GAHC010135362017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil) 2469/2017

1:BISWANATH KRITONIA @ BISWAJIT KRITONIA
S/O HAREN KRITONIA, R/O LEPHABARI, LATA PATA, P.S. GHUSKA DANGA, DIST. KOCH BIHAR, WEST BENGAL

VERSUS

1:GOPAL AGARWAL and 2 ORS,
S/O SRI B. L. AGARWAL, R/O GR-ALI, P.O., P.S. and DIST. JORHAT OWNER OF VEHICLE/TRUCK NO. ASW-5831 PIN 785001

2:PABITRA GOGOI
S/O KORON GOGOI
P.O. NAKACHARI
P.S. MARIANI
DIST. JORHAT
ASSAM
PIN 785001 DRIVER OF TRUCK NO. ASW 5831

3:UNITED INDIA INSURANCE CO. LTD.
MITHAPUKHURI ROAD
JORHAT BRANCH
P.O. and P.S. and DIST. JORHAT
REPRESENTED BY ITS BRANCH MANAGER
PIN 785001 INSURER OF TRUCK NO. ASW 583

Advocate for the Petitioner : MR.B K BHATTACHARJEE

Advocate for the Respondent :

Linked Case : /

1:SRI BISWANATH KRITONIA @ BISWAJIT

VERSUS

1:SRI GOPAL AGARWAL and 2 ORS

Advocate for the Petitioner : MR.B K BHATTACHARJEE
Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 21-01-2020

Heard Mr. Dr. R. Sarmah, the learned counsel for the applicant. Also heard Ms. P. Kashyap, learned counsel for the respondent No. 3/Insurance Company.

2. Dr. R. Sarmah prays for striking off the respondent Nos. 1 and 2 as parties from the case.

3. The prayer of Dr. R. Sarmah is allowed.

4. The respondent Nos. 1 and 2 are struck off as parties from the case. However, it is seen that despite the Order dated 26.07.2017, passed by this Court directing the applicant to take steps for service of notice upon the respondents, including the respondent Nos. 1 and 2, no fresh steps was taken by the applicant.

5. This is an application for condonation of delay of 610 days in preferring the appeal against the Judgment & Award dated 20.05.2015 passed by the MACT, Jorhat in MAC Case No. 26/2013.

6. In MAC Case No. 26/2013, the applicant had claimed compensation to the tune of Rs. 71,12,465.29/-, on account of injuries sustained by him in a motor accident. The learned Tribunal had awarded Rs. 11,69,200/- as compensation to the applicant/claimant. The

applicant has prayed for enhancement of the compensation amount and in the process, a delay of 610 days has occurred in filing the appeal.

7. The applicant's counsel submits that after the Judgment & Award dated 20.05.2015 was passed by the learned Tribunal, certified copies of the same were applied for and the same was delivered to the counsel for the applicant. Due to the financial crisis of the applicant, the applicant could manage to meet his counsel only in January, 2016 and submit all the papers for preferring the appeal. However, the applicant's counsel fell ill and he had to undergo major surgery of the lung and could return to Guwahati only in the last week of December, 2016. It was only in April, 2017 that the applicant's counsel could open the file and prepare the case. In the process, 610 days delay occurred in preferring the appeal.

8. Ms. P. Kashyap, the learned counsel for the respondent No. 3, on the other hand, submits that the applicant has not stated the dates on which the certified copy of the judgment was applied for and when the same was received by him. She also submits that the applicant could not be suffering from acute financial crisis in the month of January, 2016, as the Insurance Company had already deposited the awarded amount with interest totaling Rs. 13,18,858/- before the learned Tribunal on 08.09.2015 and the said amount had been taken by the applicant. She also submits that the submission that the applicant's counsel, who filed the appeal, was suffering from illness is not supported by any medical document. She accordingly prays for dismissal of the application as there is no proper explanation for the delay.

9. I have heard the learned counsels for the parties.

10. A bare perusal of the contents of the applicant's application for condonation of delay

shows that the applicant has not given any dates, as to when he applied for the certified copy of the impugned Judgment & Award and when he received the same. The averments made by the Insurance Company that Rs. 13,18,858/- had been deposited before the learned Tribunal on 08.09.2015 and the amount had been received by the applicant/claimant is also not denied by the applicant. If that be the case, there is no question of the applicant suffering from any acute financial crisis in the year, 2016. There is also no medical certificate attached to the application for condonation of delay to show that the applicant's counsel was suffering from any illness during the year, 2016, which prevented the said counsel from filing an appeal in the year, 2016.

11. The above being said, it is seen that the appeal and the application for condonation of delay had been filed only on 11.05.2017, though the impugned Judgment & Award had been passed on 20.05.2015 and compensation amount deposited on 08.09.2015.

12. On considering the above, this Court is of the view that the applicant has not been diligent in pursuing his remedy. Further, the explanation for the delay is without any dates and there is no attempt to give a proper explanation for the delay.

13. In view of the above reasons, this Court does not find any reason to condone the delay. The application for condonation of delay is accordingly dismissed.

JUDGE

Comparing Assistant