IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.698 of 2009
CNR No. ODHC010034582009

(An appeal Under Section-173 of M.V. Act, 1988).

The Branch manager New India Assurance Company Ltd., Sundargarh Branch … ***Appellant***

-versus-

Ugresan Harijan and another … ***Respondents***

For Appellant : ***Mr. N.B. Das, Advocate***

For Respondents : ***Mr. S. Mohanty (R-3)***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:29.10.2026 (ORAL)

G. Satapathy, J.

MACA No.698 of 2009 & Misc. Case No. 1786 of 2009

1. This judgment shall dispose of not only the Misc. Case No. 1786 of 2009 filed by the Appellant for condonation of delay of 143 days, but also dispose of the Appeal on merit.

2. The appeal has been filed by the Branch Manager New India Assurance Company Ltd. (In short "the

insurer") challenging the impugned judgment dated 27.12.2008 passed by the learned 1st Motor Accident Claims Tribunal, Sundergarh (In short, "the Tribunal") in M.A.C. Case Nos.32 of 2004 & 33 of 2004, wherein the insurer was directed to pay a sum of Rs.8,00,000/- only to the claimants-cum-R1 to R5 herein together with simple interest @ 9% per annum w.e.f. date of filing of claim on 23.06.2004 till realization of the compensation with right to recover the aforesaid amount from OP No.1-cum-R6 in due process of law.

3. The facts in this case, being largely undisputed, is only reiterated in precise for disposal of the present appeal which traces its origin from an accident, which took place on 24.05.2004 in which one Sricharan Harijan while going along with one Mitrabhanu Seth on a Motor Cycle was allegedly hit by the Truck bearing Regd. No.MP-07-G-3924(hereinafter referred to as "the offending vehicle") from backside resulting in death of both of them. On this accident, one criminal case in Lephripada PS was

registered against the driver of the offending Vehicle namely Satyajit Jena and the investigation in the said case culminated in submission of charge sheet against the driver for rash and negligent driving the offending Vehicle. On this accident, a claim being preferred by the dependents of the deceased Sricharan Harijan, a teacher by profession, the same was registered by the Tribunal for grant of compensation.

3.1. In response to the notice of the claim of the claimants, the owner of the offending Vehicle appeared and filed her written statement denying all the allegations levelled against the driver and the involvement of her Vehicle with further plea that since her offending Vehicle was duly insured with the insurer, the insurer is contractually liable to indemnify her by satisfying the award. On the other hand, the insurer had also independently contested the claim of the claimants by filing separate written statement denying its liability to indemnify the owner of the offending Vehicle for violation

of policy conditions, in addition to denying all the allegation leveled against the insurer.

3.2. On the *inter se* pleading between the parties, the learned tribunal struck with necessary issues and allowed the parties to lead evidence. Accordingly, the claimants examined three witnesses and exhibited seven documents under Exts. 1 to 7 in support of their case as against no evidence whatsoever by the owner and insurer of the offending Vehicle.

4. After appreciating the evidence upon hearing the parties, the learned tribunal passed the impugned judgment directing the insurer to pay the compensation to the claimants first and recover thereafter from the owner in due process of law by holding that the insured has violated the policy conditions. The Appellant-insurer, however, challenges the impugned judgment not only on the quantum of compensation, but also on the interest component awarded thereon in this appeal.

5. Heard, Mr. Nayan Bihari Das, learned counsel for the appellant and Mr. Srinivas Mohanty, learned counsel who enters appearance for R3. None appears for R1,2,4 & 5 despite being duly noticed, however, the notice issued against R6 has not yet been made sufficient since neither AD nor undelivered notice returned from R6, but in view of the proviso appended to Order-V Rule 9(5) of the CPC, the service of notice against R6 is held to be sufficient.

