

GAHC030004822023



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

Case No. : I.A.(Civil)/105/2023

United India Insurance Co. Ltd., Aizawl Branch r/b its Manager
Aizawl, Mizoram

VERSUS

Smt. Vanlalbuangi and Anr.
W/o Lalmakima (L)
R/o Sairang, Aizawl District. 2:Virender Sing

Advocate for the Petitioner : Mr K Laldinliana

Advocate for the Respondent : Mr. L.H. Lianhrima, Sr.Adv. for R1

Linked Case : MACApp./7/2023

United India Insurance Co. Ltd.
Aizawl r/b its Branch Manager
Aizawl

VERSUS

Smt. Vanlalbuangi and Anr.
W/o Lalmakima(L)
R/o Sairang
Aizawl District

2:Sh. Virender Singh
S/o Omprakash Singh

R/o H/No.4
B/L-3
B.R.Parth
Beltola
Kamrup
Metropolitan
Assam- 781028

Advocate for the Petitioner : Mr K Laldinliana
Advocate for the Respondent : Mr. L.H. Lianhrima
Sr.Adv. for R1

ORDER

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

22.04.2024

Heard Mr. K. Laldinliana, learned applicant and Mr. L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel for the respondent No. 1. None appears for the respondent No. 2. Be it stated herein that this Court had permitted the applicant to serve notice to the respondent No. 2 in a substituted manner by making newspaper publication in the local daily where the respondent No. 2 is said to reside. Accordingly, the applicant had made newspaper publication in the local daily "The Assam Tribune" on 08.02.2024 and 09.02.2024. The applicant has filed affidavit incorporating the newspaper publication. Upon perusal of the same, notice upon the respondent No. 2 is deemed to be complete.

[2.] By filing this application, the applicant seeks condonation of 184 days delay in filing the connected appeal against the Judgment & Order dated 13.12.2022

passed by the Member-cum-Presiding Officer, Motor Accident Claims Tribunal (MACT), Aizawl in MACT Case No. 29/2021.

[3.] Mr. K. Laldinliana, learned counsel submits that the Judgment & Order was passed by the Tribunal on 13.12.2022 and immediately upon receiving a copy of the same, the counsel for the applicant furnished the same to the applicant alongwith his legal opinion. Upon receiving the same, the Judgment & Order and opinion of the advocate was forwarded to the Divisional Office at Silchar and which again in turn was forwarded to the Regional Office at Guwahati seeking their opinion. The competent authority eventually was of the opinion that an appeal should be filed against the Judgment & Order and accordingly informed their counsel vide letter dated 10.07.2023.

[4.] The counsel concerned upon receiving the instruction applied for certified copy of the Judgment & Order dated 13.12.2022 before the MACT on 17.07.2023 and thereafter, the certified copy was made available on 16.08.2023 after about 30 days. After the certified copy of the Judgment & Order was received, the counsel for the applicant took further 28 days to complete the filing and in the process, a delay of 184 days has occasioned. The learned counsel therefore submits that the delay is neither willful nor intentional but due to reasons beyond the control of the applicant, including the time taken for issuance of certified copy of the Judgment &

Order. Accordingly, he submits that the explanation given by the applicant may be treated as sufficient explanation for condoning the delay. In support of his submission, the learned counsel relies upon the case of *B. Madhuri Goud -Vs- B. Damodar Reddy* reported in (2012) 12 SCC 693.

[5.] Mr. L.H. Lianhrima, learned Senior Counsel on the other hand submits that the applicant has miserably failed to give any explanation for the delay in filing the connected appeal. He submits that for reasons best known to the applicant, the applicant through their counsel has applied for a certified copy of the Judgment & Order dated 13.12.2023 only on 17.07.2023 after more than seven (7) months from the date of the Judgment & Order. No explanation has been offered by the applicant as to why a certified copy was applied for after a long delay. He submits that the applicant is very much aware of the fact that the period of limitation for filing an appeal before the High Court against the Judgment & Order of the Tribunal is 90 days but despite the same, it has taken the applicant 184 days to file the appeal before this Court and that too, without any explanation. He submits that the explanation that has been tendered by the applicant cannot be construed as sufficient cause in any manner and therefore, the delay of 184 days may not be condoned and the application be rejected. In support of his submissions, the learned Senior Counsel relies upon the following authorities:-

