

GAHC010194932020



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

Case No. : I.A.(Civil)/103/2021

SMTI. SANTANA DEY
W/O- TAPAN KUMAR DEY, R/O- C.R. DAS ROAD, DHUBRI, P.O., P.S. AND
DIST.- DHUBRI, ASSAM, PIN- 783301.

VERSUS

NATIONAL INSURANCE COMPANY LTD. AND 4 ORS.
REP. BY THE BRANCH MANAGER, GOALPARA BRANCH, P.O., P.S. AND
DIST.- GOALPARA, ASSAM- 783101.

2:SMTI. HIMANI DAS
W/O- LATE ANIL DAS
R/O- VILL.- ULUPARA
P.S. AND P.O. AGIA
DIST.- GOALPARA
ASSAM- 783120.

3:SMTI. NABANITA DAS
D/O- LATE ANIL DAS
R/O- VILL.- ULUPARA
P.S. AND P.O. AGIA
DIST.- GOALPARA
ASSAM- 783120.

4:BAPAN DAS
S/O- LATE ANIL DAS
R/O- VILL.- ULUPARA
P.S. AND P.O. AGIA
DIST.- GOALPARA
ASSAM- 783120.

5:MOJIBOR RAHMAN

S/O- MAYJRUDDIN SK.
R/O- DHUBRI
P.O.
P.S. AND DIST.- DHUBRI
ASSAM- 783301

Advocate for the Petitioner : MR G BORDOLOI

Advocate for the Respondent : MS. P BORTHAKUR (R-1 & R-2)

Linked Case :

SANATAN DEY

VERSUS

NATIONAL INSURANCE COMPANY LTD. AND 4 ORS. E

Advocate for : MR G BORDOLOI

Advocate for : appearing for NATIONAL INSURANCE COMPANY LTD. AND 4
ORS. E

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 29.05.2024

Heard Mr. G. Bordoloi, learned counsel for the applicant/appellant along with Ms. M. Saikia, learned counsel for the respondent No.1.

This is an application filed under Section 5 of the Limitation Act, for the condonation of delay of 550 days in filing the instant MAC appeal.

The learned counsel for the applicant submits that the reason for the delay in filing the appeal is that the applicant is the owner of the vehicle bearing Registration No. AS-01Z-0066 (Bus), which was involved for the road accident, wherein the father of the claimant had died due to the negligence driving of the driver. The applicant was made the Proforma respondent No.5

in MAC Case No. 58/2016. Thereafter, the learned Tribunal in MAC. Case No. 58/2016 had passed its judgment and award dated 13.06.2018, *ex-parte* against the instant applicant because of which the applicant was not aware of the said judgment and award.

The learned counsel for the applicant submits that he got to know about the said impugned judgment and award only when notice was issued to him in MAC Appeal No. 686/2019, when the claimant had filed an appeal for enhancement of the awarded amount.

Subsequently, the respondent/insurance company had filed an application before the learned trial court for recovery of 50% of the awarded amount from the instant appeal based on the judgment and award dated 13.06.2018 and the same being registered as Misc. (Recovery) case No. 26/2018.

The learned counsel for the applicant submits that the applicant received the certified true copies in connection with Misc. (Recovery) case No. 26/2018 and MAC case No. 58/2016 on 10.01.2020.

However, before the applicant could take effective steps, the Lockdown was declared in the country due to Covid -19.

The learned counsel submits that thereafter the applicant have taken necessary steps and delay was not due to any laches or negligence on the part of the applicant since the impugned judgment and award in MAC Case No.58/2016 was passed against him *ex-parte* and he received the copy of the impugned judgment and award at a later stage only when an appeal was filed against the impugned judgment and award by the claimant.

Ms. M. Saikia, learned counsel for the respondent submits that the

explanation given is not sufficient to condone the delay of 550 days.

Having heard the submission made by the learned counsels, this Court finds that since the impugned judgment and award dated 13.06.2018 in MAC Case No. 58/2016 was made *ex-parte* against the applicant, it was not possible for the applicant to be aware of the said judgment and award.

The Court finds the explanation given by the applicant that he got to know about the judgment and award only on issuance of notice by this Court, in MAC Appeal No.686/2019 when an appeal was filed by the claimant on 27.02.2020, reasonable and acceptable.

Thereafter, it is seen that there was a National Lockdown all over the Country due to Covid-19 and as such necessary steps could not be taken by the applicant.

Under such circumstances, this Court satisfied that the reasons for the delay has been satisfactorily explained and accordingly this Court finds it fit to condone the delay of 550 days in filing the instant appeal against the judgment and award dated 13.06.2018 in Misc. (Recovery) case No. 26/2018.

I.A. Case No. 138/2021 stands allowed and disposed of.

On the disposal of the instant I.A., Registry to give number to the appeal and list the matter for admission within 3(weeks).

JUDGE

Comparing Assistant