

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT (MV) 164 of 2023

With

CAN 1 of 2023

Kajal Paul & Anr.

Versus

Oriental Insurance Co. Ltd. & Anr.

For the appellants : Mr. Subhankar Mandal, Adv.

For the Respondents : Ms. Sucharita Paul, Adv.

Heard on : 27.09.2023

Judgment on : 06.10.2023

Ajay Kumar Gupta, J.

CAN 1 of 2023

1. This is an application for condonation of delay filed under Section 173(1) of the Motor Vehicles Act, 1988 seeking condonation of delay in filing the instant appeal.

2. Mr. Mandal, learned counsel appearing on behalf of the appellants/petitioners moved the said application for condonation of delay of 1738 days in preferring the instant appeal. Learned Advocate further submitted that the delay was neither due to laches nor negligence on the part of the appellants. He referred paragraph Nos. 4, 5 and 6 to show the reasons, which prevented the petitioners in filing appeal within the period of limitation as prescribed under Section 173(1) of the Motor Vehicles Act, 1988. He prayed for condonation of delay and further prayed the appeal may be heard on merit for substantial justice as the Act has been enacted for the benefit of the society.

3. On the other hand, affidavit-in-opposition filed by Ms. Sucharita Paul, learned counsel appearing on behalf of the respondent no. 1/Insurance Company is taken on record. The learned counsel appearing

on behalf of the appellants/petitioners did not prefer to file affidavit-in-reply. Accordingly, the record is taken up for hearing.

4. Ms. Sucharita Paul vehemently argued that the prayer for condonation of inordinate delay in filing appeal may not be allowed as the appellants/petitioners failed to show sufficient reasons for filing appeal after expiry of 1738 days delay. She further pointed out that the appellants/petitioners have shown the reasons for delay due to financial crises, absence of proper guidance and outbreak of Covid-19 pandemic. Those reasons are not sufficient to accept in this case for allowing the application for condonation of delay.

5. It is further submitted that if there was a financial crises then the appellants/petitioners could have approached the State Legal Services Authority or District Legal Services Authority for free legal aid under Section 13 of the Legal Services Authority Act, 1987. Apart from that, the Covid-19 pandemic was started in the year 2020 and it continued till 2021. Such periods have already been excluded from the entire delay and thereafter it comes to 1738 days delay. The appellants/petitioners could not file the appeal even four years prior to the outbreak of Covid-19 and even after withdrawal of lockdown due to covid-19. Learned Tribunal passed the judgment and award on 31st March, 2016, thereby awarded a

compensation to the tune of Rs. 16, 71,708/- in favour of the appellants/petitioners. Insurance Company has been directed to pay the said awarded sum along with 8% interest from the date of filing of the claim case. The compensation amount was required to be paid within 30 days failing which, the appellants/petitioners were made entitle to 9% interest from the date of impugned judgment and award till realization. Therefore, the appellants/petitioners did not come with clean hand and fail to show any sufficient cause or reasons for condoning the inordinate delay of 1738 days in preferring the instant appeal.

6. It is further submitted that the insurance company has filed an application for review being Misc. Case No. 77 of 2016 against the said judgment and award dated 31st March, 2016, which is still pending for disposal before the learned Tribunal. The pendency of such Misc. Case does not prevent the appellants/petitioners to file appeal, when the appellants/petitioners feeling aggrieved and dis-satisfied with the said judgment and award dated 31st March, 2016 passed by the Learned Tribunal. Therefore, the application for condonation of delay may be rejected in limini as well as appeal should be dismissed as barred by limitation.

7. Having heard the submissions of both sides and on perusal of the application, it appears that the appellants/petitioners have mentioned the following reasons for delay in filing appeal in an application as hereunder:-

i. Delay caused due to filing of review application by the Insurance company along with application for condonation of delay vide Misc. Case No. 77 of 2016 before the Ld. Tribunal against the Judgment and Award dated 31.03.2016 and the same is still pending for hearing.

ii. The appellants/petitioners could not contact the learned advocate for filing appeal before the High Court since the compensation amount awarded by the learned Judge of the Motor Accidents Claims Tribunal is inadequate and the Insurance Company has even not paid the said compensation amount till date. Finally, the appellants/petitioners received an advice on 4th week of February, 2023 for filing an appeal before the Hon'ble High Court for enhancement of the compensation amount.

iii. In spite of due diligence, the appellants/petitioners could not file the appeal within the period of limitation due to outbreak of Covid-19 pandemic.

iv. Due to absence of proper guidance and acute financial crises, the appellant/petitioners could not file the appeal within time.

