
(2024) 12 SIK CK 0018

In the Sikkim High Court

Case No : I.A. No. 01 Of 2023 In Motor Accident Claim Appeal 62 Of 2023 (Filing No.), I.A. No. 02 Of 2024 In Motor Accident Claim Appeal 62 Of 2023 (Filing No.)

Manju Minda And Others

APPELLANT

Vs

Manoj Kumar Gupta And Others

RESPONDENT

Date of Decision : 13-12-2024

Acts Referred:

Citation : (2024) 12 SIK CK 0018

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Manish Jain, Lidya Pradhan, Rahul Rathi

Final Decision : Disposed Of

Judgement

Meenakshi Madan Rai, J

1. Heard on I.A. No.01 of 2023, which is an application seeking condonation of 168 days' delay in filing the instant Appeal, which impugns the Judgment and Award of the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), in MACT Case No.35 of 2017 (Smt. Manju Minda and Others vs. Manoj Kumar Gupta and Others), dated 26-12-2019, vide which compensation of Rs.10,88,400/- (Rupees ten lakhs, eighty-eight thousand and four hundred) only, was granted to the Applicants, with interest of 9% per annum from the date of filing of the claim petition, i.e., 18-05-2017, till full and final payment.

2. Learned Counsel for the the Applicants submits that the grounds for the delay have been explained at length in the Petition. That, after the Judgment was pronounced on 26-12-2019, the COVID-19 struck and as a result the Applicants were unable to obtain the copy of the impugned Judgment. Added to that, was the reason that the Applicants were able to pay the Court fees and obtain certified copies of the Judgment only on 20-09-2022. Learned Counsel submits

that the period of limitation in the instant matter begins to run from the date when the Applicants obtained a copy of the Judgment in September, 2022, pursuant to which they contacted the Counsel. As the Counsel and his family were in mourning from November, 2022, till March, 2023, the Appeal could not be filed on time. That, ultimately the Appeal was originally filed through e-filing on 08-06-2023 but remained unregistered due to defects in the Petition which could not be rectified on time as one of the Applicants was unwell and hospitalised. That, the other members of the family were engaged in attending to her. After rectification of defects, the Appeal was re-submitted on 10-08-2023. Hence, the delay occurred. That, the Applicants were prevented by sufficient cause from preferring the Appeal, hence the delay be condoned.

3. Learned Counsel for the Respondent No.2 (Insurance Company) per contra submits that, the limitation cannot be computed from the date on which the Court fees was paid and the Judgment obtained by the Applicants on 20-09-2022, as erroneously submitted by the opposing Counsel. The period of limitation in fact begins to run from the date when the impugned Judgment was pronounced. The ground that due to COVID-19, the Judgment could not be obtained is also frivolous and untenable as ultimately the Applicants took steps to obtain the Judgment only in the month of September, 2022, much after the COVID-19 restrictions were lifted. What transpired during the intervening period of 2021 upto 19-09-2022 has not been explained in the Petition. As the delay has not been sufficiently explained it cannot be condoned. That, the Petition thereby deserves a dismissal.

4. Learned Counsel for the Respondent No.1 has no submissions to advance.

5. I have heard the submissions of Learned Counsel for the parties in extenso.

6. The grounds averred in Paragraphs 2, 4, 5, 6 and 9 for delay are as follows;

".....

2. That the judgment in the aforesaid case was pronounced by the Ld. Claim Tribunal on 26/12/2019 though the copy of the judgment was made available to the appellants in the month of September, 2022. It is pertinent to state here that the appellants were able to get the copy of the award on 25/09/2022 as the appellants were only able to pay the court fees for the judgment on 20/09/2022. (Copy of the money receipt paid by the Appellants is enclosed and marked as Annexure A/2). Hence, the time of limitation would run from the date of payments of courts fees paid by the appellants herein, which is 20.09.2022. It is further submitted that during the year 2019-2020 and 2021 there was nationwide lockdown due to Covid-19. The appellants had therefore, tried to gather few documents but were unable to do so due to restrictions on movements. It is further submitted that the Hon'ble Supreme Court in various judgments has stated that the said period shall not be computed for the purpose of limitation. The appellants at that time were out of station and were stationed in Guwahati and when they came to Sikkim for taking necessary steps in the

matter, they were unable to do so as due to Covid which had crippled them both financially and monetarily. Finally, in the month of September, 2022 the appellants managed to gather some funds to pay for the certified copy of the judgments and hence the appeal in the instant case would have to be filed on or before 20/12/2022. The instant appeal has been filed on 08/06/2023 hence; there is a delay of about 168 days for filing of this appeal against the judgments/ award of the Learned Tribunal.

