IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.343 of 2014
CNR No. ODHC010074352014

(In the matter of application under Section 173(1) of the Motor Vehicles Act, 1988).

The New India Assurance Co. Ltd., Bhubaneswar … ***Appellant***

-versus-

Pravat Kumar Majhi and another … ***Respondents***

For Appellant : ***Mr. G.P. Dutta, Advocate***

For Respondents : ***None***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:06.11.2026 (ORAL)

G. Satapathy, J.

MACA No.343 of 2014 & Misc. Case No.2306 of 2014

1. This judgment shall not only dispose of the Appeal on merit, but also the Misc. Case No.2306 of 2014 filed U/S.5 of the Limitation Act, 1963 for condonation of delay of 28 days in preferring the Appeal to challenge the impugned judgment dated 25.11.2013 passed by the learned Fifth Motor Accident Claims Tribunal, Khurda (in short, the "Tribunal") in MAC Misc. Case No.88 of 2003 directing the New India

Assurance Co. Ltd.-cum-appellant herein (In short, "the insurer") to pay a sum of Rs.64,000/- to the claimant-R1 together with simple interest @ 6% per annum w.e.f. the date of filing of the claim application on 11.11.2003 as compensation.

2. The facts in this case, being largely undisputed are not reiterated to avoid prolixity; but it appears on a consideration of the Appeal Memo together with the oral submission as advanced for the appellant that the insurer only challenges its liability to indemnify the owner for the vehicle not being insured with the appellant at the relevant date and time of the accident.

3. Heard, Mr. G.P. Dutta, learned counsel for the appellant, but none appears for R1 despite being duly noticed. None appears for R2-cum-owner of the offending vehicle, but since the owner of the vehicle did not contest the case and remain declared *ex-parte* by the learned Tribunal, the re-issuance of notice against R2 stands dispensed with in view of the provision under Order XLI Rule 14(4) of the CPC.

4. Admittedly, there is a delay of 28 days in filing the appeal, but it is claimed by the insurer that the delay is neither intentional nor deliberate, rather it is prevented by "sufficient cause" for not approaching the Court within the stipulated time. It is no more *res integra* that when delay is of shorter duration, the Court should approach the case liberally, but the same is not applicable when the delay is of longer duration and the same is the product of negligence and utter apathy of the person responsible for delay. The ground under which the insurer seeks for condonation of delay in this case appears to be convincing and does not suggest to be a case of absolute apathy. Besides, the grounds taken for condonation of delay in this Appeal is late processing of the file in the office of the insurer. The delay in this case is definitely of shorter duration and, therefore, the expression "sufficient cause" must receive liberal construction. Further, what constitutes "sufficient cause" cannot be laid down precisely by any hard and fast rule, but the ground for which delay has occurred in this case must be considered pragmatically.

The law of limitation is of course based upon public policy that there should be an end to the litigation and even if the delay is condoned in this case, this appeal would be disposed of by this judgment only. Besides, when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. In the backdrop of aforesaid settled principles of law, when the case of the Appellant-Insurer is considered liberally for a delay of small duration, it cannot be said that the Appellant-Insurer was negligent or slack, rather the insurer can be considered to have been prevented by "sufficient cause" in not preferring this Appeal in time. Hence, adopting a liberal, pragmatic and justice-oriented approach, the delay of 28 days in filing this Appeal by the insurer is, hereby, condoned. Accordingly, **Misc. Case No.2306 of 2014** is disposed of.

