

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 537 of 2015**

Bajaj Allianz General Insurance Company Limited Through
Divisional Manager, Shivmohan Bhawan Vidhan Sabha Road,
Pandri, Police Station Pandri, Civil & Revenue Distt. Raipur
Chhattisgarh

---- Appellant**Versus**

1. Ramkumar S/o Late Mangal Singh Aged About 45 Years
2. Tulsi Bai W/o Ramkumar Aged About 42 Years

Both R/o Village. Nawagaon, Thana And Tahsil Takhatpur, Civil
And Revenue Distt. Bilaspur CG

Claimants

3. Dhaniram Maravi S/o Jhaduram Maravi Aged About 45 Years R/o
Village Nawadih, Post Pali, Thana Takhatpur, Distt. Bilaspur, Civil
And Revenue Distt. Bilaspur Chhattisgarh
4. Manharan Gond S/o Vishnu Gond Aged About 25 Years R/o
Village Nawadih, Post Pali, Thana Takhatpur, Distt. Bilaspur, Civil
And Revenue Distt. Bilaspur Chhattisgarh

---- Respondents

For appellant	:	Mr. N.K. Thakur, Advocate.
For Respondents	:	None though served as per office note 24-10-2016.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****26/10/2016**

Heard on I.A. No. 1/2016 for condonation of delay in filing instant
MAC as the same has been filed after a delay of 1469 days of its
limitation.

2. Brief facts of the case are that initially the Claims Tribunal vide
award dated 9-12-2011 in Claim Case No. 107/2011 held the
appellant and respondent No. 3 and 4 jointly and severely
responsible and directed the appellant to satisfy the award of Rs.
1,92,000/- including interest and the cost of the award. After the
period of limitation as required under Article 124 of the Limitation
Act, 1963 i.e. 30 days, the appellant filed a review petition on 31-
1-2012 which was registered as MJC No. 22/2013. On an

application under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code (in brevity 'CPC') read with Section 169 of the Motor Vehicles Act, the Tribunal disposed of the said MJC vide order dated 9-1-2015 and held that the said application was time barred, also the appellant/applicant himself did not press the application for condonation of delay in filing the said review petition and further held that the appellant/applicant failed to prove that the facts regarding the forged and fabricated policy could not be brought during hearing of said claim case and even with exercise of due diligence it was not within the knowledge or could not be produced by the applicant in the hearing of said claim case, hence after award, it would not be appropriate to review the matter after the receipt of internal inquiry report of the office of the applicant. After the said order, the appellant has filed instant MAC against the award dated 9-12-2011.

3. Heard learned counsel for the appellant who placed reliance on the facts which are already brought before the review court that the internal inquiry report was received by the legal section of the applicant on 3-1-2012 wherein it was found that the document of insurance was forged and fabricated, that is why they were not in a position to place the same before the Tribunal hence the award was passed against the appellant and bonafidely the appellant challenged the said award by filing the review petition. With this the delay of 1469 days occurred in filing the instant MAC may be condoned.
4. Perused the award dated 9-12-2011 and the order passed in the said MJC dated 9-1-2015.
5. Under the provisions of Article 124 of the Limitation Act, limitation

for filing the review petition is 30 days. Indisputedly the revision petition was filed before the concerned Tribunal after stipulated time. The application for condonation of delay was filed but the same was not pressed hence disposed of by the Tribunal. With this indisputedly the said MJC for review of the award dated 9-12-2011 was barred by limitation. For relevance Sections 169 and 173 of the Motor Vehicles Act are reproduced as under:-

169. Procedure and powers of Claims Tribunals.

1. In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
2. The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. (2 of 1974.)
3. Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

173. Appeals.

1. Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to

pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

2. No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

For relevant, Order 47 Rule 1 of the CPC is also reproduced as under:-

1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (C) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

Rule 240 of the C.G. Motor Vehicles Rules, 1994 is also reproduced below :-

“Rule – 240. Procedure to be followed by Claims Tribunal in holding enquiries.- Application of certain provisions of Code of Civil Procedure 1908; Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rule 9 to 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.”

6. On perusal of the said Rule 240 of the Rule of 1994, it appears that the applicability of Order 47 is not included in the said rule. With this, there is no distinct and permissible provision for filing the review petition before the concerned Tribunal under the law.
7. As per settled law, against the award of the concerned Tribunal, the aggrieved party is required to file an appeal under Section 173 of the Motor Vehicle Act. Review petition is not permitted under the Rule 240 of the Rule of 1994, even otherwise, said petition was barred by limitation under Article 124 of the Limitation Act. During trial, the parties are required to plead their pleadings, facts and to adduce evidence. It is none of the business of the Court to weight for any internal inquiry report. If the appellant was vigilant he might have internally examined the matter and adduce evidence well in time during trial of the said claim case which he did not do which

goes to show the appellant has utterly failed to prove that after exercise of due diligence the said inquiry report could not be produced by him during trial. To further add, the Court below vide order dated 9-1-2015 held that sufficient opportunity for evidence was granted to the appellant to adduce evidence but the appellant failed to adduce any evidence. It is further appreciated in para 7 of the impugned order dated 9-1-2015 that there was no pleading that the policy in question was forged and fabricated. Also there is no prayer during trial to grant more time as internal inquiry proceedings are going on. When there are submissions regarding insurance of a vehicle, if number of said policy and other facts are in the knowledge of the appellant to be forged, it was the duty of the appellant to immediately without any delay conduct internal examination whether the said insurance was by the appellant or not. The appellant has failed to observe the above part of the alertness as required.

8. Instant MAC has been preferred after 1469 days of limitation. In the considered view of this Court, the appellant has failed to explain satisfactorily the cause of such delay in filing the instant MAC.
9. I.A. No. 1/15 for condonation of delay in filing the appeal is hereby dismissed as not maintainable along with instant MAC which is barred by limitation of 1469 days.
10. The Appeal is dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge