

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 2-2-2021****Pronounced on 9-2-2021****MAC No. 923 of 2020**

- Manager National Insurance Co. Ltd. Supela Bhilai Tahsil And District Durg Chhattisgarh Through Divisional Manager, Division Office, Agrawal Chamber First Floor Vyapara Vihar Road Above Canara Bank P.S. Civil Line Bilaspur District Bilaspur Chhattisgarh. (Insurance Co.)

---- Appellant**Versus**

1. Miss Priya Sahu D/o Late Dhanesh Sahu Aged About 22 Years
2. Miss Richa Sahu D/o Late Dhanesh Sahu Aged About 16 Years

R/o. Q.No. 3/A New Police Line Durg, District Durg Chhattisgarh.

Respondent No. 2 is minor through natural guardian Miss Priya Sahu (Sister), **(both are Claimants)**

3. Malkit Singh S/o Gurunam Singh Aged About 45 Years R/o Santara Badi Behind Gurudwara Durg District Durg CG.

(Driver Of The Vehicle).

4. Vijay Kumar Singh S/o Late Bhola Singh Aged About 54 Years R/o Shriram Chowk Gokul Nagar Ward No. 33, Khursipar Bhilai District Durg Chhattisgarh.

(Owner Of The Vehicle)**---- Respondents**

For appellant : Shri Praveen Kumar Tulsyan, Adv.

For Respondents No.1 and 2 : Shri Ajay Shrivastava, Adv.

For Respondent No. 3 and 4 : None though served.

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. By this order I.A. No. 1/2020 application for condonation of delay in filing the instant miscellaneous appeal is being disposed of.

2. Respondents No. 1 and 2 had filed a claim case No. 122/2016 against the appellant, respondents No. 3 and 4 for getting compensation of Rs. 38,33,000/- before 10th Addl. Motor Accident Claims Tribunal, Durg, (CG).

3. The 10th Addl. Motor Accident Claims Tribunal, Durg had passed the impugned award dated 14-11-2019 directing the appellant and respondents No. 3 and 4 that they shall pay a sum of Rs. 37,15,000/- jointly and severally within a month along with interest at the rate of 9% per annum to respondents No. 1 and 2.

4. Being aggrieved appellant has preferred instant miscellaneous appeal.

5. In brief the appellant's case regarding I.A. No.1 is that after receiving the copy of the award on 14-11-2019, the counsel sent it along with his opinion to Divisional Office Durg, the Divisional Office referred the matter to Regional Office at Raipur. The Regional Office, Raipur had received the same on 6-1-2020. The Regional Office, Raipur was competent to file the appeal to the High Court in those cases where the award amount is between Rs. 30 to 35 lacs. The amount of impugned award was more than 35 lacs hence the matter was sent to the Head Office on 17-1-2020. Meanwhile, circular No. 42/2019 was issued on 12-2-2020 effective from 2/3/2020 by which the financial approval increased and Regional Office became competent to take decision about the filing the appeal, hence the matter was sent back Regional Officer which was received by the Regional office on 23-3-2020.

6. After receiving matter, on the very day the Regional Officer approved filing of appeal, from next day, the lock down commenced therefore Regional Office started work from 17-4-2020 with 20% - 25% staff. The Chennai office of the company was closed till the mid month May, hence, for mandatory deposit the cheque was prepared on 27-5-2020, it was received by the Divisional Office at Durg on 1-6-2020, it was sent to Bilaspur office on 2-6-2020, normal functioning of the subordinate judiciary was closed, therefore after a long effort the cheque was deposited before the concerned Tribunal on 11-6-2020. Thereafter, by appointing the counsel for filing the appeal before this Court, and handing over the record to him, appeal preferred on 29-6-2020, aforesaid reasons are bonafide hence, delay of 138 days may be condoned.

7. In brief, counsel for the respondents No. 1 and 2 submitted that appellant failed to give reasons for each day delay hence said application may be rejected.

