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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 19th February, 2024**

+ **MAC.APP. 1041/2017**

ORIENTAL INSURANCE CO LTD Appellant

Through: **Mr. A.K. Soni, Adv.**

versus

**SARVESH & ORS. (UNITED INDIA INSURANCE
COMPANY LTD)** Respondents

Through: **Mr. Sankar N. Sinha, Adv. for
R-7.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 50825/2023 (delay of 281 days)

1. This is an application seeking condonation of 281 days delay in filing the present petition.

2. For the reasons stated in the application, the same is allowed.

Delay of 281 days in filing the present petition is condoned.

3. The application stands disposed of.

CM APPL. 50824/2023

4. This is an application moved on behalf of the appellant/Insurance Company seeking setting aside of an order dated 18.11.2022, whereby the appeal was dismissed for non-appearance of any AR or for that matter counsel for the Insurance Company. Although the said application is opposed by learned counsel for the respondents present, however for the reason stated in the application



and in the interest of justice, the same is allowed. The application stands disposed of accordingly.

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5. Having heard the submissions advanced by the learned counsel for the parties present and perusal of the record, the only issue that has been raised by the learned counsel for the appellant/Insurance Company is that there was a delay of 18 years on the part of the respondent Nos. 1 & 2/claimants in filing the claim petition under Section 140 read with Section 166 of the Motor Vehicles Act, 1988 and yet the learned Presiding Officer MACT, North West District, Rohini Courts Complex, Delhi has awarded interest to the claimants at the rate of 9% w.e.f. the date of filing of the petition i.e. 05.05.2008.

6. Evidently, the motor accident question had occurred on 02.08.1989 resulting in fatal injuries to Ajad Gupta. It is also indeed borne out from the record that the claim petition was filed after almost 18 years on 05.05.2008. It appears that although the claimants had filed a claim petition on the same facts before the MACT, Ahmedabad State of Gujarat, the was dismissed in default.

7. However, a specific issue was framed whether the claim petition was not maintainable on that count and the learned Tribunal *vide* impugned judgment-cum-award dated 14.09.2017 referred to previous order dated 21.11.2012, whereby the then Presiding Officer MACT had decided the issue of maintainable of the petition in favour of the claimants observing that the provisions of the Motor Vehicles Act are benevolent in nature and the aim of the entitlement is to provide relief to the unfortunate road victims and their legal



representatives.

8. It was further observed that the beneficial provisions of the Act, should not be allowed to be defeated by having recourse to technical provisions of Civil Procedure Code, if the claimants are otherwise entitled to the relief prayed on its own merits.

9. First things first, the aforesaid order dated 21.11.2012 was not challenged by the appellant/Insurance Company, and therefore, it has attained finality and at this stage of the matter, it is not open to the appellant/Insurance Company now to re-agitate the said issue and raise a plea that the petition was barred by limitation.

10. All said and done, in view of the inordinate delay on the part of the claimants in filing the claim petition, the award of interest @ 9% is very onerous and harsh. In the opinion of this Court, not creating a binding precedent, interest of justice would be served if the rate of interest is reduced, to which in all fairness a concession is afforded by learned counsel for the respondent Nos. 1 & 2/claimants.

11. Accordingly, the present appeal is disposed of directing that respondent Nos. 1 & 2/claimants shall be entitled to interest on the amount of compensation awarded by the learned Tribunal @ 7.5% per annum from the date of filing of the claim petition i.e.05.05.2008 till realization.

12. The appeal is disposed of accordingly.

DHARMESH SHARMA, J.

FEBRUARY 19, 2024/sa