

(2008) 07 GUJ CK 0051

In the Gujarat High Court

Case No : Civil Application No. 7485 of 2008 in First Appeal (Stamp Number)
No. 1387 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Vasubhai Raviyabhai Ghodi and Others

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 173

Citation : (2008) 3 GLH 155

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Mehul Sharad Shah, for the Appellant; None for Respondents 1-6,
for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—The applicant - National Insurance Company Limited has filed the present Civil Application with a prayer to condone the delay of 675 days in filing First Appeal before this Court.

2. Learned advocate Mr. Mehul Sharad Shah, who is appearing on behalf of applicant - Insurance Company, submitted that the detail which has been given in application, except that, applicant is not having any other material to place on record for satisfying the delay beyond 2006 to 2008, in all 675 days.

3. I have considered the submissions made by learned advocate Mr. Shah. He also submitted that liberal view may be taken in this matter. That submission is also considered by this Court.

4. The Motor Accident Claim Petition No. 279 of 2003 filed by claimants, because, one Vasubhai Raviyabhai Ghodi who died in accident on 28th May 2003 at about 8-00 pm at night near Pali Karamveli S.T. Stand. At the time of accident, the deceased was driving Bajaj Scooter No. GJ-15-S-6496 going to Karamveli to Daman, where, from the opposite side, one Hero Honda Splender Motorcycle No.

GJ-15-C-9462 driven by another person dashed with Scooter. Ultimately, schoolist Shri Ghodi died because of injury received by him in the accident. Total claim was made about Rs. 10 lakhs by father, mother, wife, minor son and minor daughter of the deceased. This National Insurance Company Limited is representing Hero Honda Motorcycle who dashed with the scooter and Shri Ghodi was died. The deceased was aged about 31 years and according to claimant, he was earning Rs. 5,000/- per month. These are the facts which have been taken into account by Tribunal and ultimately, Tribunal has come to conclusion that there was 5% negligence of the deceased and 95% negligence of Hero Honda Motorcycle. Tribunal has awarded Rs. 2,94,000/- with 9% interest on 22nd February 2006.

5. In light of these factual background, now, learned advocate Mr. Shah raised contention before this Court that because of a riding person of Hero Honda who was a driver as well as owner and not having valid driving licence, therefore, Insurance Company is not supposed to pay single pie to the claimant as Insurance Company is not liable under the Insurance Policy. He also raised contention that this question was raised in the written statement which was not considered by Tribunal and therefore, there is no discussion of such contention in the award.

6. I have considered these submissions made by learned advocate Mr. Shah. Looking to his submissions, in the award of the Tribunal, nowhere, this question is discussed by the Tribunal in written statement also while referring by the Tribunal, this question is not referred it and discussed it and this contention was not argued by the lawyer who was representing the Insurance Company. There is no affidavit of the lawyer Mr. P.C. Sanghavi who was representing the Insurance Company that such contention was raised before the Tribunal and Tribunal has not dealt with. In light of the background, naturally, this contention was not raised by the Insurance Company before the Tribunal. If it is raised in written statement, then, it may not be pressed before the Tribunal by the learned advocate Mr. Sanghavi, therefore, Tribunal has rightly not examined such issue. Ultimately, Shri Ghodi has died in the accident. Wife and children became helpless because of the death of father and husband. The delay condone application filed by Insurance Company with a prayer to condone it, because, Insurance Company is having a good question of law to be argued which I have, prima facie, examined it and from the record of the Tribunal, there is no such contention was raised by Insurance Company before the Tribunal. No affidavit of the lawyer is filed to the effect that such question was raised and not dealt with by the Tribunal. Therefore, contention raised by learned advocate Mr. Shah that important question of law is there, cannot be accepted and therefore, the same is rejected.

7. It is made clear by this Court that this Court is not expressing any opinion in respect to the award passed by Tribunal on merits. This Court is examining only delay condone application and that whether it can be condoned or not.

