

GAHC010225352023



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

**Case No. : I.A.(Civil)/3036/2023 in
MACApp./12200/2023**

MADHURJYA DHEKIAL PHUKAN
S/O SRI KAMAL CH. DHEKIAL PHUKAN,
R/O NIJORAPAR, WARD NO. 1, BOKAJAN, P.O.- BOKAJAN, P.S. BOKAJAN,
DIST.- KARBI ANGLONG, ASSAM, PIN- 782480.

VERSUS

THE BRANCH MANAGER
UNITED INDIA INSURANCE COMPABY LIMITED, JORHAT BRANCH,
JORHAT, ASSAM, PIN- 785001.

2:DEPAK CHETRI
S/O SRI DEBENDRA CHETRI

R/O LAKHIJAN (BOKAJAN)
P.O.- BOKAJAN
P.S. BOKAJAN
DIST.- KARBI ANGLONG
ASSAM
PIN- 782480.

3:SWAPNA KHAKHLARY
W/O LATE MUNU KHAKHLARY

VILL.- ETAPARA
P.O.- LANGHIN TINIALI
P.S.- DIKMOKA
DIST.- KARBI ANGLONG
ASSAM
PIN- 782441.

4:BONBIR KHAKHLARY
S/O LATE MUNU KHAKHLARY

VILL.- ETAPARA
P.O.- LANGHIN TINIALI
P.S.- DIKMOKA
DIST.- KARBI ANGLONG
ASSAM
PIN- 782441.
(REP. BY SMT. SWAPNA KHAKHLARY BEING MINOR.)

5:MANJU KHAKHLARY @ DEWALI KHAKHLARY
W/O SRI SUJIT KHAKHLARY

VILL.- ETAPARA
P.O.- LANGHIN TINIALI
P.S.- DIKMOKA
DIST.- KARBI ANGLONG
ASSAM
PIN- 782441

Advocate for the Petitioner : MR. M MAHANTA

Advocate for the Respondent : MR. S DUTTA (R-1)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

26.06.2024

Heard Shri M. Mahanta, learned counsel for the applicant. Also heard Ms. M. Choudhury, learned counsel for the respondent no.1 who has filed objection.

The instant application has been filed under Section 5 of the Limitation Act praying for condonation of delay of 409 days in preferring the connected appeal against judgment and order dated 12.05.2022 passed by the learned, Motor Accident Claim Tribunal, Nagaon in M.A.C. Case No. 349/2016.

It is submitted by Shri Mahanta, the learned counsel that though the claim

before the Tribunal was contested by his client who is the owner of the vehicle by filing written statement, subsequently, he was under the *bona fide* impression that since the vehicle was duly covered, his appearance may not be necessary in further proceedings. Vide the impugned judgment and award, while awarding the compensation, there is an observation to pay and recover in favour of the Insurance Company. He further submits that it is only on receipt of notice from the Executing Court that his client came to know about the impugned order and accordingly, the appeal has been preferred and in the aforesaid process, the delay of 409 days has occasioned. It is submitted that the delay is not deliberate and there was no negligence.

Per contra, Ms. M. Choudhury, the learned counsel for the respondent no. 1 – Insurance Company has submitted that the reasons sought to be relied upon is not at all acceptable or trustworthy. By drawing the attention of this Court to the averments made in paragraph 6 of the application, the learned counsel has submitted that the applicant is an elected representative of the Autonomous Council and was not a layman and therefore, it is no believable that the applicant was not aware of the proceeding. She accordingly submits that the application be dismissed.

An application filed for condonation of delay is required to be adjudicated by taking a justice oriented and pragmatic approach wherein substantial justice is to be given weightage over technicalities. At the same time, the rights accrued upon the adverse party cannot be lightly brushed aside. The delay in the instant case is also a substantial one of 409 days.

Considering the aforesaid facts and circumstances, this Court is of the view that while interest of justice may require condonation of delay, the same has to be subjected to certain conditions.

Accordingly, the delay of 409 days is condoned and the I.A. stands allowed subject to a cost of Rs. 5000/- (Rupees Five Thousand) to be paid to the Gauhati High Court Bar Association Welfare Fund.

Interlocutory Application accordingly stands disposed of.

JUDGE

Comparing Assistant