8. Before deciding the application, this Court would like to refer the Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the said Act”).

Section.173. Appeals.— (1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2.) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than [one lakh] rupees.

9. In view of the aforesaid provision, the appeal is to be filed within the period of limitation described under Section 173(1) of the Said Act within 90 days from the date of judgment and award. It further provides the High Court may entertain the appeal even if the expiry of the period of 90 days but it should be on satisfaction by the Court that the appellant was prevented by sufficient cause for preferring the appeal beyond the statutory period of limitation.

10. There must be sufficient and cogent ground for delay and that must be explained by the appellant in an application why such enormous delay was caused in filing the instant appeal. It is apparent from the Section itself that there is a power to condone the delay but condonation of delay can never be a mechanical and routine manner when the law provides limitation for preferring an appeal.

11. That proviso contemplates the power of discretion of the Court for condonation of delay. Even then, the discretionary power exercised judicially by recording the reasons. When there is an enormous delay of 1738 days a Court is bound to ascertain the sufficient cause and/or genuine reasons for acceptance of such sufficient cause while considering the application for condonation of delay.

12. So far as the first reason is concerned, the filing of Misc. Case by the Insurance Company for review does not prevent, in any way, to file appeal before this High Court, when the appellants/petitioners are not satisfied with the compensation amount awarded by the learned Tribunal. The appellants/petitioners are also the parties in the Misc. Case No. 77 of 2016 and it is a separate proceeding. Thus, filing of Misc. Case is no way

connected or precluded the appellants to file appeal within limitation period. It could have filed at earliest.

13. So far as the second reason is concerned, no sufficient explanation has been made in an application, why the appellants/petitioners could not contact the learned advocate for more than four years prior to outbreak of pandemic Covid-19 or even after over of such pandemic as the judgment and award passed by the Tribunal on 31st March, 2016.

14. With regard to third reason, this Court does not find any sufficient cause for not filing appeal because the outbreak of Covid-19 pandemic started in the year 2020 and it continued till 2021. Those periods have already been excluded from the total period of delay. Apart from that, the appellants/petitioners could not file appeal prior to 2020 or after 2021. Appeal filed on 20.03.2023. Hence, such huge delay of 1738 days cannot be allowed on the pretext that the act is beneficial piece of legislation.

15. With respect to the last reason, it is rightly pointed out by the learned counsel appearing on behalf of the insurance company that when there was a financial crises, the petitioners could have approached the State Legal Services Authority or District Legal Services Authority for providing free legal aid for preferring an appeal under Section 13 of the

Legal Services Authority Act, 1987 but they failed. The petitioners could not keep silence for about five years in filing appeal when they were feeling aggrieved and dissatisfied with the impugned judgment and award. Petitioners could have approached High Court Legal Service Committee, State legal service Authority or District legal service Authority. Reasons shown by the petitioners with regard to proper guidance or advice and due to financial crisis are frivolous and without justification. Appellants/petitioners are found not due diligent in conducting their case. Accordingly, the grounds for reason of delay set forth in the application are not at all satisfactory in the eye of law.

16. In the light of the above discussions, this Court does not find any sufficient reason or sufficient cause to support the contention of the appellants/petitioners that they have prevented by sufficient cause to file appeal within the prescribed period of limitation. Furthermore, huge delay of 1738 days cannot be allowed only on the ground that the act is beneficial piece of legislation. The petitioners ought to have more cautious and due diligence while approaching or seeking relief from the Court. Relief cannot be granted to those who are not prompt and diligent for their own grievances.

17. Accordingly, in absence of sufficient explanation or cause of delay, the application for condonation of delay is liable to be rejected.

18. In the light of the above observations, application being **CAN 1 of 2023** stands rejected.

19. Consequently, Appeal being **FMAT (MV) No. 164 of 2023** also stands dismissed as barred by limitation. No order as to costs. Interim order, if any, stand vacated.

20. Let a copy of this Judgment and order along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

21. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

22. Urgent Photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)