

(2019) 07 SIK CK 0015

In the Sikkim High Court

Case No : IA No.01 Of 2018, MAC App No.04 Of 2019

Branch Manager, National Insurance Company Limited

APPELLANT

Vs

Tika Devi Limboo And Others

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2019) 07 SIK CK 0015

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Sushant Subba, Madan Kumar Sundas, N. Rai, K. B. Chettri, Umesh Gurung, Yogesh Gurung

Final Decision : Dismissed/Disposed Off

Judgement

Meenakshi Madan Rai, J

1. The Appellant Company has filed the instant Application under Section 173(1) of the Motor Vehicles Act, 1988 (M. V. Act), seeking condonation of 274 days delay which occurred in filing the Appeal. It is averred that the delay occurred on account of the various grounds as detailed herein;

"a. That the Impugned award was passed by the Learned Member, Motor Accidents Claims Tribunal, East Sikkim at Gangtok in M.A.C.T. Case No.10 of 2016 on 28.02.2018.

b. That the certified copy of impugned award was received by Branch Office at Gangtok from Advocate Ms. Vidya Lama on 20.03.2018.

c. That the Impugned award was studied by Branch office at Gangtok and further forwarded to Kolkata Regional Office on 30.03.2018.

d. That due to incomplete documents the Kolkata Regional Office returned back the file to Branch Office at Gangtok for rectification on 10.04.2018.

- e. That the Branch Office at Gangtok again forwarded the said file with complete documents to Kolkata Regional Office on 13.04.2018.
- f. That the Branch Office at Gangtok received an email on 19.04.2018 from Kolkata Regional Office, with an instruction to prefer an appeal before this Hon'ble High Court.
- g. That the Branch Office at Gangtok had initially appointed Counsel Shri Thupden G. Bhutia on 11.05.2018 to file an appeal before this Hon'ble High Court and the said appointment letter was received by him on 23.05.2018.
- h. That the Counsel Shri Thupden G. Bhutia on first week of November, 2018, expressed his inability to file the instant appeal, stating his personal difficulties.
- i. That the Branch Office at Gangtok, thereafter appointed Shri Mandan Kumar Sundas on 09.12.2018 for filing the instant appeal against the impugned Judgment before this Hon'ble High Court.
- j. That by the last week of December, 2018 Shri Madan Kumar Sundas, had collected all the required documents and completed the Memorandum of Appeal to be filed before this Hon'ble High Court.
- k. That from 8th January, 2019, Counsel Shri Madan Kumar Sundas was on paternity leave for one month.
- l. That in the first week of February, 2019, Memorandum of Appeal was submitted to Branch Office at Gangtok by Advocate Shri Madan Kumar Sundas for verification and approval and the same was further forwarded to Kolkata Regional Office.
- m. That the same had taken few days to verify and for signature."

Hence, the occurrence of the delay.

2. A response was filed to the said Application objecting to the grounds advanced and it was averred that the MV Act is a social and beneficial legislation and as such the Award which has been passed by the Learned Motor Accident Claims Tribunal, East Sikkim, at Gangtok (hereinafter, Learned Claims Tribunal) cannot be treated lightly by the Appellant Company. That, the grounds given by the Appellant Company do not suffice to condone the delay and the Respondents No.1 to 3 ought not to bear the brunt for the lethargy and fault of the Appellant Company. Hence, the Application be dismissed.

3. While reiterating the points raised in the averments Learned Counsel for the Appellant Company in his verbal submissions contended that it is a settled position of law that Government and Government Undertakings have been permitted some flexibility in case of condonation of delay on account of time required for processing the papers by such Offices. In this context, various High Courts and the Hon'ble Supreme Court have upheld this view in condoning such delay. In the circumstances, the said Application be considered and delay

condoned.

