

GAHC010106102019



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

Case No. : I.A.(Civil)/2389/2019

THE NATIONAL INSURANCE COMPANY LIMITED
REGISTERED HEAD OFFICE AT 3 MIDDLETON STREET, CALCUTTA-700071,
REP. BY THE MANAGER, GAUHATI REGIONAL OFFICE, BHANGAGARH,
GUWAHATI- 781005.

VERSUS

SMTI. RASHMI KALITA AND 4 ORS.
W/O- LATE RAJAT KALITA, R/O- VILL.- BORGAON (KAHARPARA), P.O. AND
P.S. TIHU, DIST.- NALBARI, ASSAM, PIN- 781371.

2:SRI ARNAB KR. KALITA
S/O- LATE RAJAT KALITA
R/O- VILL.- BORGAON (KAHARPARA)
P.O. AND P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371.

3:MISS VIOLINA KALITA
D/O- LATE RAJAT KALITA
R/O- VILL.- BORGAON (KAHARPARA)
P.O. AND P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371. (OPPOSITE PARTY NO. 2 AND 3 ARE REP. BY OPPOSITE PARTY
NO. 1).

4:SRI KASHMIR SINGH
S/O- SRI GURMUKH SINGH
10
JIBAN RATAN DHAR ROAD

DUM DUM
KOLKATA-28
WEST BENGAL.

5:SRI HARENDRA KR. ROY
S/O- AWADHESH ROY
GURIPUR SERVICE STATION
P.O. BIRATI
N.H.- 35
DUM DUM
KOLKATA
WEST BENGAL

Advocate for the Petitioner : MS. R D MOZUMDAR

Advocate for the Respondent : MR. P K DAS (R1)

Linked Case :

THE NATIONAL INSURANCE COMPANY LIMITED

VERSUS

SMTI. RASHMI KALITA AND 4 ORS

Advocate for :

Advocate for : appearing for SMTI. RASHMI KALITA AND 4 ORS

Linked Case :

THE NATIONAL INSURANCE COMPANY LIMITED

VERSUS

SMTI RASHMI KALITA and 5 ORS

Advocate for : MS.C MOZUMDAR
Advocate for : appearing for SMTI RASHMI KALITA and 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 10-05-2024

Heard Ms. R.D. Mozumdar, learned counsel for the applicant and Mr. P.K. Das, learned counsel for the opposite party nos. 1 – 3.

2. Though notices are found to be served upon the opposite party nos. 4 & 5 in the substituted manner, none of them has appeared till date.

3. This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of 52 days of delay, which is stated to have occurred in filing the accompanying review petition, which is yet to be registered and numbered. The accompanying review petition is preferred under Order XLVII Rule 1[a] r/w Section 114 and Section 151 of the Code of Civil Procedure, 1908 seeking review of an Order dated 19.02.2019 passed in an interlocutory application, I.A. [Civil] no. 1845/2016, which was filed along with a Memorandum of Appeal under Section 173 of the Motor Vehicles Act, 1988. The interlocutory application, I.A.[Civil] no. 1845/2016 was preferred seeking condonation of delay of 905 days, which had occurred in preferring the appeal against a Judgment and Award dated 28.11.2013 in MAC Case no. 111/2011 passed by

the learned Member, Motor Accident Claims Tribunal, Nalbari. By the Order dated 19.02.2019, the interlocutory application, I.A.[Civil] no. 1845/2016 was dismissed.

4. In this interlocutory application, it is averred that after passing of the Order dated 19.02.2019, a certified copy of the said Order was applied for and the certified copy of the Order was received on 11.03.2019. Thereafter, legal opinion was sought for and the legal opinion was received on 12.03.2019. After receipt of the legal opinion, information was sought for as regards the alleged offending vehicle. The alleged offending vehicle was registered in the State of West Bengal. Such information could be obtained through an Investigation Report dated 22.04.2019. The Investigation Report was received at Guwahati Regional office of the applicant on 30.04.2019. It is stated that the concerned brief was handed over then, to the legal engaged counsel, who took take few days' time to prefer the accompanying review petition. In the process, a period of 52 days delay had occurred in preferring the accompanying review petition.

5. Mr. Das, learned counsel for the opposite party nos. 1 – 3 has submitted that the delay has not been properly explained.

6. Though the application has been filed as far back as in the year 2019, on 14.05.2019, no written objection to the statements and averments made in the interlocutory application has been preferred.

7. I have gone through the statements and averments made in this interlocutory application. After having gone through the reasons cited for explaining the period of delay, I am of the considered view that the applicant has been able to explain the reasons for delay showing sufficient cause of delay

of 52 days, which had occurred in preferring the accompanying review petition. Accordingly, the instant interlocutory application seeking condonation of delay of 52 days, stands allowed.

9. The Registry to register the connected review petition and thereafter, list the same accordingly.

JUDGE

Comparing Assistant