

GAHC010100442024



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

Case No. : I.A.(Civil)/1510/2024

NEW INDIA ASSURANCE COMPANY LIMITED
A PUBLIC SECTOR UNDERTAKING COMPANY, REGISTERED AND
INCORPORATED UNDER THE COMPANIES ACT, 1956, HAVING ITS
REGISTERED OFFICE AT 87 M.G. ROAD, FORT MUMBAI-400001 WITH ONE
OF ITS REGIONAL OFFICE AT STAR CITY COMPLEX, 5TH FLOOR, LACHIT
NAGAR, G.S. ROAD, ULUBARI, GUWAHATI-781007, REP. BY ITS REGIONAL
MANAGER, GUWAHATI, ASSAM.

VERSUS

ASHUTOSH DAS AND 2 ORS.
S/O LATE ARADHAN DAS,
VILL.- SHIDUBI, PT., P.O.- SHILDUBI, P.S.- SILCHAR, DIST.- CACHAR,
ASSAM, PIN- 785612.

1.2: BHANUMATI DAS
W/O LATE ASHUTOAH DAS

VILL.- SHIDUBI
PT.
P.O.- SHILDUBI
P.S.- SILCHAR
DIST.- CACHAR
ASSAM
PIN- 785612.

2: RAJIM UDDIN LASKAR
S/O LATE MOHIB ALI LASKAR

VILL.- KHULICHERRA
P.O. AND P.S.- KHULICHERRA
P.O. AND P.S.- JAMALPUR

DIST.- CACHAR
ASSAM
PIN- 788120.

3:ABUL HUSSAIN LASKAR
S/O ABDUL SAHID LASKAR

VILL.- KACHUDARAM
PT- 1
P.O. AND P.S.- KACHUDARAM
DIST.- CACHAR
ASSAM
PIN- 799119

Advocate for the Petitioner : MR. R C PAUL,

Advocate for the Respondent : ,

Linked Case :

NEW INDIA ASSURANCE COMPANY LTD

VERSUS

ASHUTOSH DAS AND 2 OSR

Advocate for : MR. R C PAUL

Advocate for : appearing for ASHUTOSH DAS AND 2 OSR

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 28.08.2024

Heard Mr. A. R. Das, learned counsel for the applicant.

Though office note dated 09.08.2024 indicates that the service taken by usual process in respect of respondent nos. 1 (a), 2 and 3 has been duly served, none appears today when the matter was

called.

This is an application under Section 5 of the Limitation Act, 1963 read with Section 173(1) proviso of the Motor Vehicle Act, 1988 for condoning the delay of 56 days in filing the Appeal against the impugned Judgment and Award dated 22.12.2023 passed by the MACT, Cachar, Silchar in MAC Case No. 602/2020, whereby an amount of Rs. 29,35,561/- was awarded in favour of the claimant/respondent.

It appears that the respondents/claimants no. 1 (a) and 1 (b) has filed claim petition before the MACT at Silchar, Cachar claiming compensation for the death of their son i.e. Samjit Das in road traffic accident on 09.02.2020 while he was riding his Motor Cycle.

The MACT after hearing the parties awarded compensation in favour of the respondent no. 1/claimant.

Aggrieved by the aforesaid award the accompanying appeal has been preferred by the applicant/Insurance Company.

However a delay of 56 days had occurred for which the present Interlocutory Application has been filed.

Mr. A. R. Das, learned counsel for the applicant submits that the said delay of 56 days had occurred due to time taken by the Regional Office and the Legal Department and therefore the same is due to administrative reasons which were beyond the control of the applicant.

Heard the party and perused the averments made in the

interlocutory application in support of condonation of delay.

Paragraph 2, 3, 4, 5, 6 and 7 of the Interlocutory Application is reproduced hereunder for ready reference:-

“2. That the Respondents/Claimants No. 1(a) and 1(b) filed a claim petition before the L'd Member, Motor Accident Claims Tribunal at Silchar, Cachar claiming compensation for the death of their son namely Samjit Das in a road traffic accident dated 09/02/2020 at about 07:45 P.M. while the said namely Samjit Das (since deceased) was riding his Motor Cycle bearing Registration No. AS-11-S-7409 (Motor Cycle) returning from Kabuganj Bazar towards his residence and when he reached at Nutun Bazar near Smashan, the offending vehicle bearing Registration No. AS-11-AC-7547 (Crusier) which was coming from opposite direction in a rash and negligent manner hit the said Motor Cycle. As result of the said accident, he sustained grievous injuries but during treatment, he died on the same day at Silchar Medical Collage & Hospital, Silchar.