.....

4. That the appellants as soon as they were able to get the copy of the judgment in the month of September, 2022 they immediately contacted their counsel to file the petition before this Hon'ble Court and inturn the counsel had requested the appellants to gather some documents which the appellants took time till the month of October, 2022.

5. That in the mean time the counsel of the appellant was pre-occupied as he was looking after his ailing mother who later expired. The counsel and his family were in mourning and were not able to come to office in the months of November till March, 2023.

6. The in the mean time when the counsel started to come to office, there were certain other documents which were still need to be filed which the counsel through his junior had applied and same could not only be arranged in the month of April, 2023 and the memo of appeal was being drafted. The Memo of Appeal took some time to be drafted as the same could only be signed in the month of June, 2023 as one of the petitioner was out of station and hence there was delay due to the circumstances beyond the control of the parties or their counsel in the instant case.

.....

9. That initially the petition was filed on 09/06/2023 but the same could not be registered due to defects in the petition, the same could not be cured during the grace period as one of the appellant got sick and was unable to be contacted, due the said circumstances the instant petition is filed before this Hon'ble Court today after clearing of all the defects in the petition, the said delay was not intentional but was beyond the control of the appellant mentioned herein.

....."

7. Having given due consideration to the submissions advanced before this Court, it is evident that the grounds averred by the Applicants has failed to sufficiently explain the delay. It appears that the Applicants were lackadaisical in their approach, as admittedly the impugned Judgment was pronounced on 26-12-2019. Till then the COVID-19 had not struck, it was only in March, 2020 that the lockdown was announced in the country. I am aware of the Orders of the Hon'ble Supreme Court that allowed the period of limitation to be exempted from 15-03-2020 and other similar orders that followed upto 28-02-2022. This being

the circumstance, it is seen that the Applicants have failed to explain even the delay that occurred thereafter, as the Appeal was filed only on 08-06-2023. In any event, it is worthwhile mentioning that the Courts were working online despite the COVID-19 Pandemic and nothing restrained the Applicants from taking necessary steps for obtaining the impugned Judgment and filing the Appeal. The challenge in the Appeal is to the income of the deceased which according to the Learned Counsel for the Applicants was unfairly computed by the Learned MACT as Rs.7,000/- (Rupees seven thousand) only, per month. The document furnished substantiated this fact though. Admittedly, there are no documents to buttress the claim of additional income of the deceased, pegged at Rs.28,000/- (Rupees twenty eight thousand) only, per month, by the Applicants. The Applicants have relied on extraneous documentary evidence, which is devoid of the income of the deceased.

8. At this juncture, it is worthwhile noticing that the Supreme Court in Paragraph 21 of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others* (2013) 12 SCC 649 inter alia held as follows;

"21. From the aforesaid authorities the principles that can broadly be culled out are:

.....

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

.....

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud,

misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

.....”

9. On the cornerstone of the above extracted observations, I am constrained to opine that there has been gross negligence on the part of the Applicants and the Petition has been filed much beyond the period of limitation for which the explanation offered is unsatisfactory and fails to meet the mandate of “sufficient cause”. I am thus not inclined to exercise my discretion to condone the delay.

10. In view of the aforementioned reasons, I am of the considered view, the delay Petition does not deserve any consideration and is dismissed and disposed of.

11. Be that as it may, the Insurance Company, Respondent No.2, shall pay the compensation computed by the Learned MACT, vide the impugned Judgment in MACT Case No.35 of 2017, dated 26-12-2019, within forty-five days from today.

12. Interest calculated @ 9% per annum, on the award amount of Rs.10,88,400/- (Rupees ten lakhs, eighty-eight thousand and four hundred) only, shall be paid, as agreed upon, between the parties before this Court today, from the date of filing of claim petition, i.e., 18-05-2017, till one year from the date of pronouncement of the impugned Judgment, i.e., 25-12-2020. In other words, interest @ 9% per annum, on the award amount, shall be from 18-05-2017 to 25-12-2020.

13. I.A. No. 01 of 2023 stands disposed of.

14. Consequently, I.A. No. 02 of 2024 stands disposed of.

15. MAC App./62/2023 (Filing No.) also stand rejected and disposed of.

16. Copy of this Order be transmitted forthwith to the Learned MACT along with its records.