8. The award passed by Tribunal on 22nd February 2006. The application was submitted on 1st March 2006. The certified copy of award was ready for delivery to the Insurance Company on 3rd April 2006 and on 5th April 2006, certified copy is received by Insurance Company. The application was not made for urgent copy but in ordinary course, copy was applied by the insurance company. Accordingly, payment was made by Insurance Company.

9. Learned advocate Mr. P.C. Sanghavi received the copy on 5th April 2006 and he sent the papers on 6th April 2006 which was received by Divisional Office, Vapi on 7th April 2006. The opinion was given by learned advocate Mr. Sanghavi not to prefer appeal against the said award. Thereafter, Divisional Office, Vapi sought opinion of the panel advocate Mr. Parimal Sanghavi because it was evident that opponent No. 6 was not having effective driving licence and it was asked by applicant to learned advocate Mr. Sanghavi that whether awarded amount should be deposited or not. Thereafter, learned advocate Mr. Sanghavi again sent his opinion to Divisional Office, Vapi with his opinion by letter dated 19th April 2006 which was received by Divisional Office on 24th April 2006. Thereafter, learned advocate Mr. Parimal Sanghavi who personally remained present at Divisional Office, Vapi to clarify that whether the amount awarded should be deposited or not. But, thereafter, the advocate appearing for the applicant did not do needful and therefore, Divisional Office, Vapi again sent a reminder to learned advocate Mr. Sanghavi and requested to do needful. Thereafter, Divisional Office, Vapi on 1st April 2008 sent copy of judgment along with opinion of the advocate to the Regional Office, Ahmedabad to prefer an appeal because on investigation, it was found that opponent No. 6 - driver was not having any effective valid driving licence to drive the vehicle that was received by Regional Office, Baroda on 2nd April 2008. Thereafter, Regional Office, Baroda verified all the papers and decided to file appeal on 30th April 2008. Therefore, in all, 675 days delay occurred in filing First Appeal. The period from 24th April 2006 to 1st April 2008 about two years, totally remained unexplained. Not only that but what happened during this interim period, no explanation is given by Insurance Company. Section 173 of Motor Vehicle Act has given sufficient time to file First Appeal within a period of 90 days i.e. about 3 months, even though, appeal is not filed within 90 days, then, same may not be entertained by the High Court after expiry of the said period, if the Court is not satisfied that appellant was prevented by sufficient cause for preferring the appeal in time. In application, no circumstances is pointed out by the applicant which has been prevented to the Insurance Company from preferring the appeal in time. The lawyer has given an opinion not to file appeal, even though, to find out something subsequently that respondent No. 6 was not having valid driving licence, therefore, everything is being investigated which was not raised before the Tribunal. I fail to understand the breach at least it may not be by statutory authority but the corporate body being a part and parcel of insurance under the Motor Vehicle act. A person who died is ultimately a real sufferer who is having a father, mother, wife and the children. For some amount, a Hero Honda Motorcycle

dashed with the scooter just to deny the compensation to the family of the deceased an issue has been raised that person who was riding the motorcycle not having a valid driving licence and he was owner, therefore, under the insurance policy being a contract between insured and insurer, insurer is not liable for the payment of compensation. If there is some breach of condition by the insured, the company is entitled to recover from insured as a matter of right under the contract, but, company is not prepared to discharge a social obligation which has been cast under the Motor Vehicle Act by statutory provisions. For third party, insurance company is liable statutorily. It cannot escape from such liability by raising mere contention available to it u/s 149(2) of the Motor Vehicles Act.

10. In an identical case of V.K. Thukral and Others Vs. Lalit and Others, owner has filed an application for condonation of 416 days delay in preferring of an appeal. His condonation application has been considered by the Apex Court and relevant observations are made in Para 7 to 9 which are quoted as under:

7. Learned Counsel for the appellants, relied upon Naubat Ram Sharma v. Additional District Judge II, Moradabad AIR 1987 SC 1352, to urge that counsel's fault should not visit the client with penal consequences. Learned Counsel also relied upon Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , to urge that sufficient cause should be construed liberally. Reliance was also placed on the decisions in Chhabi Kulavi and Another Vs. Ganesh Chandra Mondal, State of Bihar v. Nilamani Jha JT 2000 (Supp 1) SC 209; B.T. Rai v. Ramanna Gowda JT 2000 (Supp 1) SC 211 and Rafiq and Another Vs. Munshilal and Another, to urge that counsel's inaction should not result in the litigant suffering.

