

GAHC010032232014



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

Case No. : MC/995/2014

SMTI LALITA DEVI AGARWAL and 5 ORS,

2: MISS JYOTI AGARWAL

3: MISS NEHA AGARWAL

4: MASTER SUBHAM AGARWAL

5: RATANLAL AGARWAL

S/O LATE LAHARI MAL AGARWAL

6: SMTI OMA AGARWAL

W/O SRI RATANLAL AGARWAL
PETITIONER NO. 1 IS THE WIDOW
NO. 2 AND 3 ARE DAUGHTERS NO 4 IS SON
NO. 5 IS THE FATHER AND NO. 6 IS THE MOTHER OF LATE
NIRANJAN AGARWAL
ALL ARE PERMANENT RESIDENTS OF ILL. BONDKALA
DIST. BHIWANI
HARYAN

VERSUS

THE NEW INDIA ASSURANCE CO. LTD. and 4 ORS,
GOPAL MUKHERJEE ROAD, KOSSIPUR, P.O. KOLKATA, WEST
BENGAL, REPRESENTED BY ITS REGIONAL MANAGER, HAVING
ITS N.E. REGIONAL OFFICE, G.S. ROAD, BHANGAGARH, P.O.

GUWAHATI-5, DIST. KAMRUP M, ASSAM.

5:UNITED INDIA INSURANCE CO. LTD.

A.T. ROAD
HAIBORGAON
P.O. and DIST. NAGAON
ASSAM

Advocate for the Petitioner : MRJ C GAUR

Advocate for the Respondent : MR.C SHARMA

Linked Case : I.A.(Civil)/712/2020

SMTI LALITA DEVI AGARWAL and 5 ORS

W/O SRI RATANLAL AGARWAL
W/O LATE NIRANJAN AGARWAL
PERMANENT R/O VILL. BONDKALA
DIST. BHIWANI
HARYANA

2: MISS JYOTI AGARWAL

3: MISS NEHA AGARWAL

4: MASTER SUBHAM AGARWAL

5: RATANLAL AGARWAL

S/O LATE LAHARI MAL AGARWAL

6: SMTI OMA AGARWAL

W/O SRI RATANLAL AGARWAL
PETITIONER NO. 1 IS THE WIDOW
NO. 2 AND 3 ARE DAUGHTERS NO 4 IS SON
NO. 5 IS THE FATHER AND NO. 6 IS THE MOTHER OF LATE
NIRANJAN AGARWAL

ALL ARE PERMANENT RESIDENTS OF ILL. BONDKALA
DIST. BHIWANI
HARYANA
VERSUS

THE NEW INDIA ASSURANCE CO. LTD. and 4 ORS

GOPAL MUKHERJEE ROAD
KOSSIPUR
P.O. KOLKATA
WEST BENGAL
REPRESENTED BY ITS REGIONAL MANAGER
HAVING ITS N.E. REGIONAL OFFICE G.S. ROAD
BHANGAGARH
P.O. GUWAHATI-5
DIST. KAMRUP (M)
ASSAM.

2:MUNINDRA KUMAR

S/O LATE SUKHDEO LAL
GOPAL MUKHERJEE ROAD
KOSSIPUR
P.O. KOLKATA
WEST BENGAL

3:SHAMBHU PRASAD
S/O LATE SUKHDEO LAL
GOPAL MUKHERJEE ROAD
KOSSIPUR
P.O. KOLKATA
WEST BENGAL

4:SK. HARJAL ALI

R/O ITACHI
NATUN BAZAR
P.O. and DIST. NAGAON
ASSAM.

5:UNITED INDIA INSURANCE CO. LTD.

A.T. ROAD
HAIBORGAON
P.O. and DIST. NAGAON
ASSAM.

Advocate for : MR J C GAUR
Advocate for : MR. K K BHATTA appearing for THE NEW INDIA
ASSURANCE CO. LTD. and 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 22-03-202

Heard Mr. N. Karanwal, learned counsel for the applicant. I have also heard Mr. M. Talukdar, learned counsel appearing on behalf of Mr. K.K. Bhatta, learned counsel for the respondent No.1 and Ms. M. Choudhury, learned counsel for respondent No.5.

2. This is an application under section 5 of the Limitation Act read with section 173 (1) of the Motor Vehicles Act, 1988 for condonation of delay of 1541 days in filing the connected appeal.