3. That the Applicant being the insurer of the vehicle bearing Registration No. AS-11-AC-7547 (Crusier), had duly contested the said case and took all the defences as per the facts and circumstances of the case as narrated in the claim petition, evidence on affidavit as well as the claimant in his cross-examination whereby deposed that due to rash and negligent manner of driving of the driver of the offending vehicle bearing Registration No. AS-11-AC-7547 (Crusier) the alleged accident took place and as a result of the said accident, the rider namely Samjit Das was riding his Motor Cycle bearing Registration No. AS-11-S-7409 (Motor Cycle) sustained grievous injuries and later on he died during his treatment at SMCH, Silchar. But the L'd Tribunal did not consider the vital aspect of the evidence on record and the point of law involved therein and consequently passed the impugned Judgment and Award on 22/12/2023 and thereby awarding compensation in favour of the Respondent Nos.1/Claimants and

the Appellant/Applicant Company was made partly liable to satisfy the awarded amount along with interest.

4. That the Applicant states that the L'd conducting Advocate of the Applicant company in the trial court was out of station for his urgent family matters in the month of January, 2024 up to the middle part of February, 2024 and as such his Junior assisting Advocate was given to look after the case and accordingly his said Junior assisting Advocate applied for Certified copy of the Judgment and Award dated 22/12/2023 in the month of January, 2024 but on 26/12/2023 got the free copy of the said judgment from the Office of the MACT, Silchar.

Further, the Applicant states that in the middle part of February, 2024 the engaged Penal Advocate has come to Silchar and he has gone through the contents of the aforesaid Judgment and Award and found that the L'd Tribunal awarded the compensation totally erroneously and with perversity and also failed to appreciate the entire evidence on records and accordingly, submitted the Legal Opinion on 26/02/2024 to the concerned Branch Office at Silchar of the Applicant company thereby advising for preferring an Appeal before the Hon'ble High Court.

5. That the Applicant states that on receipt of the Legal Opinion from the conducting Advocate of the trial court, the competent Branch Office at Silchar of the Applicant Company has gone through the entire facts and circumstances as narrated in the Judgment and Award and found that the L'd Tribunal passed the Judgment and Award illegally and erroneously beyond the evidence on records and as such the competent Branch Office at Silchar of the Applicant Company was in fact seems to take the further Legal Opinion from the Sr. Penal Advocate from the Divisional Office at Agartola and thereby sent the entire records of the file to the said Sr. Advocate on 19/03/2024 and thereafter, the said Sr. Advocate after going through the records available in the file came to the conclusion that the L'd

Tribunal failed to appreciate the evidence on records and he advised to prefer an Appeal. Thereafter, the said file again received by the Branch Office at Silchar on 04/04/2024 and after going through the Legal Opinion of the Sr. Penal Advocate, the said file was again sent to the Regional Office at Guwahati on 08/04/2024. The competent authority of the Regional Office at Guwahati on received the said File 19/04/2024 and after going through the entire Judgment and Award in the records, it was found that there not available the evidence on affidavit as well as the deposition of the cross-examination of the claimant and hence the said authority has advised to obtain the copies of the same to the Branch Office at Silchar of the Applicant company. Accordingly, the said Branch Office at Silchar of the Applicant company thereafter, informed the conducting Advocate of the trial court to be submitted the copies of the evidence on affidavit as well as the deposition of the cross-examination of the claimant on 23/04/2024 and the said copies were submitted to the Branch Office at Silchar of the Applicant company on 30/04/2024 and the said copies were received by the competent authority of the Regional Office on 06/05/2024. Thereafter, the said competent authority at Regional Office, at Guwahti again took the Legal Opinion from the Penal Advocate at Guwahati and accordingly, the entire file was handed over to him for final Legal Opinion on 07/05/2024 and then after going through the entire file contents the documents by the said Sr. Advocate came to his opinion that the L'd Tribunal has wrongly, erroneously without following the evidence on record was pleased to pass the Judgment and Award on 22/12/2023 and hence he has advised to prefer an Appeal before the Hon'ble High Court and the said opinion was submitted on 09/05/2024.

6. That the Applicant states that after observing necessary formalities, the file was given to the present Advocate for filing Appeal at the earliest possible extent to prevent the further delay. The present Advocate on receipt of the said file on 10/05/2024 took some time to prepare the Memo of Appeal along with Delay Application as well as Stay Application and the

same was given to his Advocate's clerk to file the Appeal on 15/05/2024.

7. That the Applicant states that under the administrative system of its official hierarchy, the Regional Office is competent to finally decide on filing of an Appeal. The Legal Department decided to file an Appeal against the impugned Judgment and Award and accordingly the brief was handed over to the present Advocate. Thereafter, the present Advocate took some time to prepare the Appeal and the same was filed at the earliest opportunity.”

Apparent that it is due to the administrative formalities taken by the Legal Department of the applicant/Insurance Company, the aforesaid delay of 56 days had occurred.

The reasons appears to be sufficient and bona-fide.

Delay of 56 days is condoned.

Let Registry register the accompanying appeal.

Disposed of.

JUDGE

Comparing Assistant