

(2003) 03 AP CK 0006

In the Andhra Pradesh High Court

Case No : A.A.O. No. 1853 of 2002 & Appeal Against Order No. 1853 of 2002

New India Assurance Co. Ltd.

APPELLANT

Vs

Jahangir Shareef and Another

RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2005) 3 ACC 603

Hon'ble Judges : P.S. Narayan, J

Bench : Single Bench

Judgement

P.S. Narayan, J.—With the consent of both the Counsel the main civil miscellaneous appeal itself is being disposed of.

2. The facts in brief are as follows:

Appellant herein, New India Assurance Co. Ltd., Divisional Office-I, A-1, Karim Trade Centre, M.G Road, Secunderabad, had filed an application in I.A. No. 504 of 2001 in O.P. No 1000 of 1999 on the file of the Court of Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad u/s 5 of the Limitation Act, 1963 praying for the relief of condonation of delay of 175 days in filing the application to set aside ex parte decree dated 2.8.2000 in O.P. No. 1000 of 1999.

3. O.P. No. 1000 of 1999 was filed under Sections 140 and 166 of Motor Vehicles Act, 1988 claiming compensation of Rs. 1,00,000/- under various heads against respondent No. 1 owner of the vehicle and respondent No. 2 the Insurance Company. Notices were served on both the respondent. Since they remained absent they were set ex parte on 15.10.1999. Subsequent thereto the claimant was examined as P.W. 1 and award was made at Rs. 30,000/- with interest at 12 per cent per annum from the date of claim application till the date of realisation. Subsequent thereto the present appellant Insurance Company had filed an application for condonation of delay of 175 days in filing an application to set

aside the ex parte decree and the affidavit filed in support of the application was sworn by the Senior Divisional Manager of the Insurance Company. No counter was filed opposing the application. The learned V Additional Chief Judge came to the conclusion that the explanation given in the affidavit filed in support of the application for condonation of delay is not sufficient explanation and had dismissed the same. Aggrieved by the said order the present appeal is filed.

4. Mr. Kota Subba Rao, learned Counsel representing the appellant, submitted that the Insurance Company already had deposited half of the decretal amount and after examining the O.P. the Insurance Company was satisfied that there were substantial grounds to contest the case, the appellant had thought of filing an application to set aside the ex parte award made and in this process there was delay of 175 days in making the application to set aside the said ex parte award or decree as the case may be. Learned Counsel further submitted that the Insurance Company will be burdened with several of the cases and in the process of the examination of the matters, it is too natural at certain times that delay may occur and hence while appreciating an application for condonation of delay in such a case too technical or harsh approach cannot be adopted. The learned Counsel also submitted that the learned Judge should have definitely taken into consideration the non-filing of any counter by claimant and this aspect also was not considered by the learned Judge. The Counsel also had placed reliance on certain decisions which may be referred to infra at the appropriate places.

5. Per contra, Mr. Raj Kumar, learned Counsel representing the respondent No. 1-claimant with all vehemence had submitted that in view of the limitations imposed on the Insurance Company in taking up the defence under the provisions of the Motor Vehicles Act, even on merits, absolutely there is no case to the appellant Insurance Company and there is no point in allowing such an application for condonation of delay. The learned Counsel had drawn my attention to Section 149(5) and also Rule 476 of the Andhra Pradesh Motor Vehicles Rules, 1989. The learned Counsel further submitted that the only ground given in the affidavit in support of the application is that the Insurance Company will have thousand cases and on examining the present O.P. the company came to know that there are substantial grounds to contest the case and this reason definitely cannot be said to be sufficient cause for condonation of delay. The learned Counsel also had placed reliance on certain decisions to substantiate the contentions advanced by him.

6. Heard both the Counsel and also perused the material available on record.

7. It is pertinent to note that in present case the order impugned is the dismissal of an application for condonation of delay. Though the merits of the main matter had been argued elaborately, the relevancy of the same may be only to a limited extent and hence defences available to the Insurance Company, the limitations imposed by the provisions of the Act or the rules framed there under need not be gone into in detail at this stage. No doubt, the learned Counsel representing the respondent No. 1 had placed strong reliance on *New Asiatic Insurance Co. Ltd. v.*

Pessumal Dhanatnal Aswani 1958 ACJ 559 ; National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , and also on Inder Singh Vs. Syed Hussain and Another, .

8. In State of Haryana v. Chandra Mani III (1996) CLT 62 (SC) : 1996 (2) UJ (SC) 105, the three Judge Bench of the Supreme Court held that the individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and it is a fit case for condonation of the delay and discretion given by Section 5 of the Limitation Act, 1963 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient causes" should receive a liberal construction.

9. In P.K. Ramachandran Vs. State of Kerala and Another, , the Supreme Court while considering an application for condonation of delay of 565 days in filing an appeal had arrived at a conclusion that the explanation at the relevant time was Advocate General's office was fed up with so many arbitration matters pending, consideration cannot be said to be a reasonable or satisfactory explanation for delay and law of limitation has to be applied with all its rigour prescribed by statute and Courts have no power to extend period of limitation on equitable grounds.

10. Strong reliance was placed on Ram Nath Sao v. Gobardhan Sao I (2002) CLT 244 : 2002 (2) Sup 143. In New India Assurance Company Limited, Hyderabad Vs. G. Sarada Prasad and others, , a Division Bench of this Court while dealing with condonation of delay of 1047 days and 139 days in presenting letters patent appeal had arrived at a conclusion that since the grounds taken by the Insurance Company for condonation of delay...sufficient cause had not been shown and the application is liable to be dismissed. It is no doubt true that in the present matter the application for condonation of delay of 175 days, the Senior Divisional Manager of the appellant Insurance Company had sworn to the affidavit and the reason given by him at para 2 of the affidavit reads as hereunder:

I submit that we have more than a thousand cases, on examining the present O.P. we came to know that there are substantial grounds to contest the case. Thus a delay of 175 days occurred in making the application seeking to set aside ex parte decree in O.P. No. 1000 of 1999.

11. This is the explanation given by the appellant Insurance Company and by any stretch of imagination it cannot be said to be a reasonable explanation or proper explanation so as to constitute sufficient cause within the meaning of Section 5 of the Limitation Act, 1963. It is made clear that while deciding whether in a particular matter sufficient cause is established or not definitely each case depends upon the facts and circumstances and while giving the explanation so as to constitute sufficient cause be that an Insurance Company, a

Corporation, a Government body or any other quasi-Governmental body, officers who sworn the affidavits must be careful and cautious in explaining the reasons and they are not expected to file affidavits in a casual manner making vague allegations. In such cases, definitely it cannot be said that such vague reasons may attract the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963. It is suffice to state that each case depends upon the facts and circumstances of the particular specified case and no elaborate guidelines exhaustively can be laid down in this regard. As far as the present case on hand is concerned, in the light of the nature of the reason which had been specified in the affidavit filed in support of the application for condonation of delay, I am satisfied that such reason will not answer the expression "sufficient cause" within the meaning of Section 5 of Limitation Act, 1963. Appellant is granted two months time for making deposit of the rest of the amount if the appellant Insurance Company is so advised.

12. Hence, appeal is devoid of merits and accordingly the civil miscellaneous appeal is dismissed. No costs.