

**HIGH COURT OF TRIPURA
AGARTALA**

IA No.01/2023 in MAC App. No.91 of 2023

Smt. Nilima Das

.....Applicant/Appellant(s);

Versus

Shri Parimal Banik & others

.....Respondent(s)

For Applicant/Appellant(s) : Mr. N. Majumder, Advocate.

For Respondent(s) : Mrs. S. Deb (Gupta), Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

16/02/2024

Heard Mr. N. Majumder, learned counsel for the applicant/appellant and Mrs. S. Deb (Gupta), learned counsel for the respondent No.3-Insurance Company on the prayer for condonation of delay of 2323 days.

2. The claimant is the applicant/appellant who seeks enhancement of compensation of Rs.6,74,172/- along with interest @ 9% per annum from 14.05.2012 till its realization awarded by the learned Member, Motor Accidents Claim Tribunal, West Tripura, Agartala in T.S. (MAC) 214/2012 vide impugned award dated 18.02.2015 in an application under Section 166 of the Motor Vehicles Act, 1988.

3. The appeal suffers from a delay of 2323 days, for condonation of which, IA No.01/2023 has been filed. The period of limitation for preferring such an appeal is 90 days. Applicant has discounted the period of COVID delays between 15.03.2020 till 28.02.2022 in view of the order of the Apex Court in Suo Motu Writ Petition (C) No.03/2020. The applicant has, at para 5 of the interlocutory application, made the following statements to explain the delay:

“5. That, the Claimant-petitioner after the said Judgment and award was under treatment and because of the head injury and Operation at Rabindranath Tagore International Institute of Cardiac Science (RTIICS) at Mukundapur, Kolkata after the Road Traffic Accident (RTA) she was suffering from several complications of treatment of head, Nerves and due to the said accident she lost her memory and was could not look after her family. In the aforesaid circumstances the other family members was also very much shocked. Moreover for the purpose of treatment huge money was spent to revive her health and to survival. Inmates of the family had arrange the money from various sources and from the relatives. The family members of the appellant petitioner in the circumstances had to take shelter to the relatives house, in the said circumstances the appellant petitioner could not even know whether appeal could be preferred or not. That apart from that the appellant – petitioner could not also decide as to whether any appeal could be preferred against the judgment and award passed by the Ld. Motor Accident Claims Tribunal, West Tripura, Agartala. The appellant petitioner was suffering from several ailments and therefore, the petitioner could not decide whether the appeal would be preferred or not. That apart, the petitioner was suffering from shocking of such road traffic accident and naturally she was not in a position to re think of her case whether any appeal would be preferred or not. With the passage of time the appellant petitioner considering her helplessness and future, thought to prefer appeal and subsequently, contacted with the present appointed lawyer/advocate in this regard and on the advice of the appointed advocate, the appellant petitioners however, decided to prefer appeal.”

The statements made in this paragraph do not refer to any period or date during which she had undergone treatment at Kolkata or annexed any treatment papers in support thereof. She also claims to have loss of memory but surprisingly no prescription, investigation report or certificate of any specialized doctor, under whom she was treated for these symptoms, have been annexed. Mere averments on the part of the applicant that she suffered severe complications of treatment of head, nerves and lost her memory would not justify such a huge delay of 2323 days in approaching this Court in appeal even discounting the period of COVID delays.

4. Mr. N. Majumder, learned counsel for the applicant, has placed reliance upon a decision of the Apex Court in the case of *Sandhya Rani Debbarma and Others v. National Insurance Company Limited and Another* reported in (2016) 16 SCC 206 wherein, a huge delay of 2824 days in filing a

special leave petition against the judgment of the High Court of Tripura in WP(C) No.113/2006 was condoned.

5. However, the bare facts of the said case taken note of in the cited judgment indicates that the writ petitioner had preferred an appeal before the Division Bench of the High Court which came to be dismissed as not maintainable on 22.08.2013. Thereafter, he filed an SLP challenging it. Vide order dated 05.05.2014, the Apex Court directed the appellants to amend the special leave petition and impugn the judgment and order of the learned Single Judge as well. Having regard to that fact that the delay was caused only on account of the appellants pursuing the remedy of filing a writ appeal before the Division Bench of the High Court, as well as the fact that claim was made under Section 166 of the Motor Vehicles Act, 1988, which is a beneficial legislation, delay in filing the special leave petition was condoned. The facts of the present case are, therefore, completely distinguishable from the case of *Sandhya Rani Debbarma* (supra) relied upon by learned counsel for the applicant.

6. Mrs. S. Deb (Gupta), learned counsel for the respondent No.3- insurance company, has also strongly objected to the prayer for condonation of delay and submitted that there is no explanation worthwhile in the application seeking condonation of delay. Moreover, the statements are bland and not supported by any documents to substantiate that the applicant was undergoing treatment for such a long period. It is submitted that such inordinate unexplained delay should not be condoned as it may encourage non-diligent

litigants to invoke the jurisdiction of this Court without any sufficient cause or explanation.

7. Upon consideration of rival submission of the parties and the facts noted above, this Court is of the view that applicant has failed to show any semblance of explanation to justify the delay of 2323 days in approaching this Court in the present appeal. As such, delay cannot be condoned.

8. IA No.01/2023 stands dismissed. Consequently the appeal [MAC App. No.91/2023] also stands dismissed.

9. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