

(2019) 01 GAU CK 0043
In the Gauhati High Court
Case No : Criminal Appeal No. 478 Of 2015

New India Assurance Co. Ltd

APPELLANT

Vs

Himangku Kr. Das And 2 Ors

RESPONDENT

Date of Decision : 23-01-2019

Acts Referred:

Limitation Act, 1963 — Section 17

Citation : (2019) 01 GAU CK 0043

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : M Choudhury, Z Hussain

Final Decision : Disposed Off

Judgement

Prasanta Kumar Deka, J

1. Heard Mr. M. Choudhury, the learned counsel for the petitioner. Also heard Mr. Z. Hussain, the learned counsel for the respondents.

2. The present respondent No.1 is the son of deceased, Ravi Das @ Rabindra Das. That on 14.02.2002 at about 08:30 pm, while the said Ravi Das @ Rabindra Das was on duty of a RCC Bridge near Narikali Mandir on National Highway 52, the offending vehicle bearing Registration No. AS-13/5900 coming from the Guwahati towards Mangaldoi at a high speed knocked down the said deceased father of the respondent No.1 resulting serious injuries. He was taken to the Mangaldoi Civil Hospital but was declared dead in the hospital. Alleging that the accident occurred due to rash and negligent driving of the offending vehicle and the deceased being the only earning member of the family, the respondent No.1 filed M.A.C. Case No.42/2008 in the concerned Tribunal at Mangaldoi claiming Rs.15,00,000/- as compensation. The present petitioner filed its written statement denying the accident including a denial of any coverage by the insurance policy referred in the said proceeding at the relevant time of the accident. Finally the said proceeding was heard and award of Rs.6,11,300/- was

passed in favour of the respondent No.1. It would be pertinent to mention here that in the proceeding before the Tribunal the respondent No.1 relied the GD Entry No. 375 dated 14.05.2002 and the GD Entry No. 377 dated 14.05.2002 of the Sipajhar Police Station, Darrang District. The GD Entry No. 377 dated 14.05.2002 records that an Auto Rickshaw bearing No. AS-13/5900 was involved in the said vehicular accident. The said award was directed to be satisfied by the present petitioner, the New India Insurance Company Ltd. laden with interest at the rate of 7 % per annum from the date of filing of the petition till realisation. The petitioner failed to comply the direction of the Tribunal and as a result, the Tribunal was constrained to issue necessary certificate on the basis of which Bakijai Case No.229/2014 was initiated before the Bakijai Officer, Darrang. Subsequent to the registration of the said Bakijai Case No. 229/2014, notice was issued to the petitioner. On receipt of the said notice, the Insurance Company upon investigation came to the conclusion that the GD Entry No. 375 dated 14.05.2002 of the Sipajhar P.S. and GD Entry No. 377 dated 14.05.2002 of the same Police Station on the basis of which the MAC Case No. 42/2008 was initiated, were fake inasmuch as the Insurance Company obtained the extract copy of Sipajhar P.S. GD Entry Nos. 375 and 377 dated 14.05.2002 and surprisingly, the contents of the said GD Entry Nos. 375 and 377 had no similarity with respect to the one on the basis of which the MAC Case No. 48/2008 was initiated.

3. Being fully satisfied with the collected informations in order to show that the GD Entry Nos. 375 and 377 dated 14.05.2002 on the basis of which the said proceeding was initiated being fake, the petitioner filed an application for review of the judgment and award dated 07.07.2010 before the Tribunal at Mangaldoi. Alongwith the said review application a delay condonation petition was also filed as there was delay of 1429 days from the date of judgment and award. The said review application alongwith delay condonation application was registered as Misc. MAC Case No.10/2014 in the Court of learned Addl. Sessions Judge, FTC, Darrang at Mangaldoi. Vide order dated 18.04.2015 the delay condonation application was rejected and while rejecting the said application the learned court below held as follows:-

"13. There is no straitjacket formula for deciding what would be the sufficient cause for condoning the delay in filing the appeal but 'sufficient cause' depends upon the facts of the case. But it is fairly well settled that in the absence of plausible and/or reasonable explanation for the delay, this Court has no power and jurisdiction under Section 5 of the Limitation Act to condone the delay. It is also fairly well settled that an application for condonation of delay which has been filed in a very cryptic and casual manner without explaining the delay shall not be entertained.

16. This Court is of the considered view, the number of days' delay is not the deciding factor in considering the application for condonation of delay in filing the appeal, but deciding factor would be as to whether there is plausible and/or

reasonable explanation for the delay in filing the appeal, inasmuch as , this Court has the power to exercise its discretionary power for condonation of delay only when there is plausible and/or reasonable explanation for delay and also the said plausible or reasonable delay would be the 'sufficient cause' contemplated in Section 5 of the Limitation Act. In the instant case, there is absolutely no explanation for the inaction of the petitioner-appellant-insurance company for a period of more than one year from 11.03.04 to 19.8.05. Having considered the entire materials on record together with considering the dictum of the law for condoning the delay as propounded by our Hon'ble High Court, I am of the considered view that the petition so filed by the Insurance Company U/S 5 of the Limitation Act lacks merit and as such, the petition filed by the Insurance Company U/O 47 Rule 2 read with Section 151 C.P.C. stands dismissed."

