

S/L 18
08.7.2021
Court No.26
SD

FMAT 1303 of 2019
With
CAN 1 of 2019
(Old CAN 12508 of 2019)
(Via Video Conference)

Triparna Mondal @ Triparna Mondal (Ghosh) & Ors.
Vs.
The National Insurance Co. Ltd. & Ors.

Mr. Pingal Bhattacharya
...for the Appellants/Claimants.
Mr. Afroze Alam
...for the Respondents/Insurance Co.

CAN 1 of 2019 (Old CAN 12508 of 2019):

Let copy of this application furnished by counsel on behalf of the appellants be treated as original one.

This is an application for condonaion of delay of 1020 days in filling the appeal being FMAT 1303 of 2019 against the judgment and award dated November 10, 2016 passed by the learned Judge, Motor Accident Claims Tribunal (ADJ, 3rd Court), Tamluk in M.A.C. Case No. 41 of 2015.

Mr. Pingal Bhattacharyya, counsel appearing on behalf of the appellants/claimants, submits that due to certain reasons the appellants could not file the instant appeal within time. He relies on paragraphs 11, 12 and 13 of the application herein to buttress his arguments.

He further relies on three judgments of the Supreme Court in the case of ***State of Bihar & Ors. vs. Kameshwar Prasad Singh & Anr.*** reported in ***(2000) 9 SCC 94, Pralhad Shankarrao Tajale & Ors. vs. State of Maharashtra*** reported in ***(2018) 4 SCC 615*** and ***State of Nagaland vs. LIPOK AO & Ors.*** reported

in **(2005) 3 SCC 752** to fortify his argument that being a beneficial legislation the Court should exercise its discretion in favour of the appellants and allow the condonation of delay.

Mr. Afroz Alam, counsel appearing on behalf of the respondent/Insurance company, submits that the delay is inordinate and condoning such a delay would result in opening the floodgates of all settled matters before the Tribunal. He further submits that the appellants/claimants had accepted the award and in fact, received the sum of money as per the award in the year 2017 without any demur.

Mr. Alam also submits that the explanation provided in the application is unsupported by any documents and is a story telling exercise carried out by the appellants. He also relies upon two unreported Division Bench judgments of this Court in the case of ***Sri Bablu Bhowmik & Anr. vs. The National Insurance Co. Ltd. & Anr.*** and ***Lovely Debi Chowhan @ Lovely Chowhan & Ors. vs. The Shriram General Insurance Co. Ltd. & Anr.*** wherein the condonation of delay was not allowed in spite of the fact that the delay was less than 75 days.

I have heard counsel appearing on behalf of the parties and perused the materials placed on record.

One may first look into the relevant paragraph in the application of the appellants/claimants and accordingly, paragraphs 11, 12 and 13 are delineated below:-

“11. Your petitioners state that after the death of the sole bread earner of the petitioner’s family they became perplexed with the situation and they were just wondering what they will do in their life along with two minor children and after the getting the awarded amount the petitioners took three years to settle themselves with the new situation having no male guardian in the family.

12. *Your petitioners state that your petitioners reside in the district of nadia and the case initiated at tamluk in the district of Purba Medinipur having distance of near about more than 250 k.m. and travelling of the same with two minor children was painful, however, after settling everything your petitioner no. 1 instructed the clerk of the Learned Court below to apply for the Certified copy of the judgment/award dated 10.11.2016 only in the first week of September, 2019 accordingly the clerk of the Learned court below applied for Certified copy on 21.09.2019 and Certified copy was obtained on 04.11.2019 and the same was delivered to your petitioner on 10.11.2019.*

13. *Your petitioners state that thereafter your petitioner no. 1 contacted his Ld. Advocate for preferring an appeal before this Hon'ble Court and also handed over all the papers to his Learned Advocate for preferring an Appeal before this Hon'ble Court for non-granting compensation under the head of future prospect which has been settled by the Hon'ble Apex Court of the country."*

From a perusal of the explanation provided, it is crystal clear that no action was taken by the appellants from the year 2016 till 2019. The explanation provided that *"the petitioners took three years to settle themselves with the new situation having no male guardian in the family"* is clearly an afterthought and does not merit any consideration. *Ignorantia juris non excusat* – ignorance of law is no excuse – especially so when there is an inordinate and procrastinated delay on the part of the appellants. One could understand the delay if the same was for a limited period of time. Even in such a case, sufficient cause is required to be shown.

With regard to the judgments cited by the counsel appearing on behalf of the appellants, it may be noted that none of these judgments relate to the Motor Vehicles Act, 1988. Furthermore, the judgments are general in nature and do not lay down any binding principle that has to be followed by this Court. One need not join issue with the fact that sufficient cause is required to be shown, and accordingly, since in the present case no sufficient cause has been shown as indicated by me above, the judgments have no application in the present case.

I am relying on an extract of the judgment passed by the Division Bench in **Sri Bablu Bhowmik & Anr. (supra)**. The extract is provided below:-

“Law is well settled that the length of delay in presentation of an appeal is not relevant for deciding whether the delay should be condoned or not; what is relevant is the cause shown. A long delay could be condoned provided sufficient cause is shown, whereas a few day’s delay may not be condoned if sufficient cause were not shown. Here, we have a case where the appellants seek condonation of only 8 days’ delay. They have not disclosed in the application of receiving the amount on account of compensation, awarded by the tribunal. Having regard to their conduct in receiving the compensation awarded by the tribunal without any protest, thereby foreclosing the insurer’s right of preferring an appeal, we are of the considered view that exercise of discretionary power on facts and in the circumstances, would not be proper. The conduct of the appellants is such that they are not entitled to exercise of discretion in their favour.”

In the present case, I also find that not only the appellants/claimants received the compensation in the year 2017 but waited for another two years to file this particular

appeal. The conduct of the appellants seen in conjunction with the reasons provided in the application do not merit consideration for condonation of delay. Ergo, I dismiss the application for condonation of delay.

FMAT 1303 of 2019:

Since this appeal is time barred, the same is hereby dismissed.

There shall be no order as to costs.

The Registry is directed to send down the lower court records at once, if received by this time.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)