8. In the matter of **Shakuntala Devi Jain v. Kuntal Kumari**, (AIR 1969 SC 575), Hon'ble Supreme Court observed in para 7 as under :-

“7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in refiling the appeal with the certified copy should be condoned under Section 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in *Krishna v. Chathappan* [ILR 13 Madras 269, 271] “Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words “sufficient cause” receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.”

9. Hon'ble Supreme Court in the matter of **N. Balakrishnan v. M. Krishnamurthy**, [(1998) 7 SCC 123] observed in para 9 to 13 as under :-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR 1006] and *State of W.B. v. Administrator, Howrah Municipality* [(1972) 1 SCC 366 : AIR 1972 SC 749] .

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the

suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

10. In the decision of Hon'ble Supreme Court in the matter of **Esha Bhattacharjee v. Raghunathpur Nafar Academy**, [(2013) 12 SCC 649] it has been held that :-

- (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be

made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

11. In the case in hand, impugned award was passed on 14-11-2019. The appeal could be filed within 90 days from 14-11-2019 as per the provisions of Section 173(1) of the Motor Vehicles Act, 1988. Appellant has preferred this appeal on 29.06.2020. Instant appeal could be filed on 12.02.2020. The appeal is barred by 138 days.

12. In the case in hand, the limitation for preferring the appeal had expired on 12.02.2020. Said circular dated 12.02.2020 came into force on 02.03.2020.

13. Before the commencement of said circular the Regional Office at Raipur was competent to give permission to file an appeal in the High Court in those cases where the amount of award was between Rs. 30,00,001/- to Rs.35,00,000/-, the Head Office was competent to give permission to file an appeal in the High Court in those cases where the amount of award was between Rs.35,00,001/- to 50,00,000/-.

14. As per this circular, from the date of enforcement i.e. 2-3-2020 Regional Office at Raipur is competent to give permission to file an appeal in the High Court in those cases where the amount of award is between Rs.50,00,001/- to Rs.60,00,000/-.

15. From 13.02.2020 to before the enforcement of said circular i.e. 01.03.2020 the competent authority to give such permission regarding impugned award was Head Office, who had knowledge that limitation already expired on 12-2-2020 but Head Office did not give such permission and waited till 02.03.2020 which is the date of commencement of such circular, for commencement of this circular. Hence, for not giving such permission by Head Office the reason that such circular was issued and was effective from 02.03.2020 is highly unsatisfactory.

16. Moreover, after 02.03.2020 and before sending the record to Regional Office at Raipur, record was with Head Office. The date of commencement of the said circular i.e. 02.03.2020 competent Authority to

give permission to file an appeal in the High Court in those cases where the amount of award was between Rs.60,00,001/- to Rs.75,00,000/- was Head Office. Hence, Head Office was competent to give such permission regarding impugned award because the amount of impugned award was less than Rs.60,00,001/- but again Head Office did not give such permission from 02.03.2020 to the day when record was sent back to Regional Office at Raipur, hence, reason for not giving the such permission during this period that circular became effective from 02.03.2020 is absurd.

17. Looking to the above mentioned facts and circumstances of the case, this Court finds that delay from 13.02.2020 to that day when the record was sent back to Regional Office by Head Office is unsatisfactory, the reasons raised by the appellant to explain the aforesaid delay is of routine and haphazard manner. Negligence, inaction, want of bonafide is imputable to appellant. The aforesaid explanation regarding aforesaid delay do smoke of malafide.

18. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Shakuntala Devi Jain** (supra), **N. Balkrishanan** (supra) and **Esha Bhattacharjee** (supra), are applicable against the appellant.

19. Consequently, this Court finds that appellant failed to satisfy this Court that he had sufficient cause for not preferring the appeal from 13.02.2020 to that day when the record was sent back to Regional Office at Raipur from Head Office. Consequently, I.A. No.1 is rejected.

20. In view of above I.A. No. 2 and I.A.No. 3/2021 stand disposed off.

21. Consequently, instant MAC is also dismissed.

Sd/-
(Sharad Kumar Gupta)
Judge