

GAHC010251242022



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

Case No. : I.A.(Civil)/3675/2022

THE ORIENTAL INSURANCE CO. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956, REP. BY ITS
REGIONAL MANAGER, ULUBARI, GUWAHATI- 7, DIST.- KAMRUP.

VERSUS

SAYAD JAMAL @ SURAJMAL @ SAIDUR ALI AND 4 ORS.
S/O MD. JAINAL ABDIN,
VILL.- NEPALIGAON,
P.O.- DHANSIRI,
P.S.- ORANG,
DIST.- UDALGURI, ASSAM, PIN- 784509.

2:RANA DEV SAIKIA
S/O LATE GUNA KANTA SAIKIA

R/O WARD NO. 7

N.T. ROAD
NORTH LAKHIMPUR

P.O. AND P.S.- NORTH LAKHIMPUR

DIST.- NORTH LAKHIMPUR
ASSAM
PIN- 787001.

3:MD. JAHANGIR ALAM
S/O ABDUL WAHIB

VILL.- FASALPUR DHUBURI

P.O. AND P.S.- DHUBURI

DIST.- DHUBURI
ASSAM
PIN- 783301.

4:PARIMAL DAS
S/O LATE LATE J. CHANDRA DAS

VILL.- NO. 2
DARRANG BAHJER

P.O.- SILBORI

P.S.- DALGAON

DIST.- DARRANG
ASSAM
PIN-784148.

5:NATIONAL INSURANCE COMPANY LIMITED
MANGAIDAI BRANCH
REP. BY ITS REGIONAL MANAGER
G.S. ROAD
GUWAHATI- 05

Advocate for the Petitioner : MR. S K GOSWAMI, MR. R SHARMA

Advocate for the Respondent : MS. R D MOZUMDAR (r-5), MR. B K DAS (R-1),MR. S P SHARMA (r-5),MS. C MOZUMDAR (r-5)

Linked Case :

THE ORIENTAL INSURANCE CO. LTD.

VERSUS

SAYAD JAMAL @ SURAJMAL @ SAIDUR ALI AND 4 ORS. F

Advocate for : MR. S K GOSWAMI

Advocate for : appearing for SAYAD JAMAL @ SURAJMAL @ SAIDUR ALI AND
4 ORS. F

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

ORDER

12.12.2024

Heard Mr. S.K. Goswami, learned counsel for the applicant. Also heard Mr. B.K. Das, learned counsel for the respondent no.1 and Mr. S.P. Sharma, learned counsel for the respondent no.5.

This is an application filed under Section 5 of the Limitation Act, r/w Section 173 (1) of Motor Vehicle Act, 1988 for condonation of delay of 114 days in preferring the connected appeal against the judgment and award dated 11.03.2022 passed by the learned Member, Motor Accident Claims Tribunal, Udalguri, in MAC Case No. 18/2017.

The ground for delay in preferring the connected appeal has been explained in paragraph nos. 3 & 4 of the application. It is submitted that after passing the judgment in MAC Case No. 18/2017 on 11.03.2022, neither the Advocate engaged by the petitioner company nor the learned Member of the Tribunal had informed the present petitioner company regarding the judgment. It is further submitted that the engaged Advocate applied for certified copy of the judgment and the same had been prepared on 30.07.2022. Thereafter, the appellant company has received a certified copy of the judgment along with an opinion from the engaged Advocate on 20.08.2022.

The learned counsel for the applicant further submits that after investigation and on perusal of the records, it was found that the victim along with others were travelling in a Bolero Pick Up Van and there was head on collision with the offending truck, which was insured with the appellant company. But in the claim petition it has been projected that claimant along with 5 others were standing on the side of the road waiting for the bus. The G.D. Entry of Chariduar Police Station, i.e, G.D. Entry No. 17 and 24 dated 02.02.2017, clearly reflects that present claimant along with 5 others were occupants of Bolero Pick Up Van and driver of the Bolero Pick Up Van died on the spot, and some of the occupants of the Bolero Pick Up Van sustained serious injuries. But the said fact was concealed by the claimant in the claim petition and the claimant has projected that 5 persons were standing on the side of the road and suddenly the offending truck hit the claimant as well as one Bolero Pick Up Van as a result of which the claimant sustained injuries. Therefore, the petitioner company decided to take legal opinion from the Advocate practicing in the Gauhati High Court, and said opinion was received by the petitioner company on 12.09.2022. Thereafter, competent authority decided to prefer an appeal on 22.09.2022. Thereafter, the petitioner company by letter dated 30.09.2022 deputed the Advocate to file an appeal against the judgment and award dated 11.03.2022, passed by the learned Member of the Tribunal, and the file was received by the engaged Advocate on 11.10.2022. Immediately, the engaged Advocate prepared the appeal and filed on 19.10.2022. As such, there has been delay of 114 days in the process in preferring the connected appeal.

The learned counsel for the applicant further submits that there was no deliberate or intentional negligence of the petitioner company in preferring the

connected appeal and hence, prays for condonation of delay in filing appeal.

Mr. Sharma, the learned counsel for the respondent no. 5 submits that he has no objection, if the delay is condoned. The respondent no. 1 however, filed an objection stating that the delay in filing the connected appeal has not been properly explained and as this is a contested case where the company is expected to have applied for certified copy of the judgment and till appeal, if any, within the stipulated time. But in the instant case there is a delay of 114 days which cannot be condoned unless properly explained.

Heard the learned counsel for the parties.

Upon hearing the parties and on consideration and the explanation made by the applicant for delay in preferring appeal, particularly in paragraph nos. 3 & 4 of the application, this Court is satisfied that the applicant has properly and satisfactorily explained the cause of delay in filing the connected appeal and the appellant was prevented from sufficient cause for not preferring the connected appeal within the stipulated time.

In view of the observations made above, the delay of 114 days in filing the connected appeal is hereby condoned.

The I.A. stands allowed and disposed of.

Registry shall number the appeal and list for admission on a date to be fixed by the Registry.

JUDGE

Comparing Assistant