IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

19.02.2024
SL No.200
Court No. 551
Ali

FMAT 61 of 2021
With
IA No. CAN/1/2021

Jhuma Bhanjo & Ors.
Versus
National Insurance Co. Ltd. & Anr.

Mr. Jayanta Banerjee,
Ms. R.B. Roy,
Mr. Sandip Bandopadhyay,
Mr. A. Bhattacharjee
...for the appellant.

Mr. Rajesh Singh
...for the respondent/Insurance Co.

Affidavit-in-opposition filed on behalf of the Insurance Co. is taken on record.

In Re.:CAN 1 of 2021

This is an application under Section 173 of the Motor Vehicles Act, 1988 read with Section 5 of the Limitation Act for condonation of delay in filing the appeal.

The instant appeal is preferred against the judgment and award dated 5th day of August, 2015 passed by the learned ADJ, 3rd Court, Tamluk, Purba Medinipur in MAC Case No. 267 of 2014.

The claimants have preferred the instant appeal against the award.

The report of the Stamp Reporter suggests that there are 1585 days delays in preferring the instant appeal.

Learned advocate for the appellants submits that the present appeal was preferred by the present claimants/appellants who are the widow, old aged mother and the minor sons of the deceased. He argued that initially the appellants were instructed by the learned advocate of the tribunal to prefer an appeal as there are grounds. They could not prefer appeal in time as there were paucity of funds and they were unaware about the city of Kolkata. Finally, they could contact with the learned advocate at Calcutta in the March of 2020 and, lastly, they met with the learned advocate on December, 2020.

Mr. Banerjee, learned advocate appearing on behalf of the appellants submits that the instant appeal is filed under Section 173 of M.V. Act. The M.V. Act is a beneficial legislation; the present appellants are prevented by sufficient cause to prefer the instant appeal in time. So, the appeal may be admitted by condoning the delay. He further argued that in the instant appeal there exists a good merit. The learned tribunal has erroneously passed the impugned award which need be gone through this appellate Court. He further argued that when there is a specific merit, the appeal must have to be heard on merit without disposing the same in limine on the ground of limitation. In support of his contentions he cited several decisions of Hon'ble

Supreme Court as well as the Co-ordinate Bench of this Court.

1) ***Collector, Land Acquisition, Anantnag & Anr., V. Mst. Katiji & Ors.*** reported in ***(1987) 2 SCC 107.***
2) ***Raheem Shah & Anr. Versus Govind Singh & Ors*** passed in ***Civil Appeal No. 4628 of 2023.***

He also cited another decision of a Co-ordinate Bench of this Court wherein the delay of 1495 days was condoned in view of the decision of Hon'ble Supreme Court passed in ***Kantiji (supra).***

Aparna Chakraborty & Ors. Vs. The National Insurance Co. Ltd. & Anr. report in ***FMAT 34 of 2021.***

Learned advocate appearing on behalf of the Insurance Company Mr. Singh submits that the application for condonation of delay cannot be allowed. There is an inordinate delay of 1585 days in preferring the instant appeal.

The sole purpose of the appellant to prefer the appeal to get benefit of the judgment of Hon'ble Apex Court passed in ***National Insurance Company Ltd. Vs. Pranay Sethi.*** He further argued that the delay as explained in the body of the CAN 1 of 2021 is not sufficient. He further argued that there are no materials to consider the grounds as stated in the body of the application. He further

argued that the appellants were quite silent since the year 2015 and subsequently, in the year 2020 they came up to file an appeal. He further argued that in different cases this Court has not allowed the delay condonation application on different grounds as there is no sufficient materials.

In support of his contentions, he cited several decisions:-They are

Aziz Mondal & Anr. Vs. Oriental Insurance Co. Ltd. & Anr. passed in ***F.M.A.T. 766 of 2016.***

Triparna Mondal @ Triparna Mondal (ghosh) & Ors. Vs. the National Insurance Co. Ltd. & Ors. reported in ***FMAT 1303 of 2019,*** and

Prakash Santra Vs. M/s. Oriental Insurance Co. Ltd. & Anr. report in ***F.M.A.T. 1075 of 2016***.

Heard the learned advocates perused the memo of the appeal also perused the report of the Stamp Reporters which suggests that excluding the delay due to the Pandemic from 15.03.2020 till 18.02.2021, the delay is 1585 days in preferring the instant appeal.

The grounds for delay in preferring the instant appeal as mentioned in the body of CAN 1 of 2021 are as follows:-

1) The claimants are the village rustic lady and minor persons; there were paucity of

funds as the award has not been satisfied.

2) There are merits in the appeal, and
3) For the purpose of beneficial legislation the delay can be condoned and the matter may be heard on merit.

In considering the grounds it appears to me that the impugned award was passed on 5th of August, 2015. The claimants have preferred application for getting the certified copy of the award promptly on 18th of August, 2015; on the same day the certified copy became the ready for delivery and it was delivered on the same day. The conduct of the appellants appeared to be very fast for getting the certified copy of the award. However, thereafter, it is the case of the petitioner that they contacted with their learned advocate of the tribunal who advised them to prefer an appeal. It is the fact of the petitioner that they were not in a position to go Kolkata to file an appeal since there are paucity of funds. They have also contended that they are very much willing to file an appeal against the judgment and award. It is true that the present appellants are the widow and old mother of the deceased with their minor sons. Admittedly, the fact regarding their intention to prefer the appeal has not been put forwarded by any specific evidence. They are silent since 2015 till the day of pandemic, is not

substantiated by any sufficient grounds. Actually, they were sit tight over five years with the certified copy of the impugned judgment and award in hand. Basic grounds for not making any effort in preferring the appeal for five years is not explained.

Let me consider the observation of Hon'ble Supreme Court in several cases regarding condonation of delay.

In ***Collector, Land Acquisition, Anantag & Anr. (supra)*** the Hon'ble Supreme Court has make a guidelines to adopt a liberal, justice Oriental approach. The sufficient cause and merit as explained in the body of judgment of ***Collector, Land Acquisition, Anantag & Anr. (supra)*** is not similar of the facts and circumstances of this case.

In ***Raheem Shah and Anr. (supra)*** the Hon'ble Supreme Court has condoned the delay of only 52 days. The grounds mentioned in ***Aparna Chakraborty (supra)*** regarding paucity of funds also not similar to that of the present case.

In considering the submissions of the learned advocate regarding the purpose of beneficial legislation as well as the merit exists in the appeal, I am of the view that the merit in the appeal in the month of August, 2015 has been drastically changed in the present days. The law of the land has been substantially changed in cases under Section 166 of the M.V. Act. It can be presumed that the appellant

was not interested to prefer appeal in the year 2015; but subsequently, after pronouncement of ***Pranay Sethi (supra)*** by Hon'ble Supreme Court, the appellants consider its beneficial for them to prefer appeal. The sole purpose of filing the appeal in later stage is to get more benefit. Waiting for filing appeal when chance shall accrue can be termed as "chance appeal". Such "chance appeal" cannot be admitted by condoning delay. Moreover, the conduct of the appellant appears to me not bona fide. The delay in preferring this instant appeal is inordinate. I find no justification for the appellants to sit tight over the matter after receiving the certified copy of the impugned award for long five years.

Thus, I find no justification to condone the delay in preferring the instant appeal.

Accordingly, CAN 1 of 2021 is considered and rejected.

The FMAT 61 of 2021 is barred by limitation. So, the FMAT is also dismissed.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)