

GAHC020000052021



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

Case No. : I.A.(Civil)/3/2021

THE NATIONAL INSURANCE CO. LTD.
REPRESENTED BY THE SENIOR DIVISIONAL MANAGER,
DIVISIONAL OFFICE, DHOBINULLAH, DIMAPUR, P.O DIMAPUR

VERSUS

NANDA KANAI PEGU AND 2 ORS
S/O KHRISHNA KANTA PEGU,
C/O C. APOK AO, MOKOKCHUNG BAZAR AREA, MARIANI ROAD,
MOKOKCHUNG

2:BAKUL GAYAN
S/O LATE RANGAI GAYAN

OWNER OF VEHICLE NO. AS07/ AC- 3878 TATA MAGIC
VILLAGE- KUTUMAGURI
P.O KHAGA
DIST LAKHIMPUR
ASSAM

3:BIJAY NAGATE
S/O CHANDRASWAR NAGATE
DRIVER OF VEHICLE NO. AS07/ AC- 3878 TATA MAGIC
VILLAGE- BORGAYA
KHAGARI
P.O BORGAYA KHAGARI
DIST. LAKHIMPUR
ASSA M

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For Applicant : Mr. Imti Imsong, Advocate
For respondent(s) : Mr. B. N. Sarmah, Advocate
(For Respondent no.1)
Date of hearing : 09.05.2023
Date of judgment : 11.05.2023

JUDGMENT AND ORDER (CAV)

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. Imti Imsong, learned counsel for the applicant. Also heard Mr. B. N. Sarmah, learned counsel for the respondent.
- 2.** This application, under section 5 of the Limitation Act, 1963 read with Section 173 of the Motor Vehicles Act, 1988 has been filed by the applicant Insurance Company praying for condonation of delay of 293 days in preferring the appeal against Judgment and Award dated 18.11.2019 passed by learned Member, Motor Accident Claims Tribunal, Mokokchung, in MAC Case No. 29/2018, awarding an amount of Rs. 9,37,600/- to the claimant (*respondent no. 1 herein*) with an interest at the rate of 9% per annum from the date of filing of the claim petition i.e. 24.07.2018, till realization of the same.
- 3.** The applicant herein is a body corporate and registered under Companies Act, 1956, having its registered office at 3 Middleton Street, Post Box - 9229, Kolkota-71 and it carries on various insurance businesses all over India through its various regional offices including the North East Regional Office situated at G.S. Road, Guwahati and one of its Divisional Office situated at Dhobinullah, Dimapur.

4. The respondent no. 1 is the claimant in MAC Case No. 29/2018, who had sustained injuries in a vehicular accident which took place on 06.11.2017 in front of Sonapur High School, Laluk, under the jurisdiction of Laluk Police Station in the District of Lakhimpur, Assam. The respondent nos. 2 & 3 are the owner and the driver, respectively, of the vehicle bearing registration no. AS 07 AC 3878 (Tata Magic), which was involved in the said accident. The respondent no. 1 had filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 before Motor Accident Claims Tribunal, Mokokchung, which was registered as MAC Case No. 29/2018, *inter-alia*, stating that, on 06.01.2017, while he was going to North Lakhimpur from Gohpur along with another person on a motor bike bearing registration no. AS 07 K 6645, it was knocked down by a vehicle (Tata Winger) bearing registration no. AS 07 AC 3878 and as a result of which respondent no. 1 sustained injuries.

5. The present applicant contested the said case by filing written statement. However, after completion of the inquiry, learned Member, Motor Accident Claims Tribunal, Mokokchung awarded, by Judgment and Award dated 18.11.2019, compensation to the respondent no.1, as stated herein before. The present applicant, being aggrieved and dissatisfied with the aforesaid judgment and award passed by learned Member, Motor Accident Claims Tribunal, Mokokchung, preferred an appeal under Section 173 of the Motor Vehicles Act, 1988 before this Court on 04.01.2021. However, as stated by the applicant, there has been a delay, of 293 days, in filing the said appeal and the present interlocutory application has been filed for condoning the said delay.

