IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1561 OF 2016

The New India Assurance Company Ltd. .. Petitioner
vs.
Mrs. Shailja Sachin Jadhav & Ors. .. Respondents

Ms. Kalpana R. Trivedi for the Petitioner.
Ms. Sabhyata Rajpurohit a/w. Mr. A.N. Desai for the Respondents.

CORAM : M.S. SONAK, J.
DATE : 8 FEBRUARY, 2016.

P.C. :

1 The challenge in this Petition was to the order dated 15.01.2016 made by the Motor Accident Claim Tribunal (MACT) refusing to set aside *"no W.S. order"* and accept on record the written statement of the Insurance Company after lapse of almost 8 years since the date of the institution of the claim petition by the claimants (respondent Nos.1 to 4).

2 The Claim Petition concerns claim arising out of demise of Sachin Jadhav, who was about 32 years of age at the time of his demise in a motor accident. The claimants are the widow Shailja (27 years), minor son Atharva (1 year), father Shivaji (60 years) and mother Shilpa (58 years). As, upto 18.12.2013, the petitioner

Insurance Company did not file its written statement, a "*no W.S. order*" came to be made against the Insurance Company. The record would indicate that the Insurance Company had in fact accepted this order, as, despite this order, the petitioner Insurance Company proceeded to cross examine the claimants. After considerable delay for which, there is no explanation offered, the petitioner Insurance Company has filed an application dated 31.07.2015 for setting aside "*no W.S. order*" and for permission to file written statement on record.

3 The learned counsel for the petitioner submitted that the claim petition was posted for "*dismissal*" for considerable period, as, the claimants had not paid the requisite court fees. Apart from the validity of such reason, if the application dated 31.07.2015 made by the petitioner Insurance Company is perused, then, no such reason is even set out in the said application. The reason set out in the application is that there were some settlement talks between the parties and, therefore, there was delay in filing the written statement. The application dated 31.07.2015, is required to be reproduced here, so that, the casualness with which the same came

to be made would be quite evident. The entire application, reads thus :-

> *<u>"Application for setting aside "NO WRITTEN STATEMENT" Order against the insurer</u>*
> *<u>MAY IT PLEASE YOUR HONOUR</u> :-*
> *That in the above stated application the Insurance company was ready and willing to settle the claim in lokadalat out of court settlement, but the amount offered by the insurance company was not accepted by the applicant, even there were three to four meeting for settlement was conducted at the office of insurance company and hence there was delay in filing written statement.*
> *The delay is not intentional, hence the written statement filed today may be taken on record in the interest of justice.*
>
> *Kalpana R. Trivedi*
> *Advocate for Iffco Tokio General Insurance Company Ltd."*

4 In the aforesaid application, there is no reference to the quantum of delay which is quite inordinate, in the present case. The reasons set out, are not backed by any details or material. The reasons, in any case, are not at all convincing and the same were rightly rejected by the Claims Tribunal. The Insurance Company, cannot, take the matter so lightly and choose not to file its written statement for such considerable length of time particularly in a matter where the deceased was 32 years of age and the claimants are the widow, minor son and aged parents.

5 Upon the query as to what defence the Insurance Company seeks of raise in this matter, in the light of provisions contained in Section 149 of the Motor Vehicles Act, the learned counsel for the Insurance Company to begin with, was quite evasive in her answer. Upon request that the draft written statement, which was stated to be ready and available, being shown to this Court, some time was applied for by the learned counsel for the petitioner. Accordingly, the matter was posted in the afternoon session. When the matter was called out in the afternoon session, the learned counsel for the petitioner stated that the xerox copy of the written statement is being taken by the learned counsel who purports to appear for the claimant. After some time, it was stated that the written statement is with the Advocate who appears before the Tribunal. It is quite clear that the learned counsel for the petitioner Insurance Company was avoiding to furnish of the draft written statement. The learned counsel for the petitioner states that the only defence which the insurance company seeks to raise is that the deceased was negligent at the time when he met with the incident. At least, prima facie, it is impermissible for the Insurance Company to raise this kind of defence. In any case, the delay in the present case is gross and unexplained. Insurance Company, in the matter