8. It is true that in an adversarial litigation, clients repose faith in their advocate and having paid the fee and given requisite instructions to their lawyer, party would be fully justified in being confident that his lawyer would discharge his professional obligations. Therefore, where it is brought on record that a party has done everything in its power to effectively participate in a proceedings, courts should be liberal in construing sufficient cause and should lean in favour of such party. A litigant does not stand to benefit by lodging appeals at a belated stage. Whenever substantial justice and technical consideration are opposed to each other, cause of substantial justice has to be preferred. Justice oriented approach has to be taken by a Court. However, this does not mean that a litigant has a free licence to approach the court at its will.

9. At some stage of the judicial proceedings, where a litigant finds that his lawyer is not rendering the requisite professional services, it becomes the duty of the litigant to become vigilant.

11. Learned advocate Mr. Sanghavi who kept the papers with him for a period of two years, even though, no action has been taken or no steps have been taken by company against such lawyer who has personally gave opinion not to file an

appeal. Subsequently, he was called to remain personally present and thereafter, matter remained pending with him about two years which is unexplained as no affidavit is filed. Therefore, lawyer who remained inactive or not tendering the requisite professional service to the client and ultimately, client cannot take any advantage of such situation. In the aforesaid decision of Apex Court, delay of 416 days has not been condoned and rejected the delay condone application for filing First Appeal by owner.

12. Similarly, in case of Oriental Insurance Co. Ltd. Vs. S.D. Sahare and Others, by Jammu and Kashmir High Court, where, High Court has considered the same. The relevant Para 14 to 20 are, therefore, quoted as under:

14. Expiry of the period of limitation prescribed for filing appeal in a contested matter, particularly in those cases where claims are allowed under the Motor Vehicles Act, in favour of the injured or those who are left behind to suffer because of the death of their breadwinner, vests a valuable right in the claimant which cannot be taken away on mere ipsi dixit of the party losing the litigation. Strong reasons are, therefore, required to be spelled out by such appellant seeking condonation of delay in filing the appeal. It is further required to indicate the steps taken by it to ensure filing of appeal within the prescribed time and the circumstances which had prevented it from filing the appeal within the prescribed period of limitation.

15. The ground urged by the insurance company to seek condonation of delay does not indicate its awareness that the appeals had to be filed within the prescribed period of limitation and about the efforts and steps taken by it to ensure that no delay was caused in filing the appeals within the prescribed period of limitation as also the factors which despite its having taken steps to file appeal within the prescribed period of limitation had disabled it to file the appeal.

16. The insurance company has not placed any material on record either, on the basis whereof it may be said that it had all along been aware that it had to file the appeal within the prescribed period of limitation and that it had taken requisite steps needed for filing such appeals, or to expedite the reconstruction of records which are stated to have been allegedly lost in transit when the file had been sent to the Regional Office and despite taking all steps, it had been disabled because of one or the other reasons to file the appeal within the prescribed period of limitation.

17. Spelling out of the difficulty or the purported genuine cause which had disabled an insurance company or, for that matter, any other authority which acts through its impersonal machinery, to file an appeal within the prescribed period of limitation or the discernment of such cause from any other material on record thus becomes necessary because in its absence the court may be disabled to find out as to whether the difficulty or cause projected was a genuine cause justifying condonation of delay or was a self invited or misconceived cause which may not, in the given facts and circumstances of a case, warrant consideration for allowing

condonation of delay and depriving of a party of its right which had accrued to it because of omission of the opposite party to file the appeal within the prescribed period of limitation.

