

GAHC010239252023



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

Case No. : I.A.(Civil)/3225/2023

KASHALA @ KAUSALAYA @ KAMALA DAS AND 3 ORS.
W/O LATE SUNIL DAS,
VILL.- NO. 2, BURBHANDHA, P.S.- ULUANI- 782460, DIST.- NAGAON
(ASSAM).

2: DIPANKAR DAS
S/O LATE SUNIL DAS
VILL.- NO. 2
BURBHANDHA
P.S.- ULUANI- 782460
DIST.- NAGAON (ASSAM).
(BEING MINOR
REP. BY APPELLANT NO. 1
MOTHER).

3: SHANGITA DAS
D/O LATE SUNIL DAS
VILL.- NO. 2
BURBHANDHA
P.S.- ULUANI- 782460
DIST.- NAGAON (ASSAM).
(BEING MINOR
REP. BY APPELLANT NO. 1
MOTHER).

4: SARALA DAS
W/O LATE BHARAT DAS
VILL.- NO. 2
BURBHANDHA
P.S.- ULUANI- 782460
DIST.- NAGAON (ASSAM)

VERSUS

NATIONAL INSURANCE COMPANY LTD AND 2 ORS.
REP. BY ITS REGIONAL MANAGER
G.S. ROAD, BHANGAGARH P.O.- GUWAHATI- 78105 DIST.- KAMRUP (M)
(ASSAM).

2:MD. HABIBUR RAHMAN
S/O LATE MAINUDDIN
VILL. AND P.O.- FAKULI PATHAR
P.S.- JURIA- 782124
DIST.- NAGAON (ASSAM).

3:KARUNA BORAH
S/O LATE RAJEN BORAH
VILL.- SUTAR KOTAIPAR P.O.- BARANGATOLI- 782141 DIST.- NAGAON
(ASSAM)

Advocate for the Petitioner : MR. A R AGARWALA, MD. K ALI

Advocate for the Respondent : MR C PHUKAN (r-1), A. N. H PHOM (r-1),MS. S
CHAKRABORTY(r-1)

Linked Case :

KASHALA @ KAUSALAYA @ KAMALA DAS AND 3 ORS.

VERSUS

NATIONAL INSURANCE COMPANY LTD AND 2 ORS. E

Advocate for : MR. A R AGARWALA
Advocate for : appearing for NATIONAL INSURANCE COMPANY LTD AND 2
ORS. E

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 16.08.2024

Heard Mr. A. R. Agarwala, learned counsel for the applicant/appellant and Mr.
C. Phukan, learned counsel for the respondent No. 1.

The instant application is filed under Section 5 of the Limitation Act for
condoning the delay of 501 days in filing the accompanying appeal against the

impugned judgment and order dated 06.07.2021 passed by the learned Member, Motor Accident Claims Tribunal No. 1, Kamrup (M), Guwahati in MAC Case No. 1848/2017.

The applicant is being aggrieved and dissatisfied with the aforesaid judgment and order passed by the learned Member, MACT No. 1, Kamrup (M), has preferred the accompanying appeal before this Court. However, due to unavailable circumstances, the said appeal could not be filed within the stipulated period of limitation. Situated thus, the present application has been filed for condoning the delay of 501 days in filing the accompanying appeal.

Mr. A. R. Agarwala, learned counsel for the applicant/appellant submits that the delay occurred is unintentional and beyond the control of the applicant and therefore the same ought to be condoned.

Mr. C. Phukan, learned counsel for the respondent No. 1, on the other hand, submits that the applicant has not clearly explained the delay of 501 days for filing the appeal and therefore the same ought not to be condoned.

I have given my prudent consideration to the arguments made by both the parties and to the materials available on record, including the explanation given in the application for condonation of the said delay.