6. After having considered the rival submissions and upon perusal of record, there appears no dispute that the appeal has been filed with a delay of 143 days, but the ground which has been put-forth by the Appellant for condonation of delay are stated in paragraph 4 to 8 in Appeal Memo which reads as under: -

> *"(4) That the order/judgment under challenge was passed on dt.27.12.2008 and the counsel for the petitioner in court below after obtaining the certified copy, prepared his legal opinion and forwarded to the Division Office of the petitioner at Cuttack legal Office.*

(5) That the Legal Department as per the Opinion of the Counsel, sent entire records to the petitioner's Regional Office to Bhubaneswar which was received in the month of February.

(6) That the legal department of the Regional Office prepared the note and put up the file before his higher authority to take a decision on preferring appeal before this Hon'ble Court. The higher authority after taking decision sent entire records to his legal Office, Cuttack with an instruction to file appeal.

(7) That the legal department of Cuttack after receiving the case records from Regional Office sent the same to the present counsel on Dt. 10.08.2009 with an instruction to file appeal.

(8) That after receiving the case record from the appellant and going through the same, the present counsel prepared memorandum of appeal and filed on dt. 17.08.2009. In the process there is some delay in presenting the Memorandum of Appeal."

7. A careful perusal of the aforesaid averments, it appears that the delay in this case is stated to have been occurred due to processing of file and obtaining legal opinion, but these grounds are not convincing to condone the delay of 143 days, much less when no material has been produced to condone the delay. In the context of condonation of delay, this Court considers it appropriate to

reiterate the principle laid down by the Apex Court in ***Post Master General and others Vrs. Living Media India Ltd. and another; (2012) 3 SCC 563,*** wherein at paragraph 29 & 30, it has been held as under: -

> *"**29.** In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that **unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept their usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red tape in the process**. The Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Department. The law shelters everyone under the same light and should not be swirled for the benefit of a few"*

8. It cannot be denied that the insurer in this case is a public sector company and it is duty bound to process the file in due diligence, but processing file with lethargic attitude does not convince the Court to condone the delay. In the circumstance, the delay in approaching the Court neither appears to be for any convincing reason

nor was insurer prevented by any sufficient cause so as to adopt a liberal approach to condone the delay. Besides, this is an appeal of the year 2009 to challenge the award passed by the tribunal on 27.12.2008 and that too, in a claim case of the year 2004 and overturning a decision of the tribunal without any reason after a gap of 22 years would definitely cause prejudice to the claimants who are the poor sufferer and victim of the accident in which they lost their sole bread earner. It is, however, relevant to reiterate that the interest component as imposed on the insurer appears to be on higher side which was duly acknowledged by the learned counsel for the Respondent-claimant, and taking into account such acknowledgement and considering the interest on the award to be on higher side, small reduction on interest would meet the ends of justice. Further, albeit the owner of the offending vehicle has not appeared in this Appeal, but the impugned judgment was passed in the year 2008, however, the impugned judgment having not challenged by the owner of the offending vehicle, this Court does not feel it proper

to touch upon the finding of the tribunal with regard to grant of recovery rights to the insurer who is at liberty to recover the amount in accordance with law by satisfying the award of the tribunal first by filing the independent application later on for recovery of such award, but the same is subject to establishment of violation of policy conditions by the owner of the offending vehicle.

9. In view of the aforesaid developments and on consideration of the materials placed on record, this Court does not consider it proper to condone the delay and admit the appeal, but at the same time reduce the interest component on compensation to 6% per annum w.e.f date of filing of the claim till its realization. Hence, the Misc. Case No. 1786 of 2009 filed by the Appellant for condonation of delay of 143 days is, hereby, dismissed

10. In the result, the delay being not condoned, the appeal stands dismissed as barred by law of limitation at the admission stage, but the interest as awarded by the learned tribunal on compensation is reduced to 6 % per

annum and the insurer is directed to pay the compensation amount to the claimants together with simple interest @ 6% per annum w.e.f date of filing of claim i.e. on 23.06.2004 till its realization to the claimants within eight weeks hence. The statutory deposit together with the accrued interest thereon be refunded back upon receipt of proof of deposit of compensation amount before the learned Tribunal.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 29th day of October, 2026/Priyajit

Signature Not Verified
Digitally Signed
Signed by: PRIYAJIT SAHOO
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 30-Oct-2026 18:39:10