

GAHC010181962020



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

Case No. : I.A.(Civil)/36/2021

THE NATIONAL INSURANCE COMPANY LTD.
REGISTERED HEAD OFFICE AT 3, MIDDLETON STREET, CALCUTTA-
700071, REP. BY THE MANAGER, GAUHATI REGIONAL OFFICE,
BHANGAGARH, GUWAHATI- 781005, KAMRUP(M), ASSAM.

VERSUS

ON THE DEATH OF SANUFA KHATUN HER LEGAL HEIRS AND 2 ORS.
x

1.1:MD SURUJ ALI
S/O ISLAM
R/O VILL. 2 NO. SAMBARIA
P.O. 1 NO. SAMBARIA
P.S. LANKA
DIST. HOJAI
ASSAM
PIN 782435 C/A C/O NIZAM UDDIN
R/O VILL. ISLAMPATTY
DIST. NAGAON
ASSAM
PIN 782002

2:M/S EFC LOGISTICS INDIA PVT. LTD.

A.G. ROAD
KOHIMA
P.O. AND P.S. KOHIMA
DIST.- KOHIMA
NAGALAND
PIN- 797001.

3:THE ORIENTAL INSURANCE CO. LTD.

NAGAON BRANCH
CHRISTIANPATTY
PALASANI
P.S. SADAR
DIST.- NAGAON
ASSAM
PIN- 782001

Advocate for the Petitioner : MS. R D MOZUMDAR

Advocate for the Respondent : MR F KHAN (R-1)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 11-01-2024

Heard Ms. RD Mozumdar, learned counsel for the applicant as well as Mr. M. Khan, learned counsel appearing for the respondent no.1.1.

2. By filing this application under second proviso to section 173 of the Motor Vehicles Act read with section 5 of the Limitation Act, the applicant has prayed for condoning the delay of 160 days beyond the period of limitation in filing the connected appeal.

3. The learned counsel for the applicant has submitted that the judgment impugned in the connected appeal was passed on 09.07.2019 but the legal opinion of the learned dealing counsel was received only on 28.08.2019 and the matter was referred to the concerned officials and during the process of taking a decision, there was some turmoil in the State in connection with Citizenship Amendment Act and in the meanwhile the Covid-19 pandemic had

set in.

4. Therefore, the learned counsel for the applicant by taking aid of the order dated 23.03.2020 passed by the Supreme Court of India in Suo Moto WP(C) No. (s).3/2020 has invoked the benefit of extension of limitation from 15.03.2020 to 28.02.2022. It was further submitted that the certified copy of the judgment impugned in the connected appeal was received on 21.10.2020 and some more days were consumed for the learned conducting counsel to file the connected appeal.

5. The learned counsel for the respondent no.1.1 has opposed the prayer for condonation of delay on the ground that the explanation of delay for the initial period before the Covid period is absolutely vague and that the ground that the explanation of delay fails because in paragraph-3 of the application, the applicant has admitted that a copy of the judgment passed on 09.07.2019 was received by the Branch Office on 28.08.2019. Hence, it is submitted that there is no explanation at all for delay that had occurred between 28.08.2019 till limitation were extended for Corona pandemic from 15.03.2020 to 28.02.2022.

6. It appears that the pleaded case of the applicant is that the judgment impugned in the connected appeal was passed on 09.07.2019 and that the copy of the judgment as well as the legal opinion was received on 28.08.2019. Thereafter, the offices of the applicant were moved for taking their decision after 28.08.2019. However, public protest erupted against the

Citizenship Amendment Act (Bill) from 04.12.2019. Thereafter, in the month of March 2020, the Covid-19 pandemic had disrupted the Court functioning as well as it had disrupted the normal life of the citizens of the Country, and had also affected their office.

7. The applicant is required to deal with several accident cases and therefore they ought to have made out a clear policy of the dealing lawyers to report judgments passed by the MAC Tribunals to their offices. In this case, the applicant projects that the judgment was passed on 09.07.2019 but it was reported to their office on 08.08.2019. The Court cannot encourage such deficiency in the administration of the applicant's, who in this case is found to be causally dealing with orders passed by the learned MAC Tribunal.

8. It is further appalling to note that although the applicant projects that their learned lawyer was at fault, neither they have disclosed the names of the said advocate, nor the applicants have made any statement as to whether their learned counsel lawyer who had defaulted in reporting the Tribunal judgment to them is still in their panel. It means that the applicant is taking advantage of their non-reporting counsel yet no remedial actions are shown to have been taken. Therefore, while noticing that during this period of intermitting time from passing of the judgment till filing of the appeal, there were two disruptions being, firstly the CAA protests and secondly, the onset of Covid-19 pandemic, and as per the various orders passed by the Supreme Court of India in SMWP(C) 3/2020 and miscellaneous applications therein being Misc. App. No.665/2021 and Misc. App.21/2022, whereby the period of limitation was extended from 15.03.2020 till 28.02.2022 and on considering that during this

period the applicant has filed the connected appeal, the Court is inclined to condone the delay in filing the connected appeal. Nonetheless, due to inefficiency on the part of the applicants to take a decision of how to deal with the award passed by the learned MAC Tribunal in its right earnest, the Court is inclined to impose a cost of Rs.10,000/- on the applicant as a condition precedent for entertaining the connected appeal.

9. The applicant shall, within 15 days, provide the account particulars of the respondent no.1.1 to the learned counsel for the applicant so as to enable the applicant to transfer a sum of Rs.10,000/- to the respondent no.1.1 to be shared with all the legal heirs of the original claimant namely, late Sanufa Khatun equally. A proof of such transmission of money be preferably provided to the learned counsel for the respondent no.1.1.

10. With the pre-condition as indicated above attached, this application stands allowed by condoning the delay of 160 days beyond the period of limitation in filing the connected appeal, subject to payment of cost as a pre-condition for entertaining the connected appeal.

The Registry shall now register the connected appeal and list the same for admission on 24.01.2024.

JUDGE

Comparing Assistant