(1) State of Assam & Ors. -Vs- Gita Rani Kalita & Anr. 2017 (2) GLT 1190 and

(2) Basawaraj & Anr. -Vs- Special Land Acquisition Officer (2013) 14 SCC 81.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The Tribunal rendered its Judgment & Order on 13.12.2022 and according to the applicant, immediately upon receiving a copy of the same, it was furnished to the applicant alongwith a legal opinion by the lawyer concerned. The same was then forwarded from the Branch Office of the applicant Insurance Company to the Divisional Office at Silchar and thereafter, to Regional Office at Guwahati seeking opinion. However, upon perusal of the explanation which is at paragraph No. 3 (a) of the application, there are no details or particulars as to on which date the communications took place between the Branch, Divisional and Regional establishment of the applicant Insurance Company. What has only been mentioned is that the instruction to file an appeal was ultimately given on 10.07.2023 to the lawyer of the applicant. No explanation has been given as to how the matter has been dealt with between 13.12.2022 and 10.07.2023 by the applicant except for saying that it was forwarded from one office to another office and that too, without any particulars or dates.

[7.] The applicant has also taken the stand that certified copy of the Judgment &

Order was applied for before the MACT on 17.07.2023 and the same was furnished only on 16.08.2023. Be it stated herein that had the certified copy been applied within the prescribed period of limitation i.e., 90 days, the applicant would have the benefit of deducting the number of days taken by the MACT for preparing and making the certified copy ready for delivery. However, a certified copy was applied for after a lapse of seven (7) months and therefore, the number of days taken by the MACT for preparing the certified copy cannot be deducted from the time taken to file the appeal by the applicant.

[8.] The applicant has also stated that as soon as the certified copy of the Judgment & Order was received by the applicant's counsel, he started preparing the Memorandum of Appeal and it took him 28 days time to complete the process. It is not understood why the certified copy of the Judgment & Order is required for drafting the Memorandum of Appeal. The only requirement of a certified copy is at the time of filing the appeal and that the lawyer concerned can very well draft and prepare the appeal even with a true copy or photo copy of the Judgment & Order sought to be challenged before the Appellate forum. Therefore, the explanation tendered by the applicant cannot be considered as an explanation with sufficient cause in order to persuade this Court to condone the delay.

[9.] In the case of *B. Madhuri Goud* (supra) relied upon by the applicant, the Apex Court has made an observation to the effect that the Limitation Act, 1963 has not

been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The case of *N. Balakrishnan -Vs- M. Krishnamurthy (1998) 7 SCC 123* was also referred to wherein, the Apex Court had observed that length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of the very long range can be condoned as the explanation thereof is satisfactory. In the given facts of the case of *B. Madhuri Goud* (supra), there was a period of 1236 days, which was condoned by the High Court. The Apex Court however held that the High Court was not justified in condoning the delay as it was of the view that the submissions made by the respondent therein about misplacement of documents of the Office of the advocate was vague to the core and therefore, the High Court had committed grave error by entertaining the fanciful explanation given for the 1236 days delay. The Order condoning the delay was therefore interfered with. In the case at hand, it may be seen that the applicant has neither given any conceivable explanation nor the details as to how the matter proceeded after the passing of the Judgment & Order dated 13.12.2022 except for saying that the matter was taken from the Branch Office to the Divisional Office and thereafter, to the Regional Office. Despite all the short comings, even the same was to be accepted, the explanation sought to be given for time taken to file the appeal from 10.07.2023 to 13.09.2023 cannot be

accepted for the reason that the applicant has sought to explain the delay by citing the time taken by the MACT to furnish the certified copy of the Judgment & Order. As already stated, certified copy of the Judgment & Order was applied for after a period of seven (7) months from the date of the Judgment & Order and therefore, there cannot be any benefit given in this regard to the applicant for condoning the delay. Further, it is not a prerequisite that one requires the original certified copy in order to start drafting an appeal. In other words, a true copy or even a photo copy of the Judgment & Order sought to be challenge would suffice for the purpose of drafting the Memorandum of Appeal.

[10.] In the case of *Basawaraj & Anr.* (supra), the Apex Court in the given facts of that case held that “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of the case. Facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay.

[11.] In the present case as well, it is seen that the applicant has failed to demonstrate due diligence in seeking a remedy against the Judgment & Order of

the Tribunal. This can be seen from the fact that no facts and figures have been revealed in the application as to how the matter was processed. Thus, upon due consideration of the application in its entirety, this Court is not inclined to condone the delay of 184 days in filing the connected appeal. Accordingly, the application is rejected.

JUDGE

Comparing Assistant