Case No :CMAppl(FA) 0000636/2014

Party Name : ORIENTAL INS. CO. LTD Vs AMAL KANATI ROY & ANR

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This is an application for condoning 563 days delay in filing the appeal.

The undisputed facts are that the judgment which is under challenge was delivered on 26th February, 2013 and was received by the learned counsel for the insurance company on 4th March, 2013. This judgment was supplied free of cost to the insurance company by the Motor Accident Claims Tribunal.

According to the averments made in the application, counsel for the company sent the file to the Divisional Office at Agartala with his opinion that appeal should be filed. This opinion was delivered on 14th March, 2013. Though it is not clearly mentioned, it is obvious that the counsel must have also indicated the last day of limitation for filing the appeal in his opinion.

Thereafter, the Divisional Office at Agartala sent the file to the Regional Office at Guwahati for approval. The file was received back on 08.07.2013 from the Regional Office, Guwahati. There is no explanation worth the name why the file remained at Guwahati for more than 3 months i.e. from 01.04.2013 to 08.07.2013. After receipt of the file at Agartala, according to the insurance company, the file got mixed up with some other files and was not traced till 6th June, 2014.

There is no material placed on record to support this allegation. It is difficult to believe that a national Insurance Company which has a Divisional Office maintains its records in such a manner that the files get mixed up. This is not the first case in which such an explanation has been given to me. At least in 5 or 6 cases earlier, same explanation has been given. This Court was accepting the explanation, but it cannot be accepted in each and every case. Why was the file was mixed up with other cases has not been stated.

Even more shocking is the fact that the claimant filed recovery proceedings before the Motor Accident Claims Tribunal and the insurance company received notice of the recovery proceedings on 23rd August, 2013 and handed over the same to the counsel on 10th September, 2013. At least at this time some effort should have been made to trace out the file because now the insurance company knew that the claimant had filed proceedings for recovery of the award. Not a word has been stated as to why no effort was made to trace out the file. Not only this, on 31.01.2014, the learned Tribunal issued a certificate for recovery of the amount and when that certificate was received back un-executed he called upon the District Magistrate, West Tripura to immediately execute the award.

According to the insurance company, in the mean time, it made a search of the records and the records were finally traced out on 06.06.2014. No noting has been placed on record to show whether any file was found missing in the office or that any efforts were made to trace out the file. It cannot be believed that once execution proceedings were pending and the insurance company should have naturally thought it fit to trace out the file and the file could not be found out for 7 months. Even if the story of the insurance company is believed that the file was only traced out on 6th June, 2014, there is no explanation worth the name why it took the insurance company more than 6 months thereafter to file the appeal. The appeal has been filed on 18th December, 2014. 6 months and 12 days, after the file was admittedly traced out. The limitation for filing an appeal is 90 days which had already expired. Therefore, once the file was traced out one would expect that the appeal would be filed within a week or ten days at the latest.

The explanation given in this behalf appears to be totally false. Now the explanation given is that the file was again sent to the Regional Office for advising whether the appeal should be filed or not. If the file had been sent earlier in April, 2013 for getting this very opinion as to whether an appeal should be filed or not and admittedly the file had been receipt back from the Regional Office why it should have again been sent back to the Regional Office? The insurance company has very conveniently not filed the communication it received from the Regional Office on 8th July, 2013. It is obvious that the Regional Office at Guwahati would have advised the Divisional Office either to file an appeal or to settle the claim. Therefore, I do not understand why after the file was traced out, it should have been again sent back to the Regional Office.

There is no reason why the insurance company should have again approached the Regional Office. Even on the second occasion, the Regional Office at Guwahati sent a communication on 18th August, 2014 that the appeal be filed and according to the averments made in the petition the entire file was received back on 24.09.2014. It is alleged that the High Court was closed for Puja vacation, but immediately after the Puja vacation, the appeal should have been filed. Now the excuse becomes that the counsel was unwell. But no material has been placed on record to support this averment.

Be that as it may, the explanation given further is even worse. It is stated that the counsel asked the Divisional Office to collect the relevant records to explain the causes of delay. This was done on 27th October and it took almost two months thereafter to file the appeal. If this is not gross and crash negligence, I fail to understand what else would be a case of crash negligence. The negligence is writ large on the facts of the case and therefore, I have no hesitation in dismissing this application for condonation of delay. Accordingly, the same is dismissed.

A copy of this order shall be sent by the Registrar (Judicial) to the Managing Director of the Oriental Insurance Company Ltd. for information and for taking action against those officials who were negligent in their duties.