Para Nos. 3 & 7 of the application is reproduced hereunder for ready reference:-

“3. That the petitioner state that the Judgment and Award was passed on 06-07-2021, the lower court counsel applied for the certified copy of the same on 23-02-2022. The said, certified copy was made ready for delivery on 25- 02-2022 and was delivered on 25-02-2022. But the lower court counsel informed the passing of the judgment only on 15.03.2022 and the petitioner went to meet the lower Court counsel for consultation 11.04.22, but found that the lower court counsel went for 'Bihu holidays' and the petitioner came

back home and again went on 28.04.22 after his return from holidays and received the certified copies. The petitioner No.1 came back home and as per advice went to meet the High Court counsel on 16.05.2022 for consultation but found the Court holiday on being 'Budha Purnima' and again the petitioner went on 13.06.2022 and handed over to him the certified copies but the High Court counsel told that the copies of Judgment is missing, which were required for filing the appeal and hence the petitioner came back home and informed the lower court counsel about the same and the lower court counsel informed that he will search for the required copies of judgment in his chamber and asked the petitioner to come on 08.07.2022. The petitioner could not go on 08.07.2022 because she could not get attendant to accompany because of women. The petitioner went to meet the lower court counsel on 12.08.22 but could not meet him as he went for 'Independence Day' holidays to Delhi. Again the petitioner went on 08.09.2022 and given the photocopy of the judgment and ask the petitioner no.1 and ask the petitioner to come on 30.09.2022, but found that the lower Court counsel went for long vacation of 'Durga Puja' 'Kali Puja' etc. till 18.10.2022 and returned home and again decided to meet the High Court lawyer on 29.11.2022, but she could not go because of 'Women Related' monthly periods and went on 22.12.22 but found lawyers chamber close and it was stated that he went for 'Winter vacation & Christmas' holidays and went on 11.01.23 and the lower Court Lawyer asked the petitioner to come after Makar Sankranti & Magh Bihu holidays and accordingly the petitioner No.1 decided to meet the lower Court lawyer on 20.02.2023 but could not go because of illness of her minor daughter and after some recovery went on 07.04.23 but found that the 'lawyers Chamber and Court close for 'Good Friday' and accordingly the petitioner no.1 returned home and went on 10.05.2023 after 'Bahag Bihu & 'Budha Purnima' holidays and handed over

him the certified copies of judgment and the High Court lawyer asked the petitioner to come 07.06.23 for consultation and accordingly the petitioner went on 07.06.23 and after going through the all copies the High Court counsel apprises that there are good grounds for appeal and asked the petitioner to come on 30.06.2023 and accordingly the petitioner went on 30.06.23 but the High Court lawyer was absent and it is stated that he has gone outside for long summer vacation till 17.07.23 and accordingly on his return the petitioner decided to meet the counsel on 2.08.23 but the petitioner could not go for financial constraints and went on 11.09.2023 after 'Madhab Dev Tithi' and 'Janmastami'. But the High Court Lawyer said that he misplaced the certified copy of judgment somewhere and asked the petitioner no. 1 to apply afresh for the certified copy of judgment and the High Court Lawyer applied through his junior counsel for certified copy of judgment afresh on 11.10.2023 and got the certified copy on 11.10.2023.

7. That the petitioner is a illiterate / rustic villager and he practically don't know all these legal aspects such as filing time period of Appeal etc and moreover because of her financial constraint he could not meet the Lower Court/ High Court Lawyers frequently for discussion about the matters pertaining to the case and this delay was not intentional but though the petitioner tried her level best for discussion and to get the appeal prepared but he failed in spite of his efforts and thus the delay was not intentional."

Apparent that since the applicant is illiterate/rustic villager, she could not keep contact with the engaged counsel and after the passing of the judgment on 06.07.2021, the engaged counsel informed her about the same only on 15.03.2022, where after the certified copy of the said judgment was obtained and the appeal was filed. In the meantime, the said delay of 501 days occurred.

In view of the reasons stated above, the aforesaid explanation given in the

application appears to be sufficient and bona-fide. Accordingly, the delay of 501 days in filing the accompanying appeal stands condoned.

I.A. is accordingly disposed of.

Registry to register the accompanying MAC Appeal.

JUDGE

Comparing Assistant