of this nature, cannot avoid filing its written statement for the period of almost 8 years since the institution of the claim petition. In any case, even though *"no W.S. order"* was made on 18.12.2013, the petitioner Insurance Company, by means of an extremely casual and the application made on 31.07.2015, cannot urge that *"no W.S. order"* be set aside, so as to enable it to take up some defence which atleast prima facie, the Insurance Company is not even entitled to take up.

6 The principles set out in the Code of Civil Procedure, in the matters of filing of written statement with utmost despatch, must apply to claim petitions under the Motor Vehicle Act, 1988. In fact, the claim petitions are required to be disposed of expeditiously and there is no justification whatsoever on the part of at least Insurance Companies to delay the disposal, by not filing their written statement for a period of almost eight years from the date of institution of the claim petition. The Petitioner-Insurance Company, as applied for recall of '*no W.S. order*', after a period of almost three years since the same was made, without assigning any serious cause, which prevented them from filing the written statement within reasonable period.

7 In case of ***Kailash Vs. Nanhku and ors. - (2005) 4 SCC 480,*** the Hon'ble Apex Court, whilst holding that the provisions of Order 8 Rule 1 of the CPC are directory in nature has cautioned that the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. The prayer of extension of time to file written statement shall not be granted just as a matter of routine and merely for the asking, more so, when period of ninety days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the Defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the Defendant and grave injustice would be occasioned if time was not extended.

8 In case of ***R.N. Jadi & Brothers and ors. Vs. Subhashchandra – (2007) 6 SCC 420,*** the Hon'ble Apex Court, in paragraphs 11 and 15, has observed thus:

> *11. It is notorious that suits were being dragged on by defendants in suits by not filing their written statements within a reasonable time. We are not*

unaware of cases where written statements were not filed even within two or three years of the filing of the suits. The control expected to be exercised by courts, by the scheme of the Code, was not being exercised leading to slackness in the matter of filing of pleadings in defence. It was in that context that the relevant provisions of the Code of Civil Procedure were amended, the laudable object being to avoid delay in the disposal of suits. The Amended Order 8 Rule 1 fixes a time limit for the filing of written statements. But, Parliament did not stop with amending Order 8 Rule 1 alone i.e. introducing a time limit for filing written statements and restricting the power of the court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the court under Section 148 of the Code was curtailed by introducing an outer time limit of 30 days from the date originally fixed or granted. Thus, the legislative intent to limit or curtail the power of the court to extend the time for filing a written statement is obvious from a conjoint reading of these provisions.

12. ....
13. ....
14. ....
15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases,

> *the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen vs. Sir Alfred McAlpine & Sons [(1968) 1 All E.R. 543 (CA)] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?*

9 Applying the aforesaid principles to the facts and circumstances of the present case, it cannot be said that the impugned order is either in excess of jurisdiction or that discretion has been exercised by the Tribunal unreasonably. The delay in the present case is both inordinate and unexplained. The Petitioner has treated the entire matter with casualness, unmindful of the circumstance that the matter concerns demise of a 32 years old and the claimants are widow aged 27 years, minor son aged one year and elderly parents, who awaited some compensation on the basis of the claim petition instituted by them in the year 2007. This Petition is, therefore, dismissed with costs assessed at Rs.25,000/-. The Petitioner to pay the costs to the Respondent No.1 i.e. Shailja Sachin Jadhav (widow) by means of demand draft, directly drawn in her name. The costs to be paid within two weeks from today. The MACT to ensure compliance before the Petitioner takes further

part in the proceedings. Further, considering that the claim petition is of the year 2007, the MACT is directed to dispose of the same as expeditiously as possible and in any case within a period of 3 months from today.

10 All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)