6. The applicant has explained the grounds of delay, in preferring the connected Motor Accident Claims Appeal, in paragraph no. 10, 11, 12 & 13 of the petition under Section 5 of the Limitation Act, 1963.

7. Mr. Imti Imsong, learned counsel for the applicant has submitted that the impugned judgment dated 18.11.2019, passed in MAC Case No. 29/2018 was received by the Jorhat Divisional Office of the applicant on 12.12.2019, along with the opinion from its empanelled counsel. It is further submitted that after receiving the same, the Jorhat Divisional Office of the applicant processed the record and had correspondences with Secundrabad Division of the applicant as the said Division had issued the insurance policy to the owner of the vehicle involved in the accident. It is further submitted by Mr. Imsong, learned counsel for the applicant that after observation and compliance of the administrative procedure and correspondences the impugned judgment and order along with the relevant records were sent to the Regional Office at Guwahati by the Jorhat Divisional Office by Memo No. 200200/Jorhat DO/Legal/20/360 dated 13.01.2020 for further advice. The Regional Office of the applicant at Guwahati sought further legal opinion from their empanelled counsel and thereafter, the matter was put to competent authority for necessary decision. Mr. Imsong, learned counsel for the applicant has further submitted that the competent authority of applicant's company after considering the materials on record ultimately arrived at a decision for preferring appeal against the impugned judgment and award. He has further submitted that while observing the administrative procedures and obtaining further legal opinion, National lockdown was declared by the

Government of India, on 23.03.2020, due to COVID-19 pandemic and the functioning in the office of Regional Office of the applicant came to a grinding halt. Mr. Imsong, learned counsel for the applicant has further submitted that the Regional Office had sent back the records to the applicant's Divisional Office at Dimapur with the recommendation of filing of appeal before this Court, which was received by the Regional Office on 10.11.2020 and thereafter, the applicant started processing the matter for filing the appeal including requisition for sanction of statutory deposit of Rs. 25,000/-. However, as per applicant's company system of motor claim transaction, the Dimapur Division Office comes under Chennai accounts hub and for which all transactions regarding motor claims has to be done from Chennai and the cheque for statutory deposit of Rs. 25,000/- sent to the applicant by the Chennai account hub was received only on 09.12.2020.

Mr. Imsong, learned counsel for the applicant, has further submitted that the appellant could not prefer the appeal within the limitation period in view of circumstances, which were beyond the control of the applicant. According to Mr. Imsong, learned counsel for the applicant, there was a delay of 293 days (excluding the winter holidays of 10 days) in preferring the appeal in the instant case. He also submits that the delay has been properly explained by the applicant and same deserve to be condoned.

8. On the other hand, Mr. B. N. Sarmah, learned counsel for the respondent no.1 has submitted that there has been actually a delay of 412 days in preferring the appeal by the applicant, in the instant case and the applicant has miserably failed to satisfactorily explain that there was any sufficient cause, which prevented the applicant in preferring the appeal

within the period of limitation prescribed by Section 173 (1) of the Motor Vehicle Act, 1988.

9. Mr. Sarmah, learned counsel for respondent no. 1, has submitted that the present applicant had contested the MAC Case No. 29/2018 before learned Motor Accident Claims Tribunal, Mokokchung and was aware about the impugned judgment and award dated 18.11.2019. He has also submitted that the applicant consumed unexplained time in preferring the appeal against impugned judgment and award due to administrative lethargy, deliberate inaction and gross negligence in delaying the filing of appeal against the impugned judgment and award. Mr. Sarmah, learned counsel for the respondent no.1, also submitted that in-spite of knowing the period of limitation prescribed by law, the Chennai account hub took more than one month for issuing the cheque of small amount of Rs. 25,000/-. It is also submitted that the delay caused for movement of concerned file from one table to another table and for taking advice from various counsel; at different levels may not be regarded as a sufficient cause for condoning the delay.

10. Mr. B. N. Sarmah, learned counsel for the respondent no.1, has also cited following rulings in support of the submissions made by him -

(a) ***Sitaram Ramcharan Vs. M.N. Nagarshana***, reported in **(1960) 1 SCR 875**, wherein Hon'ble Supreme Court of India has observed as follows:

“.....It cannot be disputed that in dealing with the question of condoning delay under Section 5 of the Limitation Act, the party has to satisfy the Court that the sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has already been understood to mean that the explanation has to cover the whole of the period of

delay.....”

