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HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 812 of 2019

- ICICI Lombard General Insurance Company Limited Through Its Branch Manager, Vanijya Bhawan, First Floor, Devendra Nagar, District- Raipur, Chhattisgarh.

---- Applicant

Versus

1. Somendra Pratap Singh S/o Shri Bhanwar Lal Singh Aged About 26 Years R/o Mishra Gali, Surajpur, District- Surajpur, Chhattisgarh.
2. Haroon Raseed S/o Shri Mohd. Yusuf Ansari Aged About 45 Years R/o Village Ramnagar, Police Station- Basantpur, District- Sarguja, Chhattisgarh.
3. Maamun Raseed S/o Shri Mohd. Yusuf Ansari Aged About 48 Years R/o Village Ramnagar, Police Station- Basantpur, District- Sarguja, Chhattisgarh.

---- Respondents

For Applicant : Mr. K. Rohan, Advocate appears on behalf of Mr. Amrito Das, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

06-09-2019

1. This is an application for restoration of appeal namely MAC No. 324/2017 assailing the legality, validity and propriety of the award dated 30.11.2016 passed in Claim Case No. 54/2012 passed by the 2nd Additional Motor Accident Claims Tribunal, Surajpur (C.G.).

2. The applicant preferred the above mentioned appeal under Section 173 of Motor Vehicles Act, 1988 against the said award in favour of respondent No. 1 to the tune of Rs. 7,21,888/- on account of motor accident by vehicle TATA -207 bearing registration No. CG 15- A/ 6975 on 23.01.2009. The vehicle was insured by the appellant that is why the Tribunal fastened liability on the appellant.

3. Learned counsel for the applicant would submit that the case was listed before this Court on 16.3.2017. On that date the Court granted two weeks time to remove the default with pre-emptory order. The default was not removed that is why the appeal was dismissed on 4.4.2017. The applicant was under *bona fide* impression that the default has been cured within the prescribed time period. He would further submit that non-compliance of the directions rendered was neither intentional nor deliberate, therefore, the applicant be permitted to prosecute the appeal.

4. I have heard, learned counsel for the applicant.

5. The question for consideration of this Court is whether the applicant has shown sufficient cause for restoration of the said appeal. That test which is applied is whether the applicant honestly and sincerely intended to prosecute the appeal. On account of pre-emptory order the appeal was

dismissed on 4.4.2017 and the restoration application is filed on 26.8.2019 i.e. after 2 years and 4 months. It is not a case that the applicant which is Insurance Company had no knowledge about the order of this Court. Filing of an application after 2 years and 4 months shows that the applicant is not acted diligently and remained inactive for a long. It can be said that the applicant has acted in negligent manner and there was want of bona fide on its part. It is not the case where applicant sincerely intended to contest the case and did its best to do so, therefore, it is the company who could be blamed for non-prosecution of the case. The applicant had knowledge of all the proceeding of this Court on 16.3.2017 and application is filed after 2 years and 4 months which is clearly after expiry of the period of limitation, in other words the application is hopelessly time barred.

6. This Court in the facts and circumstances of the case cannot ignore the period of limitation because no court shall have jurisdiction to entertain any application if the same has been filed after expiry of the period of the limitation. The application is evidently time barred and looking to the gross negligence of the applicant this Court has no reason to restore the said appeal.

7. Accordingly, the instant MCC is liable to be and hereby dismissed. Consequently, I.A. No. 1/2019, application for condonation of delay in filing the present MCC also stands dismissed.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju