

GAHC010175752020



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

Case No. : I.A.(Civil)/73/2023

GOPAL KRISHNA TEA COMPANY PRIVATE LTD.
A REGISTERED COMPANY HAVING ITS REGISTERED OFFICE AT MARWARI
PATTY, JORHAT, PO AND PS JORHAT DIST JORHAT, ASSAM AND HAVING
ITS TEA ESTATE AT PO KILLING VALLEY, DIST MORIGAON, ASSAM 782413
AND IS REPRESENTED BY ITS GENERAL MANAGER, AND AUTHORISED
REPRESENTATIVE, SHRI RAHUL SRIVASTAVA

VERSUS

HEMANTA JANI AND 4 ORS.
RESIDENT OF AMSOI TEA ESTATE, NAGAON, ASSAM 782412

2:MISS SILPA JANI
D/O SRI HEMANTA JANI

RESIDENT OF AMSOI TEA ESTATE
NAGAON
ASSAM 782412

3:SRI SIRANJIT JANI
S/O SRI HEMANTA JANI

RESIDENT OF AMSOI TEA ESTATE
NAGAON
ASSAM 782412

4:SRI AMARJIT JANI
S/O SRI HEMANTA JANI

RESIDENT OF AMSOI TEA ESTATE
NAGAON
ASSAM 782412

5:THE MANAGER
THE NATIONAL INSURANCE CO. LTD.
GUWAHATI BRANCH
REGIONAL OFFICE
DISPUR GUWAHATI KAMRUP M ASSA

Advocate for the Petitioner : MR G N SAHEWALLA, MS. S. TODI,MR. A CHETIA,MD ASLAM

Advocate for the Respondent : MRS. S ROY (R5),

Linked Case :

GOPAL KRISHNA TEA COMPANY PRIVATE LTD.

VERSUS

HEMANTA JANI AND 4 ORS. E

Advocate for : MR G N SAHEWALLA
Advocate for : appearing for HEMANTA JANI AND 4 ORS. E

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 21.08.2024

Heard Mr. H. K. Sharma, learned counsel for the applicant.
Also heard Ms. F. N. Zaman, learned counsel for respondent no. 5.

Pertinent that the office note dated 08.06.2023 indicates that service in respect of respondent nos. 1, 2, 3 and 4 stands completed after due service.

This application is filed under Section 5 of the Limitation Act, 1963 read with proviso to Section 173 of the Motor Vehicles Act, 1988 seeking condonation of delay of 1013 days in filing the accompanied appeal under Section 173 of Motor Vehicles Act against the judgment and award dated 23.11.2017 passed in MAC Case No. 2018/2013 by the learned Presiding Officer, MACT No. 2, Kamrup (M), at Guwahati.

Mr. H. K. Sharma, learned counsel for the applicant submits that since the applicant was not aware of the proceedings before the jurisdictional MACT, they were unaware of the impugned judgment and award and only after coming to know about the same in the year 2020, when some of the representatives of the opposite party nos. 1 to 4 came to them with a copy of the said impugned judgment and award, the appeal is filed after the stipulated time.

Ms. F. N. Zaman, learned counsel for respondent no. 5 on the other hand strongly opposes the prayer for condonation. She submits that despite of the fact that the applicant has had knowledge of the

passing of the impugned judgment and award way back in 2020, February, the appeal was preferred in the month of December, 2020.

She accordingly submits that there is no satisfactory explanation as regards the time from February to December, 2020.

I have given my prudent consideration to the arguments made by learned counsel for the parties and perused the averments made in the Interlocutory Application explaining the said delay as well as the objection filed by the respondent no. 5 along with the grounds taken in the appeal memo.

Paragraph 3 of the Interlocutory Application is reproduced hereunder for ready reference:-

“3. That the applicant states that the applicant is the owner of the truck bearing registration No. AS-21-C-2249(407). It is stated herein that on 04-09-2013 at about 6:15 pm, the deceased persons namely Swapan Nayak @ Krish Nayak, the Handyman and Anjana Deka Jani, the owner of the goods were travelling by the said truck on way from Nellie Bagan towards Nagaon side, and when the said truck reached at Nellie- Shillong Tiniali, on the national highway No. 37, the said truck collided with an unknown truck and therefore both the abovementioned person suffered grievous injuries and as a result of which they were taken to the Agile Hospital, Guwahati. However, both the person succumbed to the injuries. The judgment of the M.A.C. Case No. 2018 of 2013 was passed on 23.11.2017 by the Ld. Presiding Officer, M.A.C.T. No. 2, Kamrup (M), at Guwahati in which the applicant was directed to pay the award of Rs. 4,55,800 (rupees four lakh fifty five thousand and eight hundred) to the legal heirs of the deceased/claimant.

That the applicant states that the applicant never received any notice from

the Ld. Court below about the pendency of the aforesaid case and it was only in the first part of the year 2020, when some of the representatives of the opposite party no. 1 to 4 came and handed over a copy of the judgment and order dated 23.11.2017 that the applicant came to learn about the aforesaid case. Immediately upon receipt of the certified copy of the judgment and order dated 23.11.2017, the applicant contacted some of its counsels at Guwahati and requested the counsel for obtaining the records of the aforesaid case. However, unfortunately, the counsel was unable to locate the records since a period of about 2 years have elapsed since the passing of the aforesaid judgment and order dated 23.11.2017.

Thereafter, while the counsel was preparing to file the appeal without the records, with the advent of corona virus the entire country went into lockdown. Owing to the said lockdown, the condition of the applicant also deteriorated in as much as, the applicant was unable to undertake its affairs properly and after the lockdown..was lifted gradually the condition of the applicant company improved and thereafter, is able to file the connected appeal today, i.e., on 01.12.2020 and hence there occurred a delay of 1012 days.”

Reading of the aforesaid averments apparent that it was due to want of knowledge as regards the passing of the impugned judgment as the applicant was not served with any notice from the jurisdictional MACT, the appeal was filed beyond the stipulated time.

It further appears that after the appellant has come to know about the passing of the impugned judgment and award, in the month of February,2020 however due to the time taken in constructing the records and covid pandemic, the appeal could be filed in the month of December, 2020. The aforesaid explanation appears to be sufficient

and bona-fide.

As such the delay of 1013 days in filing the accompanying appeal under Section 173 of Motor Vehicles Act against the judgment and award dated 23.11.2017 passed in MAC Case No. 2018/2013 by the learned Presiding Officer, MACT No. 2, Kamrup (M), at Guwahati stands condoned.

Let Registry to register the accompanying appeal.

Disposed of.

JUDGE

Comparing Assistant