

**Item 27.06.
No. 2024
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**Ct
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 1733 of 2022

**Mira Ghosh & Ors.
Vs
National Insurance Co Ltd. & Anr.**

Mr. Ali Imam Shah.

... for the petitioner.

Mr. Sanjay Paul,
Ms. Jaita Ghosh

... for the opposite party No.1.

1. This revisional application has been filed assailing the order No.43 dated 16.03.2021 passed by the learned Motor Accident Claim Tribunal, 1st Court Suri, Birbhum in connection MACC Case No. 219 of 2013, whereby learned Judge rejected an application under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure.
2. On perusal of the order impugned it is found that learned Judge opined that the case had already been abetted after lapse of 90 days from the date of death as per Article 120 of the Limitation Act.
3. Learned counsel appearing on behalf of the petitioner has referred to Rule 343 of the Motor Vehicle Rules and submitted that provision of Order 22 of the Code of Civil Procedure is not applicable in this case.

4. Alternatively, learned counsel appearing on behalf of the petitioner has submitted that necessary liberty may be given to the petitioner to file necessary application before the Trial Court in this regard.
5. Learned counsel appearing on behalf of the opposite party No.1 has submitted that though application under Order 22 Rule 4 of the Code of Civil Procedure was filed but no application for condonation of delay was filed. However, it is submitted that liberty may be given to the petitioner to file application before the Trial Court along with necessary application for condonation of delay.
6. From the order impugned, I find that learned Judge also suggested to file alternative application before the Court for setting aside the abatement.
7. Provision of Rule 343 of the Motor Vehicles Rules 1989, mandates that there is no bar to file an application under Order 22 of the Code of Civil Procedure.
8. In this case, it is admitted position that after death of the owner of the vehicle, no substitution petition was filed within the period of limitation and as a matter of fact, the case was abetted against the owner of the vehicle by operation of law. From that point of view, I find no infirmity in the order impugned.

9. Thus, the prayer of the revisional application stands rejected with liberty to the petitioner to file appropriate application before the Trial Court for necessary remedies in this regard.
10. With the above observation, the revisional application stands disposed of.
11. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
12. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)