lahnuna
R/o Dinthar
Mamit District

Advocate for the Petitioner : Mr Lalfakawma
Advocate for the Respondent : Mr. L.H. Lianhrima
Sr.Adv. for R1 - R4

**B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R**

08.12.2023

Heard Mr. Lalfakawma, learned counsel for the applicant along with Mr. L.H. Lianhrima, learned senior counsel for the respondent Nos. 1-4, none appeared for

respondent No.6 though A/D card duly signed by respondent No.6 is received. None appeared for respondent No.5 though notice is served through Dasti service. This court however, finds it fit to proceed and hear the matter since respondents No.5 and 6 are said to be proforma respondents in the MAC.Appeal.

2. The application filed under Order 41 rule 1 of the Code of Civil Procedure, 1908 read with section 5 of the Limitation Act, 1963 is for the condonation of a delay of 94 days as on 21.09.2023, in filing the MAC Appeal against the Judgment & Order dated 16.03.2023 passed by the learned Member-Cum-Presiding Officer, Motor Accident Claims Tribunal, in MACT Case No.44 of 2019.

3. Mr. Lalfakawma, learned counsel for the appellant submits that the delay of 94 days in filing the MAC Appeal is due to the fact that the Judgment & Order dated 16.03.2023 was forwarded to the Office of the applicant/appellant on 03.04.2023 along with the legal opinion of the dealing legal counsel, annexed as Annexure –I, the same was received by the office on 03.04.2023. However, the amount of compensation awarded in the Judgment& Order dated 16.03.2023 was Rs.74,73,484/- Rupees (Seventy four lakh seventy three thousand four hundred eighty four) only, along with an interest @ 7% p.a, which was beyond the statutory authority of the Bank Manager, Aizawl Branch. The applicant/appellant had to obtain instructions from the Divisional Office located at Silchar and Regional Office located at Guwahati. Since the communication was through the Indian Postal Service, it took considerable time to reach the said offices. Thereafter, the Original Office at Guwahati sent the file to Mr.

Raju Goswami, Gauhati High Court Advocate for his legal opinion.

4. Mr. Raju Goswami, Gauhati High Court, Advocate sent his legal opinion addressing the Chief Regional Manager, New India Assurance Company Limited on 23.06.2023 and the same was received on 28.06.2023. The copy of the legal opinion dated 23.06.2023 is annexed as Annexure-2. Thereafter, the applicant was intimated the approval for preferring the appeal vide letter dated 30.06.2023, the statutory deposit was furnished to the dealing advocate on 24.07.2023 and the dealing advocate was instructed to file an appeal against the Judgment & Order dated 16.03.2023 vide letter dated 24.07.2023. The dealing counsel thereafter applied for copies and took some time for drafting the memorandum of appeal which was filed on 21.09.2023 along with the connected the application, which resulted in the inadvertent delay of 94 days which was mainly due to interdepartmental correspondence and processing of the matter. The learned counsel submits that the delay was neither willful nor intentional and that no prejudice will be caused to the respondents if the delay is condoned.

5. Mr. L.H.Lianhrima, learned senior counsel for respondent Nos. 1-4 on the other hand submits that no sufficient cause for condoning inordinate delay of 94 days in filing the connection appeal petition has been made out. The learned senior counsel submits that the applicant/appellant knew about the impugned Judgment & Award dated 16.03.2023 passed in MACT Case No.44/2019 on the day Judgment & Order was passed as both the parties were properly represented by their respective counsels

before the claims tribunal. The applicant/appellant applied for a certified true copy of the impugned Judgment & Award only on 08.08.2023. The applicant wrote a letter to the counsel for filing an appeal only after 4(four) months had lapse vide their letter dated 24.07.2023. The learned counsel submits that no proper explanations with dates have been given as to why the applicant took more than 4 (four) months to give instructions to their counsels to file an appeal. The learned senior counsel also submits that, the general explanation that time was taken for the communication and sending of documents was through Indian Postal Service cannot be excepted, especially if sent through speed post which is usually prompt and reliable.