(b) ***Ikrar Ahmad Vs. Shiv Devi***, reported in **2018 SCC OnLine All 5950**, wherein Hon’ble High Court of Allahabad referred to a judgment of Hon’ble Apex Court in ***Mani Devraj Shah Vs. Municipal Corporation of Brihan***, reported in **2012 5 SCC 157** wherein it was observed as follows:

“23. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

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.

11. Section 173 of the Motor Vehicles Act, 1988, provides as follows:

“173. Appeals.—

(1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court: Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court: Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.”

12. Thus, the limitation period for filing an appeal under Section 173 of the Motor Vehicles Act, 1988 is 90(ninety) days from the date of impugned award. On perusal of the impugned judgment, it appears that in the instant case, the impugned judgment was delivered on 18.11.2019 and the connected MAC Appeal (MAC Appeal No. 2/2021) was filed on 04.01.2021. Thus, in the instant case, the appeal was filed after 420 days of the impugned judgment and apparently there has been a delay of 330

days in filing the appeal in instant case. The applicant has to explain the entire period of delay that it was prevented by sufficient cause in preferring the appeal within the period of limitation.

13. In this case, though the applicant has also taken the plea of National Lockdown due to COVID-19 as one of the cause for delay, however, it is pertinent to mention that the National Lockdown started on 23.03.2020, whereas, the period of limitation for preferring the appeal in the instant case expired much before that date, i.e., on 16.02.2020. The National Lockdown started only after 36 days after lapse of the prescribed period of limitation in the instant case and the applicant has not explained satisfactory what prevented it to approach the Court before imposition of National Lockdown. It is an admitted fact that applicant is in the business of insurance throughout the country, and as such, it would be wrong to presume that it was not aware about the period of limitation prescribed under Section 173 of the Motor Vehicles Act, 1988, for preferring an appeal against an award passed by a Claims Tribunal. In the instant case, the period of limitation has been prescribed by a statute of Parliament, i.e., Motor Vehicles Act, 1988. The applicant which is an Insurance Company and which deal with in business of insurance is supposed to know the limitation prescribed for preferring an appeal against award of a Motor Claims Tribunal in motor accident claims case. It is also supposed to devise the internal procedure involved for taking a decision for preferring an appeal in such a manner, so that in case of a decision to prefer an appeal is taken, the same may be preferred within the period of limitation prescribed by law. It cannot take the statutory provision of limitation for granted and give a total go by to the period of limitation so prescribed by

the statute, more so, considering the fact that the Motor Vehicles Act, 1988 is a beneficial and welfare legislation.

In the instant case, the submission of learned counsel for applicant that for the time consumed in following the administrative procedure and for correspondences between various Regional/Divisional Offices of the applicant company, the appeal could not be preferred within the prescribed time of limitation, does not appears to be a sufficient cause to condone the delay. further, the submission of the learned counsel for the appellant that the delay caused was in view of circumstances, which were beyond the control of the applicant is also not acceptable as the internal procedures of the applicant company for taking a decision for preferring an appeal, under Section 173 of the Motor Vehicles Act, 1988 has been devised by the applicant company itself knowing fully well the period of limitation prescribed by the statute. When the applicant company has itself devised its own internal procedure, it cannot be said that same was beyond the control of the applicant. Considering the period of limitation, which was made available statutorily, the internal procedure of the applicant company ought to have been accordingly devised, so as to enable it to process a case and file an appeal within the period of limitation prescribed by statute.

14. Having regard to the decisions of Apex Court/High Courts referred herein above, as well as for the reasons mentioned in the forgoing paragraphs, this Court is of the considered opinion that the applicant has failed to show sufficient cause for condoning the delay in preferring the appeal in the instant case.

15. Accordingly, this case is dismissed. The connected appeal also fails and is dismissed being barred by limitation prescribed under Section 173(1) of the Motor Vehicles Act, 1988.

JUDGE

Comparing Assistant