4. Learned Senior Counsel refuting the contentions held that the Hon'ble Supreme Court in *Office of the Chief Post Master General and Ors. vs. Living Media India Ltd. & Anr.* AIR 2012 SC 1506 has observed that delay cannot be condoned if there is no proper explanation except mentioning various dates. That, no explanation emanates for the delay in the instant matter although various dates have been mentioned sans reasons. Thus, the Application deserves a dismissal.

5. Counsel for the Respondent No.4 filed no objection nor were verbal submissions made.

6. Learned Counsel for the parties were heard at length and the impugned Judgment and Award perused before considering the condonation of delay application.

7. It is pertinent to mention that the Appeal challenges the quantification of the compensation inter alia on grounds of the income of the victim. This Court had earlier remanded the matter back to the Learned Claims Tribunal to clarify the anomalies arising in the income of the deceased, by way of examining witnesses. The concerned witness was examined by the Claimants/Respondents herein and cross-examined by the Appellant Company and necessary clarifications made. Pursuant thereto the impugned Judgment came to be pronounced.

8. The second proviso to Section 173(1) of the Motor Vehicles Act, 1988, lays down that the High Court may entertain the Appeal after expiry of a period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Hence, the key consideration is "sufficient cause", whether the Appellant Company has been able to make out "sufficient cause" is the next consideration.

9. The Hon'ble Supreme Court in *Basawaraj and Another vs. Special Land Acquisition Officer* (2013) 14 SCC 81 while explaining the expression "sufficient cause" would also opine as follows;

"11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201].)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress

resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute." [emphasis supplied]

10. On the anvil of this opinion, it would be essential to examine whether the grounds put forth by the Appellant Company qualify as "sufficient cause". While carefully walking through the grounds given by the Appellant Company seeking condonation of delay it is clear that the impugned Judgment was pronounced on 28-02-2018, certified copy of the impugned Award was received by the Branch Office from their Counsel on 20-03-2018. Pausing here for a moment, the Appellant Company has failed to reveal when the certified copy of the Judgment was applied for, although the date of Judgment is revealed. The dates revealed *supra* indicate a delay in applying for a copy of the Judgment. Admittedly the Branch Office of the Appellant Company is at Gangtok, in such a circumstance an explanation for the delay of almost three weeks for the certified copy of the impugned Judgment to reach the Branch Office was imperative but finds no place in the pleadings or verbal submissions. Thereafter, the impugned Judgment was allegedly forwarded to Kolkata Regional Office on 30-03-2018. Pursuant thereto steps were taken on account of incomplete documents till 19-04-2018, on which date the Branch Office was directed to prefer an Appeal before this High Court. More than a month elapsed before the Counsel so appointed by the Branch Office received the letter of appointment. This also lacks any explanation. Six months thereafter elapsed on account of the inability of the Counsel to file the instant Appeal on grounds of personal difficulties, this is not substantiated by any documentation. The Branch Office in December, 2018, appointed another Counsel for filing the Appeal who filed it only in March, 2019. The grounds, in my considered opinion, cannot qualify as "sufficient cause". As already pointed out the delay lacks substantiation by documentation.

11. The Supreme Court in *Office of the Chief Post Master General (supra)* while disapproving preferential treatment expected by Government Departments in matters of delay held as follows;

"13. 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 the usual explanation that the file was kept pending for several months/years due to considerable degree or 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 Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper

explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."

The Supreme Court in the aforesaid ratio has thus observed that even Government Departments are to be treated with the same yardstick as other litigants in matters of delay and law cannot be tweaked for the benefit of a few. The Appellant Company herein merely by virtue of being a Public Sector Undertaking ought not to expect preferential treatment while lacking the grounds required to establish "sufficient cause".

12. In conclusion, I am of the considered opinion that no reason emanates for condoning the delay, apart from which it must be borne in mind that the Motor Vehicles Act, 1988, is beneficial legislation enacted for the purposes of meting out even-handed justice to victims of a tragedy. The victims cannot be made to wait endlessly on the whims and fancies of the Company sans substantial reasons.

13. The Application is devoid of merit and consequently dismissed and disposed of, as also the Appeal.

14. No order as to costs.