* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>Mac. Appeal No.514/2012 & C.M. No.8631/2012</u>**

Decided on : <u>16th July, 2015</u>

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
…… Appellant
Through: Mr. Pankaj Gupta, Advocate.

Versus

ROJIDA KHATUN & ORS. …… Respondents
Through: Mr. Kunwar Pal Singh, Adv. for R-1 to 4.

<u>WITH</u>

\+ **<u>Mac. Appeal No.1141/2012 & C.M. No.18397/2012</u>**

ROJIDA KHATOON & ORS. …… Appellants
Through: Mr. Kunwar Pal Singh, Advocate.

Versus

ICICI LOMBARD GENERAL INSURANCE CO. LTD. & ORS.
…… Respondents
Through: Mr. Pankaj Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

<u>V.K. SHALI, J. (*ORAL*)</u>

1. These are two cross connected appeals arising from the same award. The first appeal bearing Mac. Appeal No.514/2012 titled *ICICI*

Lombard General Insurance Company Limited vs. Rojida Khatun & Others is filed by the insurance company and the second appeal bearing Mac. Appeal No.1141/2012 titled *Rojida Khatoon & Ors. Vs. ICICI Lombard General Insurance Company Limited & Ors.* is filed by the claimants seeking enhancement.

2. Vide award dated 13.9.2011, an amount of Rs.8,09,420/- has been awarded as compensation to the claimants on account of death of one Mohd. Akhtar, who was hit by an Eicher container bearing registration No.DL 1L G 6776 (offending vehicle) which was being driven negligently at a high speed by its driver Abdul Bariq. The deceased was a truck driver stated to be employed with M/s. Prakash Ispat Udhyog having a monthly income of Rs.12,000/-. The compensation which was sought by his widow, Rojida Khatun and parents was to the tune of Rs.42 lacs. The offending vehicle was duly insured and, therefore, the insurance company was fastened with the liability of payment of the awarded compensation amount of Rs.8,09,420/-. Out of the aforesaid amount, a sum of Rs.2,09,420/- was directed to be released to Rojida Khatun, widow. Out of the balance amount of Rs.6 lacs, a sum of Rs.1 lac each, amounting to Rs.3 lacs in all, was to be released to the other

three claimants, being married daughter and aged parents and the balance amount of Rs.3 lacs was to be kept in FDR for a period of five years, to be released to the widow, Rojida Khatun, periodically in terms of the award.

3. The insurance company had filed an appeal bearing No.514/2012 challenging the quantum. The appeal is filed along with an application bearing C.M. No.8631/2012 seeking condonation of 147 days delay in filing the appeal. The reasons which are given for condoning the delay are that the award was pronounced on 13.9.2011 and the Legal Manager, one Ankur Mathur, who was working with the insurance company had tendered his resignation. It is averred that he had not processed the present file as a consequence of which, no action was taken. It is stated that even the copy of the award was received by them in the month of March, 2012. Thereafter, the matter was processed and permission from the head office was obtained and the matter was sent to the counsel for the purpose of filing an appeal on 9.4.2012. It is stated that as the chamber of the counsel was under renovation, hence, the associate counsel took the file to his home for the purpose of preparing the draft; however, inadvertently, he forgot to return the file to the main counsel

timely and it was only on 5.5.2012 that the file was returned and thereafter, the appeal was filed on 8.5.2012. It is further stated that the delay was neither intentional nor deliberate and therefore the delay may be condoned.

4. Section 5 of the Limitation Act lays down that before the delay is condoned, the applicant must be able to show to the court that he was prevented by 'sufficient cause' from filing the appeal. The 'sufficient cause' has been interpreted as a cause by the courts which is beyond human control. While interpreting the word 'sufficient cause', the Apex Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.; (2013) 12 SCC 649* has observed that the length of the delay is not material but the *bona fides* of the person in prosecuting the matter are to be seen. In the instant case, details as to when the file was taken by the associate counsel, when it was returned, what was his name and what was the action taken against him and such other relevant details have not been given by the appellant. This appears to be only a concocted story to overcome the delay. In my considered view, the reason given by the insurance company does not constitute 'sufficient cause' for condoning the delay of 147 days in filing the appeal, which

stands unexplained. Consequently, the delay is not condoned. Since the delay is not condoned, therefore, the appeal of the insurance company becomes time barred.

5. So far as the appeal bearing No.1141/2012 filed by the claimants is concerned, that is also accompanied by an application bearing C.M. No.18397/2012 seeking condonation of 300 days delay in filing the appeal. The reason for delay given by Rojida Khatun is that after the award was passed, the appellant No.2, Samina Khatoon, daughter of the deceased Mohd. Akhtar, was in family way and therefore, she had to go to her native village in Bihar. So far as other claimants, namely, the parents of the deceased, Mohd. Akhtar, and his widow are concerned, they were already living in the village. It has been stated that all of them are illiterate and all of them tried to contact their counsel in Delhi; however, they were unable to do so and consequently it is for the first time, after 13 months, that is, on 5.10.2012 that they came to contact the counsel through Mohd. Shakeel, husband of Samina Khatoon, daughter of the deceased. It is at this stage that the counsel asked all the appellants to go to Delhi for the purpose of signing papers and consequently, this resulted in delay of 300 days in filing the appeal and since the delay was

not intentional or wilful or due to the aforesaid *bona fide* reason, therefore, the delay may be condoned.

6. I have heard the learned counsel for the parties and have also gone through the record. I have hereinabove already observed that delay of 147 days which has been caused by the appellant/insurance company has not been condoned as 'sufficient cause' has not been shown by them. By the same yardstick, if one looks into the explanation of the present appellants in the cross appeal, that also does not show *bona fide* on the part of the appellants in pursuing the matter. The award has been passed on 13.9.2011. It is very unlikely that the counsel who was representing the appellants/claimants before the MACT would not make them aware that they could file an appeal against the award but despite this, the plea which has been taken is that appellant No.2, the daughter of the deceased, Mohd. Akhtar, was in family way and she had gone to her native town where all the three other claimants, namely, the widow and the parents of the deceased were living and all of them were busy in looking after the daughter, Samina Khatoon, daughter of the deceased till the time she delivered the child and it is only after that, her husband Mohd. Shakeel almost after 13 months from the date of passing the award, chose to

contact the counsel. If Mohd. Shakeel could contact the counsel on 5.10.2012, he could have as well done the same thing much earlier than that. No explanation has been given on that score.

7. In my considered view, it is a death case and the learned MACT had passed an award for a sum of Rs.8,09,420/- and the entire award amount having been received by the appellants from the insurance company, they thought that they could get the amount enhanced from the appellate court by filing an appeal as a counter blast had already been initiated by the insurance company for reduction of the compensation amount. It is with this idea that the appellants have chosen to file the present appeal not only to counter the appeal of the insurance company but also to get the amount enhanced after having accepted the award. This cannot be permitted to be done, that filing appeals under MACT Act become speculative exercise of getting the amount of compensation enhanced. I feel that the explanation which has been given by the appellant Rojida Khatun and others in the cross appeal bearing No.1141/2012 is not *bona fide* or plausible and therefore, it cannot be deemed to constitute a 'sufficient cause' within the definition of Section 5 of the Limitation Act. Accordingly, the delay of 300 days is also not

condoned and since the delay is not condoned, therefore, the appeal of the claimants has also become time barred.

8. In view of the aforesaid facts, both the appeals, that is, the appeal of the insurance company as well as that of the claimants are dismissed as barred by time.

V.K. SHALI, J.

JULY 16, 2015
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