

(2001) 02 DEL CK 0022
In the Delhi High Court
Case No : LPA No. 37 of 1989

New India Assurance Co. Ltd.

APPELLANT

Vs

Molu Ram Jain and others

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Citation : (2002) ACJ 1008 : (2001) 4 AD 121 : (2001) 91 DLT 123 : (2001) 59 DRJ 228

Hon'ble Judges : M.S.A. Siddiqui, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mr. S.K. Paul, for the Appellant;

Judgement

M.S.A. Siddiqui, J.—The accident which gave rise to the claim for compensation by the respondents took place on 14th October, 1989. The deceased, namely, Narender Kumr Jain's legal heirs filed a petition u/s 110-A of the Motor Vehicles Act for grant of compensation. By the order dated 22nd November, 1988, the Motor Accident Claims Tribunal awarded compensation of Rs.1,16,000 with interest at the rate of 12% per annum directing the respondents Ram Chander, Mahan Singh Yadav and the appellant insurance company to satisfy the award. Aggrieved by the said award, the appellant insurance company filed a memorandum of appeal accompanied by an application u/s 5 of the Limitation Act for condensation of forty days" delay in filing the appeal. By the order dated 20th April, 1989, the learned Single Judge rejected the said application and dismissed the appeal as barred by time. Hence this appeal.

2. Learned counsel for the appellant contended that delay in filing the appeal was not caused due to negligence or on account of any malafides of the appellant Insurance Company. According to the learned counsel, the delay was caused due to inaction on the part of the appellant's counsel Mr.M.M.Kalra, Advocate, who could not obtain the certified copy and file the appeal in time. He has invited our attention to the following averments made in the application filed u/s 5 of the Limitation Act, which was supported by the affidavit of Mr. Kalra, Advocate. The

relevant paragraphs of the said application are as under:-

"4. That Shri M.P. Singh, Legal Officer (Claims) of the Appellant Company who was dealing with the case made enquiries from Shri M.M.Kalra on phone on a number of occasions and on each occasion he was informed that the copy was applied for in the last week of November, 1988 and that the copy has not been made ready so far.

5. That it was only on march 28, 1989 that M.M.Kalra, Advocate informed Shri M.P.Singh that the information provided to him earlier from time to time about the application for certified copy of the judgment dated 22.11.1988 was not correct as he had been misinformed by his Clerk about the same and he honestly believed his Clerk in that behalf.

8. That the Appellant through Shri M.P.Singh regularly perused the matter with Shri M.M.Kalra and honestly believed that the Application has been filed, as divulged by Shri Kalra from time to time.

10. That the delay caused in the filing of the Appeal is due to the reasons furnished by Shri Kalra in the Affidavit filed in this Court and this delay is due to the bonafide mistake and not intentional and the Appellant should not be made to suffer for the same."

3. It is well settled that sufficient cause in every case is sine qua non for condensation of delay and liberal construction is required to be placed when substantial justice and technical grounds are pitched against other. There is no general principle saving the party from negligence or all mistakes of its counsel. In this context, we may usefully excerpt the following observations of their Lordships of the Supreme Court in G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, :-

"The contours of the area of discretion of the Courts in the matter of condensation of delays in filing appeals are set out in a number of pronouncements of this Court. See Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., ; Shakuntala Devi Jain Vs. Kuntal Kumari and Others, ; Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, ; Mata Din Vs. A. Narayanan, ; Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condensation of the delay."

4. There is another aspect of the matter, which cannot be ignored. This relates to the functioning of the Government and its instrumentalities. If the appeals brought by the Government or its instrumentalities are dismissed for such defaults, what ultimately suffers is the public interest. In this context, a reference to the following observations of their Lordships of the Supreme Court in the case of G.Ramegowda, Major (supra) has become indispensable:-

"The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, Therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on Governmental functioning--of course, within a reasonable limit--is necessary if the judicial approach is not rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process....."

5. Having regard to the entirety of the circumstances, we feel that the appellant insurance company should not be penalised for the lapses of its counsel and the award under appeal should not be permitted to assume finality without an examination of its merit.

6. For the foregoing reasons, we allow the appeal and set aside the impugned order holding that there was sufficient cause for condensation of delay in filing the appeal. The case is remanded to the learned Single Judge for its disposal according to law. Let the matter be listed before the appropriate Bench on 19.3.2001.