6. The learned senior counsel further submits that the legal opinion given by the learned dealing counsel for the applicant, in his letter dated 03.04.2023, which is annexed as annexure-1, had opined that the instant claim is a genuine claimed and as such, a fit case for honoring the judgment & award dated 16.03.2023 passed in MAC Case No. 44 of 2019 by disbursing the award amount at the earliest. The learned senior counsel further submits that on perusal of annexure-II, which is the legal opinion obtain from Raju Goswami, Advocate, Gauhati High Court dated 23.06.2023, it shows that though the advocate has relied on the case of **IffCO-Tokio GIC Ltd. Vs. Pearl Beverages, AIR 2021 SC 2277** and opined that there is a scope for an appeal on the issue of driving under the influence of alcohol, however, the learned advocate had also mentioned that 'the Company ought to have exhibited the policy to state that this is a policy as well as a violation of the Statute'. The learned sr. counsel

further submits that it may also be noted that such a plea of drunken driving was also never raised before the learned MACT court and for the above reasons, it is cleared that there is actually no case for filing an appeal against the Judgment & Order of the learned Member-Cum-Presiding Officer, MACT in MAC Case No. 44 of 2019 and the appeal has been filed only as dilatory steps, while the appellants are fully aware that there are no grounds for setting aside the impugned Judgment & Order dated 16.03.2023.

7. The learned senior counsel has relied on the following authorities: **In Union of India v. Tata Yodogawa Ltd., reported in 2015 9SCC 102** (para 5) where the Apex Court, did not condone a delay of 51 days and did not accept the explanation that the delay was due to interdepartmental correspondence and processing of the matter to enable the Department to file the connected appeal. The learned counsel submits that in **Basawaraj v. Land Acquisition Officer**, reported in 2013 14 SCC 81, the Apex Court held that unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay and has also cited the case **ICICI Lombard General Insurance Co. Ltd. vs. Rupnath Brahma Choudhury & Anr** reported in 2017 2GLT 487 para 6, where a delay of 99 days due to the movement of files was not condoned.

8. I have heard and considered the submissions made by both the parties.

9. It is seen that though the learned counsel for the appellant has given an explanation that the Judgment & Order dated 16.03.2023 was forwarded to the Office

of the applicant/appellant on 03.04.2023 along with the legal opinion of the dealing legal counsel, and the same was received by the office on 03.04.2023. The applicant/appellant had to obtain instructions from the Divisional Office located at Silchar and Regional Office located at Guwahati. Since the communication was through the Indian Postal Service, it took considerable time to reach the said offices. However, this court finds that no dates has been given as to on which date Judgment & Order dated 16.03.2023 along with the legal opinion of the dealing legal counsel was forwarded to the Office of the to the Silchar Divisional office or on what date was it received by the Silchar Office. No date is mentioned when it was sent to the Guwahati Regional Office and thereafter on which date was it received by the Guwahati office. This court finds that one cannot have a guessing game as to how long the communication takes through the Indian postal Service. Further no date is given as to when the Advocate at Guahati High court had received the request to give his legal opinion which he gave on 23.06.2023 There is no cogent explanation as to what actually transpired when the Judgment & Order dated 16.03.2023 along with the legal opinion of the dealing legal counsel was received at the offices of the appellant at Silchar and Guwahati.

10. Further, it is noted that the leading counsel for the appellant had, in his letter dated 03.04.2023, opined that the instant claim is a genuine claimed and as such, a fit case for honoring the judgment & award dated 16.03.2023 passed in MAC Case No. 44 of 2019 by disbursing the award amount at the earliest. It is also noted that, the

legal opinion of the Advocate at Guahati High court prima facie does not indicate that there are good and sufficient grounds for filling an appeal against the Judgment and award dated 16.03.2023, however this court does not wish to elaborate on this point any further.

The Apex Court in N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123 had held that

“The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered.”

It is also noted that the Apex Court in **Union of India v. Tata Yodogawa Ltd(supra)** had not condoned the delay of 52 days due to interdepartmental correspondence and processing of the matter to enable the Department to file the connected appeal unless such a delay was satisfactorily explained

11. Thus in view of the above cite decisions of the Apex Court and findings, this

court finds that the applicant has failed to satisfactory explain the reason for the delay of 94 days in filing the MAC Appeal against the Judgment & Award dated 16.03.2023 passed by the learned Member-Cum-Presiding Officer, Motor Accident Claims Tribunal, in MACT Case No.44 of 2019.

12. Accordingly I.A.(C) No.111 of 2023 stands dismissed and disposed of along with the connected in MAC. App. No. 8 of 2023.

JUDGE

Comparing Assistant