4. As the delay was not condoned thereafter, the learned court below dismissed the review application. Being aggrieved by the said order, the petitioner has preferred this revision application.

5. Ms. Choudhury submits that the rejection of the delay condonation application by the court below was not proper. In support of her contention Ms. Choudhury submits that Section 17 of the Limitation Act, 1963, specifically provides that the period of limitation shall not begin to run until the applicant discovered the fraud with a reasonable diligence and until the applicant first had the means of producing the concerned documents. In order to satisfy the court below the petitioner produced both the sets of GD Entries and was successful at least prima facie to show that a fraud was played on the Tribunal in the said MAC Case No.42/2008. But as against the said principle of Section 17 of the Limitation Act, the learned court below held that the Insurance Company failed to explain the delay from the period of 11.03.2004 to 19.08.2005. It is the contention of the learned counsel that in order to discover the fraud its quite natural that some time was consumed but the ground specified in the impugned order in a case like the one in hand where there is a strong prima facie case in favour of the petitioner, the learned court below was wrong in passing the impugned order.

6. Mr. Hussain, on the other hand, vehemently objects to the submission of Ms. Choudhury. It is submitted that as per the contention of the petitioner, fraud was discovered in the month of February 2011 and since then the said petitioner sat idle and filed a review application in the year 2014. The said period of 3 years remained unexplained and as such, Mr. Hussain submits that the learned court below was correct in passing the impugned order. It is further submitted that Section 17 of the Limitation Act, 1963 prescribes a period of one year from the date of discovery of the fraud. As the said period of limitation is the mandate of the law under such circumstances, the learned court below was correct in rejecting the application more so when there is no explanation at all from the date of discovery of the fraud in the year 2011 till the date of filing in the year 2004.

7. Considered the submission of the learned counsel. I have perused the

impugned order and the copy of the GD Entries annexed to this petition. In the case of S.P. Chengalvaraya Naidu (Dead) By Lrs. -Vs.- Jagannath (Dead) By Lrs. and Others, reported in (1994) 1 SCC 1, the Hon'ble Apex Court held that a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party and if a judgment is passed in such a situation the said judgment is a nullity.

8. In the present case in hand, the petitioner was able at least to show before the court below two sets of GD Entries bearing the same Nos. 375 and 377 both dated 14.05.2002. The contents of the two sets of GD Entries are totally different, one speaks of the vehicular accident, on the other hand, the other set speaks of something which is beyond the one recorded in the former set. Herein it would be appropriate to consider the ratio laid down in Joginder Singh -Vs.- Roshan Lal, reported in (2002) 9 SCC 764, the respondent therein claimed that 'acrylamide' was a synthetic adhesive and entitled to duty free clearance against value based advanced licenses pertaining to the export of leather goods. The Asstt. Commissioner, Customs rejected the claim. Commissioner (Appeals) Customs accepted the claims. Before the said authorities the respondent relied upon the opinion from expert institute including an opinion from a Professor, University Department of Chemical Technology, Mumbai. The order of Commissioner (Appeals) was passed on 14.06.1995. In November 1996 Central Intelligence Unit of the Mumbai Custom House commenced an investigation and it was revealed that there was reason to doubt the veracity of some of the documents. The appellant filed an appeal before the appropriate Tribunal alongwith delay condonation application. The Tribunal declined to condone the delay taking the view of a decision of the Hon'ble Apex Court. Allowing the appeal against the order of rejection of delay condonation the Hon'ble Apex Court held as follows:-

"6. The Tribunal would appear to have lost sight of the cardinal principle which is enshrined in Section 17 of the Limitation Act that fraud nullifies everything. If the Tribunal was satisfied, as it ought to have been upon these facts, that there might be some fraud, there was every reason for it to condone the delay and to hear the appeal."

9. Keeping in view the said ratio as referred hereinabove, I am of the opinion that the learned court below also lost sight of the cardinal principle of Section 17 of the Limitation Act. Moreover, the learned court below ought to have drawn the satisfaction prima facie that a fraud had taken place and in order to enter into the issue of fraud it would have been proper to take up the review petition for its admission but the learned court below failed to appreciate the said cardinal

principle in Section 17 of the Limitation Act and also the principle that fraud nullifies everything. Thus I am constrained to set aside the impugned order dated 18.04.2015 passed in Misc. MAC Case No.10/2014 by the learned Additional Session Judge, FTC, Darrang at Mangaldoi which I accordingly do. The delay of 1429 days is condoned and the learned Court below/ the Tribunal shall hear the review petition on merits without being influenced by the earlier judgment and award passed in MAC Case No. 42/2008. Parties to this petition shall appear before the Tribunal at Mangaldoi on 27.02.2009.

10. Interim order, if any, stands vacated.

11. Registry to send back the LCR at the earliest keeping in view that the next date for appearance of the parties is fixed on 27.02.2019.

12. This revision petition is allowed and stands disposed of.