3. The fact leading to the filing of this petition is that the petitioners/claimants filed claim application before the learned Addl. District and Sessions Judge FTC cum Member, MACT, Guwahati Kamrup under section 166 of the MV Act seeking compensation for the death of their husband/father late Niranjana Agarwal who died due to the road traffic accident occurred on 22.7.2001 at about 6.20 PM near Bengalikuchi under Rangiya Polica Station, involving motor vehicle bearing registration No.AS-05-7706 (scooter) and OSC-7041 (truck) coming in a very high speed from the opposite direction. The deceased sustained grievous injuries and was immediately taken to Rangia hospital and later on he was referred to Gauhati Medical College Hospital where he was declared brought dead. The deceased died leaving behind him the claimants wife and five minor children.

He was aged about 30 years and was working as Manager in a private firm at the time of his death.

4. The case was initially contested by the opposite party. But thereafter they left and did not participate in the proceeding. However, at the last stage of argument, they again appeared and participate in the proceeding and produced witness and thereby prolonged the trial.

5. It is submitted that after the of the deceased the claimants had no other source of income. They also did not receive any compensation out of the claim petition including the interim award no fault liability. And during the pendency of the claim petition, having exhausted all their savings and other valuable items and having found no any other alternative to support their livelihood at Guwahati, the claimants were compelled to leave Guwahati. The claimant left Guwahati and shifted to their native place in Bhiwani village Bondkala district Haryana on 12.1.2008. At the time of leaving Guwahat, the claimant did not even inform their advocate appearing in the claim petition in the Tribunal. And during the absence of the claimants, the learned Tribunal concluded the trial and passed the impugned judgment and order dated 10.7.2009. The learned Tribunal held the opposite party No.2, the owner of the truck bearing registration No.OSC-7041 liable to pay the compensation. And directed to pay the compensation of Rs.5,46,500 to the claimants within a period of 60 days.

6. It is further submitted that the Advocate of the claimants had applied for certified copy of the judgment and award on 22.7.2009

and obtained the copy on 14.8.2009. But as the claimants were not available having left Guwahati on 12.1.2008, the counsel could not intimate the claimants about the judgment and award. And without any instruction from the claimants, the counsel could not take any steps on the judgment and award during the said period. However, the claimant No.1 all of a sudden contacted the Advocate Shri J.C. Gaur on 18.1.2014 when the claimant came to Guwahati in connection with the marriage of her relative. Only thereafter, the claimant enquired about her claim case. On being intimated about the judgment and award, she instructed the Advocate to file appeal against the impugned judgment and award. Thus, in the process there has been a delay of 1541 days in filing the connected appeal.

7. It is further submitted that the claimant No.1/applicant is an illiterate villager. She left Guwahati along with her five minor children for Haryana as after the death of her husband they were in helpless condition being left in penury having no other earning source. The circumstances under which they had to undergo after the sudden death of their husband/father was beyond their control. As such, the delay has been caused which was not intentional. Hence, prays for condonation of the delay of 1541 days in filing the connected appeal and admit the appeal for hearing and dispose the same on merit.

8. It is also submitted that immediately after being instructed by the claimant No.1, the Advocate took steps for filing the appeal and as such there is no laches and negligence on the part of the petitioner in pursuing the case. And unless the delay is condoned, the claimants will suffer substantial loss and injury affecting their

livelihood. Therefore, the delay of 1541 days in filing the connected appeal may be condoned for the interest of justice.

9. The opposite party has filed objection and stated that there has been a considerable long delay in filing the appeal and the delay was caused due to the laches and deliberate negligence on the part of the claimants. Therefore, the same cannot be considered and prays for dismissal of the application.

10. The petitioner has explained the cause of delay in filing the connected appeal in para 2,3 and 4 of the petition. And I have perused the same. I have also heard both the learned counsel for the parties and submissions made by the parties have duly been considered.

11. From the above explanation given in paragraphs 2,3, and 4 and the submission made by the learned counsel for the claimants/applicants, it appears that the delay of 1541 days has occurred because after death of the deceased, the family consist of the claimant No.1 and her five minor children had left Guwahati as they did not have sufficient means to survive for their livelihood at Guwahati. It also appears that after they left Guwahati, they lost contact with advocate and could not manage to visit Guwahati.

12. Considering the detail explanations made regarding the cause of delay in filling connected appeal and having regards to the facts and circumstances of the case, this Court is of the considered opinion that the application for condonation of delay may be allowed subject to the following conditions:

- i. That the applicant/claimants shall pay Rs.5,000/- as cost to the opposite party Insurance Company;
- ii. That the applicants/claimants shall not claim any interest for the period from the date of judgment and order that is for the period w.e.f. 10.7.2009 to till today i.e.,22.03.2024.

13. With the observation made above, this application is allowed and disposed of.

14. Let the appeal be registered and list for admission after ensuring that the applicants/claimants has deposited the amount mentioned above.

JUDGE

Comparing Assistant