

**HIGH COURT OF TRIPURA
AGARTALA**

**I.A. No.01/2024 in MAC.APP. No.26/2024
MAC.APP. No.26/2024
I.A. No.02/2024 in MAC.APP. No.26/2024**

Shri Ashish Malakar

..... Applicant(s).

V E R S U S

Shri Binoy Lodh & another

.....Respondent(s).

For Applicant(s) : Mr. Koushik Datta, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

25/04/2024

Heard Mr. Koushik Datta, learned counsel for the appellant/
applicant.

The claimant is the applicant/appellant seeking enhancement of the award dated 29.03.2022 totalling Rs.5,30,000/- rendered under different heads including cost of medical treatment of Rs.4,00,000/- by learned Member, Motor Accident Claims Tribunal, Tribunal No.2, West Tripura, Agartala in T.S.(MAC) No.13 of 2019. Though the award was rendered on 29.03.2022, the appeal has been preferred after delay of 633 days on 28.03.2024.

Learned counsel for the applicant/appellant has taken this Court to the averments made in the delay condonation application. It is stated therein that after delivery of the award, the claimant met with the engaged counsel for discussion on 12.04.2022. The engaged counsel took time to go through the case record and as she was pre-occupied with other briefs, she suggested the applicant to meet with her in the third week of May, 2022. After obtaining the appointment from the engaged counsel, he met her on 26.05.2022 which was a

Government holiday of Ker Puja. After a long discussion, it was opined that an appeal could be preferred against the judgment and award dated 29.03.2022 but the engaged counsel was pre-occupied with other briefs and asked the appellant to meet her in the last week of June, 2022. Meanwhile, the appellant suddenly fell ill and was completely bed-ridden for a period of two months. After recovery, he met the engaged counsel on 14.08.2022 in her chamber. It was found that the case file was misplaced in her chamber and not able to be traced. After waiting for considerable period in the month of December, 2022 again he visited her chamber to know whether the case file was recovered or not but even after thorough search it could not be recovered. Petitioner/appellant having no consequences of limitation for preferring appeal did not visit the chamber of the engaged counsel. Suddenly on 19.08.2023 one of the clients of the engaged counsel met with him and informed that the case record pertaining to the present case was given to him by the engaged counsel along with the case record. Then it was handed over to the appellant/petitioner on 24.08.2023. He was informed to visit any other advocate practicing in the High Court of Tripura to prefer an appeal. Thereafter, he approached the learned counsel on telephone and sought for an appointment. He met the learned counsel Mr. K. Datta on 09.09.2023 in his chamber and discussed about whether there are good grounds to prefer appeal. However, the engaged counsel was pre-occupied and asked him to meet him in October, 2023. Petitioner/applicant met with the engaged counsel on 02.10.2023 in his chamber and paid him Rs.10,000/- towards advocate fees and other ancillary legal expenses. Thereafter, he met with the engaged counsel on 15.02.2024 and handed over Rs.10,000/- towards legal expenditure for preferring appeal. Thereafter, the

appeal was preferred and filed on 17.03.2024/28.03.2024 with a delay condonation application.

Learned counsel for the applicant submits that the delay has been properly explained. The applicant/claimant would suffer irreparably if the appeal is not heard on merits.

Upon hearing learned counsel for the applicant and going through the averments made in the delay condonation application, it appears that the applicant/appellant has not been diligent in prosecuting the appeal which is barred by delay for more than two years. The period of limitation prescribed under the M.V. Act is 90 days for preferring such an appeal. As such, this Court is satisfied that no sufficient cause has been placed for preferring an appeal after such delay. Accordingly, the delay condonation petition [I.A. No.01 of 2024] stands dismissed.

Consequently, the MAC.APP. No.26 of 2024 and I.A. No.02 of 2024 for adducing additional evidence also stand dismissed.

(APARESH KUMAR SINGH), CJ

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