

HIGH COURT OF SIKKIM
Record of Proceedings

I.A. No.01 of 2024 in MAC App./135/2024 (Filing No.)

THE BRANCH MANAGER, CHOLAMANDALAM MS
GENERAL INSURANCE COMPANY LTD.

APPLICANT

VERSUS

DAL BAHADUR THAPA AND OTHERS

RESPONDENTS

Date: 22.04.2025

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Applicant Mr. Rahul Rathi, Advocate.

For Respondents

R-1, R-3 to R-5 None present.

R-6 & R-7 Mr. Tarun Choudhary, Advocate (*through VC*).

ORDER (ORAL)

1. Heard on I.A. No.01 of 2024, which is an application under Section 173(1) of the Motor Vehicles Act, 1988, filed by the Applicant, wherein the Applicant has sought condonation of 335 days' delay, in filing the Appeal. The application is duly supported by an Affidavit.

2. Learned Counsel for the Applicant has walked this Court through the grounds given in the application for the delay.

- (i) Learned Counsel advanced the argument that the impugned Judgment was pronounced on 30-09-2023.
- (ii) The Appeal was to be filed on 29-12-2023.
- (iii) The Appeal came to be filed only on 28-11-2024.
- (iv) That, ten days was taken to engage a Counsel by the Applicant-Company to obtain the impugned Judgment.
- (v) On 11-10-2023, it was forwarded to the Branch Office, at Siliguri.
- (vi) The Branch Office forwarded it to the Regional Office, at Kolkata, on 16-10-2023.
- (vii) The Kolkata Regional Office sought opinion from its Legal Department, on 19-10-2023.

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- (viii) On 28-10-2023, the File was returned to the Kolkata Regional Office with the opinion that an Appeal ought to be filed.
- (ix) The Kolkata Regional Office returned the File to the Siliguri Branch Office on 31-10-2023.
- (x) The File was received by the conducting Counsel on 07-11-2023 with a direction to prepare the Memo of Appeal.
- (xi) Draft Appeal was prepared and forwarded to the Siliguri Branch Office on 27-11-2023.
- (xii) The Siliguri Branch Office forwarded it to the Kolkata Regional Office on 30-11-2023 which was received by them on 05-12-2023.
- (xiii) The Legal Department of the office received the File on 07-12-2023 and returned it to the Kolkata Regional Office on 15-12-2023.
- (xiv) On 19-12-2023, the File was received at the Siliguri Branch Office.
- (xv) On 20-12-2023, the File was forwarded to Mr. Manish Kumar Jain, Learned Counsel of the Applicant-Company, who received the File on 24-12-2023.
- (xvi) The Counsel who received the File on 24-12-2023 failed to file the Appeal thereafter and the Company was unable to trace him till 17-10-2024.
- (xvii) On account of Learned Counsel Mr. Manish Kumar Jain remaining untraced the present Counsel was engaged with the request to prepare the Memo of Appeal on 30-10-2024 and thereafter steps were taken on 19-11-2024 and the

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Memo of Appeal having been prepared on 23-11-2024 was filed on 28-11-2024.

3. That, the delay in filing the Appeal was unintentional and *bona fide* as the previous Counsel engaged by the Applicant-Company failed to take steps on time despite all necessary documentations having been handed over to him by the Applicant-Company. That, the party ought not to suffer on account of the irresponsibility and fault of the Counsel, who was engaged at that time. As the delay has been sufficiently explained with *bona fide* grounds, it may be condoned.

4. Learned Counsel for the Respondents No.6 and 7 opposed the Petition on grounds that the Appeal has been in fact filed without obtaining the "No Objection Certificate" from Mr. Manish Kumar Jain the previous Counsel, if such be the circumstance, then the Applicant-Company could well have filed the Appeal prior in time to prevent harassment to the Claimants. That, the grounds furnished by the Applicant for laying the blame entirely on the Counsel does not explain the delay sufficiently and ought to be rejected and the Petition be dismissed.

5. Learned Counsel for the parties were heard at length. Due consideration have been given to the submissions. The various dates for the delay have been explained by the Counsel. Despite the same, it is not fathomable as to why the Applicant-Company continued to wait for the Counsel they had engaged without taking steps for his irresponsibility and thereby holding the Claimants to ransom for no fault of theirs. Nonetheless, it is to be borne in mind that the Court is to mete out substantial and even-handed justice. Having given due consideration to the grounds for delay, I am of the considered view that

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the Applicant was prevented by sufficient cause from preferring the Appeal on time. The delay is condoned subject to payment of costs of ₹ 10,000/- (Rupees ten thousand) only, to be deposited by the Applicant-Company to the Sikkim State Legal Services Authority, for assistance in mental health awareness, within a week from today, failing which the costs shall be enhanced.

6. I.A. No.01 of 2024 stands disposed of accordingly.

Judge
22.04.2025

ds/sdl