5. Admittedly, the Appellant-Insurer challenges the award only on the ground that the vehicle in question was not insured with the Appellant-Insurer

company at the relevant date and time of the accident and in support of such challenge, Mr. Dutta, learned counsel for the Appellant-Insurer by highlighting the observation of the learned Tribunal in paragraph-6 of page no.5 of the impugned judgment "the offending vehicle had valid Insurance policy No.550200131/03/ 01088 which was valid up to 29.04.2004 covering the date of accident" submits that the accident in fact took place on 25.04.2003 and, thereby, the insurance policy remaining valid w.e.f. 30.04.2003, but even if the accident taking place five days before the policy coming into existence, the learned Tribunal ignored such facts and has erroneously passed the impugned judgment saddling the liability of paying compensation to the Appellant-Insurer. Adverting to the aforesaid challenge of the appellant-insurer, it appears that the Appellant-Insurer has not specifically pleaded in its Written Statement (WS) that the vehicle was not insured with its company, rather it has evasively denied the existence of insurance policy of the offending vehicle with the company by stating in paragraph-13 of the WS

(the copy of WS was made available to the Court on behalf of the Appellant), which reads as under:-

> *"**13.** That the **this O.P. No-2 does not admit at this stage that the offending vehicle alleged to have caused the accident was insured with this O.P. at the time of accident as stated by the applicant in the claim application for which the applicant as well as the owner of the alleged offending vehicle are directed to file the said policy for corroboration of the allegation, failing which this O.P. No-2 is not liable to pay any compensation**. In this case failing which it shall be presumed that there is statutory violation of the conditions of policy if any as contemplated U/S 149 (2) of M.V. Act and this O.P. No-2 will not as such stand in law to identify the award of compensation if at all in future."*

6. It is emphasized here that the law of pleading makes it imperative for a party to clearly plead and establish such facts in evidence, but in this case, the Appellant-Insurer has never taken the plea that the vehicle in question was not duly insured with the company, rather the pleading itself suggests that it has only evasively denied by not admitting the claim of the claimant with regard to existence of insurance policy of the insured with the insurer. It cannot be forgotten that

the insurance company has not led any evidence, either oral or documentary. What cannot be lost sight of is that the insurance company must have the policy of the insured qua the offending vehicle, but it has preferred not to produce such insurance policy before the learned Tribunal for its inspection. The principle of documentary evidence makes it imperative for a party to produce the document(s) for its inspection of the Court to give a finding which the party wishes in his favour, which is evident from the principle of burden of proof as provided U/S.101 of Indian Evidence Act (U/S.104 of BSA).

7. The statutory provision "burden of proof" never shifts and it is for the party who wishes a particular finding in his favour has to produce the evidence in support of his claim, but in this case, the Appellant-Insurer has not produced any evidence. Further, the burden of proof rests on which party can be decided by the following test that the party which would fail, if no evidence is produced and, therefore, in this case, the Appellant-Insurer would definitely fail if

the document that is insurance policy is not produced to suggest that the vehicle in question was not insured with the appellant-insurance company.

8. In such view of the matter and on consideration of the materials and documents placed on record and keeping in view the position of law and taking into account the failure of the Appellant-Insurance to produce any evidence to suggest that the vehicle in question was not duly insured with its company, this Court does not consider it proper to accept the challenge of the Appellant-Insurance in this Appeal to disturb the finding arrived at by the learned Tribunal. Consequently, no ground is made out to set-aside the impugned judgment. It is also not in dispute that this is a case in which the claimant has been awarded with compensation of Rs.64,000/- in an application U/S.166 of the Act for the injury sustained by him in a motor vehicular accident, but the award was passed way back on 25.11.2013 for an accident occurring on 25.04.2003 and it would not be proper to

disturb the quantum of compensation as granted by the learned Tribunal in favour of the claimant-R1.

9. In the result, the Appeal being unmerited stands dismissed, but there is no order as to costs. Consequently, the impugned judgment of the learned Tribunal is, hereby, confirmed and the Appellant-Insurance company is, hereby, directed to pay the compensation together with the interest as directed by the learned Tribunal to the claimant-R1 within eight weeks hence. The statutory deposit together with the accrued interest thereon be refunded upon receipt of proof of deposit of compensation amount before the learned Tribunal.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 6th day of November, 2026/Subhasmita

Signature Not Verified
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Signed by: SUBHASMITA DAS
Designation: Sr. Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 09-Nov-2026 17:46:29