

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 985 of 2017**

Sajid Ali S/o Rajab Ali, Aged About 30 Years R/o Post At Near Barpali Chowk, Taj Gali, Champa, District Janjgir-Champa, Chhattisgarh. (Owner Of The Offending Vehicle Bearing The Registration No. C.G.11 A B 1669).

**---- Appellant****Versus**

1. Shyamlal Diwakar S/o Shri Sodhram, Aged About 28 Years R/o Village Gidhouri, Police Station Uрга, Tahsil Kartala, Civil And Revenue District Korba, Chhattisgarh .....(Claimant)
2. Lalit Kumar Kashyap S/o Jagannath Kashyap, Aged About 24 Years R/o Village Kosmunda, Champa Police Station Champa, District Civil And Revenue Janjgir-Champa, Chhattisgarh .....(Driver Of The Offending Vehicle Bearing The Registration No. C.G.11 A B 1669)
3. The New India Insurance Company Limited, Divisional Office S.C.O. 104-106, Sector 34a, Chandigarh, Through Branch Manager, The New India Insurance Company Limited, Branch Office T.P.Nagar, Korba, Tahsil And District Korba, Chhattisgarh .....(Insurer Of The Offending Vehicle Bearing The Registration No. C.G.11 A B 1669).

**---- Respondents**


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For Appellant : Shri Punit Ruparel, Advocate.

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**SB: Hon'ble Shri Justice P. Sam Koshy****Order On Board****19/07/2017**

1. Head on IA No.1, which is an application for condonation of delay in filing the appeal.
2. The present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 08.08.2016 passed by the Motor Accident Claims Tribunal, Korba (for short, the Tribunal), in Claim Case

No.55/2014. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of MV Act has awarded compensation of Rs.63,996/- to the claimant to be paid by the present appellant who is the owner of Swaraj Mazda Matador bearing registration No.CG-11-AB-1669 which had caused the accident resulting in to injury sustained by the respondent No.1-claimant.

3. The present appeal has been preferred by the insurance company with delay of more than 235 days.
4. The only reason assigned by the counsel for the appellant seeking condonation of delay is the fact that the counsel engaged before the trial court did not communicate to him about the award having been passed against the present appellant. Apart from this, there is no other ground raised by the appellant.
5. Indisputably, the claim application in the instant case was filed in the year, 2014. The appellant had been duly served with the notice issued by the Tribunal. He had also entered appearance and had engaged a Lawyer, but for reasons best known, he did not think it proper to contest the case on merits, inasmuch as, even reply was not filed before the Tribunal and therefore the Tribunal had to proceed ex parte against the appellant. Even then, the appellant did not take any steps for ensuring the ex parte order being set aside and sought for permission to contest the case on merits. It is only after the award which has been passed in August, 2016 and thereafter when the appellant received notice in the execution proceeding, the appellant has now rushed to this High Court preferring an appeal

challenging the impugned award.

6. Considering the conduct of the appellant where he has not been prudent enough in getting the case decided on merits either before the Tribunal by filing reply, and also the fact that he has not taken any proper care in keeping a watch on the proceedings before the Tribunal so as to be aware of the progress of the case, it cannot be said that sufficient cause has been shown for condoning the delay in filing of the appeal.
7. The case in hand appears to be a case of gross negligence of appellant in prosecuting his case. Although Section 5 of Limitation Act must receive a liberal construction so as to advance substantial justice and generally delay may be condoned in the interest of justice, but where a litigant is so grossly negligent that he has not taken care of his case for an inordinate long period, then it cannot be said that the court below has exercised its discretion in passing ex parte order in an arbitrary manner.
8. Accordingly, this court is of the opinion that no strong case has been made out for allowing the application under Section 5 of the Limitation Act to condone delay in filing the appeal and as such IA No.1 for condonation of delay stands rejected.
9. As a consequence, the appeal also stands rejected.

Sd/-  
(P. Sam Koshy)  
**Judge**

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