18. Appellant insurance company has neither projected nor spelled out any such cause or genuine difficulty in the present case which had disabled it from filing its appeals within the prescribed period of limitation. Its long wait for more than a year for receipt of its files from its Regional Office, without having taken any steps for reconstruction of records so as to file appeals within the shortest possible time, cannot be accepted as a genuine/sufficient cause which may be said to have disabled it from filing appeals within the prescribed period of limitation justifying condonation of delay.

19. I am supported in taking this view by a Division Bench judge of this Court in National Insurance Co. Ltd. v. Sep. Bhagirath Singh Cond (c) No. 205 of 2005; decided on 13.12.2005, where, the Bench observed as follows:

Grounds raised by the appellants do not exhibit any cause much less sufficient, which appears to have prevented the company in filing the appeals within prescribed time of limitation. On the other hand, the grounds only show the route, which the files appear to have taken before the appeals, came to be filed in this Court. The appellant, it appears, has multipolar legal hierarchy, which the appellant urges that a file has to travel before a final decision, as to the filing or otherwise of an appeal, is taken by the company. In other words, it suggests that the company has devised its own procedure for taking a decision as to whether or not an appeal be filed against a decision of the Court. If this practice, which has been adopted by the company, has to be accepted, then one has to do that at the cost of the prevailing law of the land which does not contemplate providing more than three months' time to a litigant to consider as to whether or not, it wanted to file an appeal against the judgment of a court. The company cannot, in our opinion, be permitted to have a separate period of limitation for its appeals. The insurance company cannot be treated differently from an ordinary litigant. The appellant company possessed of the requisite legal expertise knows fully well that if an appeal is to be filed, it is required to be so filed within the prescribed period of limitation.

Proviso appended to Section 173 of the Motor Vehicles Act, 1988, does not contemplate the condonation of delay on such self self invited, disabling grounds to seek condonation of delay. What is contemplated by second proviso of Section 173 of the Motor Vehicles Act, 1988, is the "sufficient cause" which prevents a litigant from filing an appeal. This sufficient cause, cannot be countenanced as cause invited by a litigant on his own. Sufficient cause contemplated by proviso to Section 173, is an unforeseen act or event because of which a litigant is prevented in filing appeal within the statutory period of limitation. Appellant company has failed to project any such cause unexpected or unforeseen as is contemplated by Section 173 of Motor Vehicles Act, 1988.

Applications filed by the applicants/appellants, were, thus, misconceived. We have examined the reasoning given by the learned single Judge. We are satisfied with the order passed by learned single Judge. The order impugned in the appeals, thus, does not call for any interference.

The appeals, are, accordingly, rejected.

20. Petitions filed by the insurance company, which do not spell out requisite details as to what the company had been doing sitting silent for more than a year, what steps had it taken to ensure filing of appeals within the prescribed period of limitation or within the shortest period of time and which were those circumstances which had prevented it from filing appeals within the prescribed period of limitation, do not, therefore, deserve liberal consideration for condoning delay in filing the appeals and depriving the claimants of the right which has accrued to them because of the omission of the company to file appeals within the prescribed period of limitation.

13. In view of observations made by Apex Court and Jammu and Kashmir High Court and looking to the facts of this case, the delay remained unexplained for a period of two years by the Insurance Company. There is a clear legal fight between two unequal and in such circumstances, Court should be remained vigilant while considering the application filed by Insurance Company with a prayer to condone the delay without satisfying the Court that was a sufficient cause in not filing the appeal in time. According to my opinion, looking to the averments made in this application and considering the submission, applicant is not able to satisfy this Court that delay of 675 days which is almost about more than two years, any sufficient cause is shown. The claimants remained without compensation. No details are given. Company remains silent for two years which amounts to deliberate delay and no circumstances are pointed out which prevented company in filing Appeal in time. The observations made by Apex Court and High Court of Jammu and Kashmir are fully applied to the facts of the present case.

14. Therefore, delay occurred in preferring Appeal is hereby not condoned in the interest of justice. Accordingly, present Civil Application for condonation of delay is dismissed.