

18.10.2023

Ct. no.654
Sl. Nos.209
sn

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

**F.M.A.T.1075 of 2016
CAN 1 of 2018 (Old CAN 9283 of 2018)**

**Prakash Santra
Vs.
M/s. Oriental Insurance Co. Ltd. & Anr.**

Mr. Krishnu Banik
Ms. Sima Ghosh
... for the appellant-claimant
Ms. Sanyanti Santra
for the respondent-insurance company

In re: CAN 1 of 2018 (Old CAN 9283 of 2018)

This is an application for condonation of delay in preferring the appeal.

As per report of the Stamp Reporter dated 3rd October, 2016, there is delay of 1002 days in preferring the appeal.

Mr. Krishnu Banik, learned advocate for appellant-claimant submits that due to injuries sustained in the said accident, the victim suffered 60% disablement. Further, the victim is uneducated and poor person suffering from various ailments. For such reasons, the claimant could not contact his learned advocate for taking appropriate in filing appeal within the statutory period, resulting in delay of 1002 days in filing the appeal. The claimant-injured was prevented by sufficient cause in filing the appeal in time. He further submits that since the Motor Vehicles Act is beneficial legislation, liberal

approach should be made while dealing with the aspect of condonation of delay.

In support of his contention, he relies on the following decisions:

- i. ***Collector Land Acquisition versus Mst. Katiji & Ors.*** reported in ***AIR 1987 SC 1353***,
- ii. ***Aparna Chakraborty & Ors. versus The National Insurance Co. Ltd. & Anr. (FMAT 34 of 2021)*** of this Court,
- iii. ***Smt. Papiya Ghoshal & Ors. versus The United India Insurance Co. Ltd. & Anr. (FMAT 488 of 2021)*** of this Court.
- iv. ***Mamtaz Begam & Ors. versus The New India Assurance Co. Ltd. & Anr. (FMAT 133 of 2021)*** of this Court, and
- v. ***Sajali Murmu & Anr. versus The Oriental Insurance Co. Ltd. & Anr. (COT 92 of 2023)*** of this Court.

In light of his aforesaid submission, he prays for condonation of delay of 1002 days in preferring the appeal.

The respondent-insurance company has filed affidavit-in-opposition to the application for condonation of delay of the appellant-claimant.

In reply to the contentions raised on behalf of the appellant-claimant, Ms. Sayanti Santra, learned advocate for respondent no.1-insurance company submits that the

claimant has failed to make out any specific ground for condonation of such delay. There is intentional laches on the part of the claimant. Further, claimant has already received the awarded sum granted by the learned Tribunal. In the light of her aforesaid submissions, she prays that the application for condonation of delay should be dismissed in *limini*.

It is contended in the application that due to disablement and financial constraints, the appeal could not be preferred within the statutory period. From the materials on record, it appears that the award has been passed on 26th September, 2013. It is stated in the application that on 27th March, 2014 he at first went to meet his learned advocate Mr. M. Molla at Berhampore Court but could not meet him since he was absent. On 22nd September, 2014, he collected relevant papers and the learned advocate for the petitioner advised for filing the appeal. Needless to mention that the appeal has been filed on 22nd September, 2016. There is no such plausible reasons for delay in taking legal advice. Further after obtaining relevant documents, he was advised to file appeal, however, there is no cogent ground shown for filing appeal after almost two years of such advice. Section 5 of the Limitation Act does not prescribe that discretion can only be exercised if the delay is within a certain limit. Acceptability of the explanation is the only criterion and length of delay is immaterial. Sometimes a

long delay may be condoned whereas a short delay may not be condonable due to want of acceptable explanation. Once the Court accepts the explanation as sufficient, the Court can exercise its discretion.

In *Mst. Katiji (supra)*, the Hon'ble Supreme Court has condoned the delay in filing the appeal since it found that sufficient cause existed. In the case at hand it emerges that no cogent ground could be shown for such inordinate delay. Thus, the facts are distinguishable.

In *Aparna Chakraborty (supra)*, this Court found the ground of financial hardship as sufficient and thereby condoned the delay which is distinguishable from the case at hand.

In *Smt. Papiya Ghoshal (supra)*, the ground that appellant no.3, an aged person, underwent two major operations and the reason of Covid pandemic weighed with the Court. Thus, the facts are distinguishable.

In *Mamtaz Begam (supra)*, the delay was condoned on the ground of Covid pandemic which is also distinct from the case hand.

In *Sajali Murmu (supra)*, the delay in filing the cross-objection was allowed since no date of service of notice for hearing of the appeal could be shown to have been served upon the respondents.

Thus, factually the present case stands on a different footing with the cited decisions. Since no sufficient ground has been shown of such inordinate

delay in filing the appeal, the application for condonation of delay is liable to be dismissed.

Accordingly, **CAN 1 of 2018(Old CAN 9283 of 2018)** stands dismissed.

F.M.A.T.1075 of 2016

Since the present appeal is time barred, the same is also dismissed.

There shall be no order as to cost.

All connected applications, if any, stand disposed of.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)