

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 6<sup>th</sup> August, 2024

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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I.A. No.01 of 2024 in MAC App./42/2024/(Filing No.)

**Applicant** : The Branch Manager,  
Shriram General Insurance Company Limited

***versus***

**Respondents** : Stenshila Hansdak and Others

Application under Section 173(1) of the Motor Vehicles Act, 1988

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**Appearance**

Mr. Rahul Rathi, Advocate for the Applicant.

Ms. Vidhya Lama, Mr. Nima Tshering Sherpa and Mr. Loknath Khanal, Advocates for Respondent No.1.

None for Respondent No.2.

None for Respondent No.3.

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## ORDER (ORAL)

Meenakshi Madan Rai, J.

**1.** Respondent No.1 has entered appearance through Learned Counsel today.

**2.** None appears for the Respondents No.2 and 3 despite service of notice.

**3.** Heard Learned Counsel for the parties on I.A. No.01 of 2024, which is an application file by the Applicant under Section 173 (1) of the Motor Vehicles Act, 1988, seeking condonation of sixty-one days' delay in preferring the Appeal.

**4.** Learned Counsel for the Applicant submits that the impugned Judgment was pronounced by the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim, (hereinafter, the

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“MACT”), on **30-10-2023**. The Applicant applied for the certified copy of the Judgment only on **02-03-2024**. The Appeal ought to have been filed within ninety days’ from the date of the impugned Judgment. Thereafter, on the Judgment being made available to the Applicant, the Appeal was filed on 30-03-2024 after necessary orders were obtained from the Branch Office at Siliguri and the Regional Office at Kolkata. Hence, the delay being *bona fide* and having been satisfactorily explained in the application, it may be condoned as the litigants ought not to be made to suffer due to mere technicalities.

**5.** Learned Counsel for the Respondent No.1 vehemently objects to the Petition for delay and submits that the day-to-day delay has not even been explained in the Petition. That, the impugned Judgment had been applied for belatedly by the Applicant and the delay ought not to be granted to the prejudice of the Respondent No.1, aged about 25 years, who had to lose her father aged about 50 years during the motor vehicle accident, who was the only earning member in the family. The Respondent No.1 was dependent on his income and the prolonged litigation has adversely affected her. That, as the grounds are not satisfactorily explained the application be dismissed.

**6.** The following facts can be culled out from the application and the submissions put forth by Learned Counsel for the Applicant;

(i) The impugned Judgment was pronounced by the Learned MACT at Gangtok on **30-10-2023**.

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- (ii) As per the averments in the application after such pronouncement, the Applicant applied for certified copy of the Judgment only on **02-03-2024** about four months after the pronouncement. The Judgment was made available on the same date.
- (iii) The Memo of Appeal ought to have been filed on or before **28-01-2024**, i.e., ninety days from the pronouncement of the impugned Judgment.
- (iv) It was further averred that after obtaining the impugned Judgment on **02-03-2024** it was forwarded to the Branch Office at Siliguri, West Bengal, for opinion on **10-11-2023**.
- (v) The Branch Office at Siliguri forwarded the File to the Regional Office situated at Kolkata, West Bengal.
- (vi) The Kolkata Office forwarded the File to its Legal Department seeking its opinion on **23-11-2023**.
- (vii) The Legal Department gave its opinion on **14-12-2023** and returned the File to the Regional Office at Kolkata.
- (viii) The Kolkata Regional Office returned it to the Siliguri Branch Office which was received on **22-12-2023**, directing the Counsel to prepare the Memo of Appeal.
- (ix) The File was received by the conducting Counsel on **02-02-2024** and sent to Siliguri Office with the draft Memo of Appeal on **19-02-2024** which then sent it to Kolkata Office on **26-02-2024**.
- (x) The Kolkata office received the File on **06-03-2024** and forwarded it to its Legal Department on **08-03-2024**.
- (xi) The Legal Department vetted the Memo of Appeal and forwarded it to the Regional Office at Kolkata for onward transmission to the Branch Office at Siliguri on **19-03-2024**.
- (xii) The Regional Office at Kolkata sent it to the Branch Office where it was received on **21-03-2024**.
- (xiii) Thereafter, nine days was taken by the Counsel to finalise the Memo of Appeal which came to be filed on **30-03-2024**.

That, a delay of sixty-one days took place in filing the Appeal.

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**7.** It is evident that the application contains erroneous dates as seen from Paragraph No.6(i), (ii) and (iv) *supra*, nonetheless, Learned Counsel for the Applicant during his verbal submissions before this Court made no effort whatsoever to clarify as to why the errors had crept in Paragraph 2 of the application with regard to the dates. The party seeking a relief has to ensure that the application filed by it is in order with all details mentioned correctly and should not give an impression to the Court that it has been filed with a "couldn't care less" attitude. It is not the duty of this Court to prompt or make corrections for one party to the detriment or prejudice of the other. In this context, in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***<sup>1</sup> the Supreme Court has held that;

**"21.** From the aforesaid authorities the principles that can broadly be culled out are:

.....

**21.2.** (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

.....

**21.4.** (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

**21.5.** (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

.....

**21.7.** (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

.....

**21.9.** (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant

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<sup>1</sup> (2013) 12 SCC 649

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factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

.....  
**21.12.** (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

.....  
**22.** To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

**22.1.** (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

**22.2.** (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

.....  
**22.4.** (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

**8.** From the averments in the application and the submissions put forth by Learned Counsel for the Applicant and having given due consideration to the same, I am of the view that the Applicant has not only been careless and callous with regard to the contents of the application but has taken no care to make amendments in the application or to rectify the errors in his verbal submissions before this Court and thereby clarify the stance of the Applicant. The Respondent No.1 has been granted compensation of ₹ 12,59,449/- (Rupees twelve lakhs, fifty nine thousand, four hundred and forty nine) only, by the Learned MACT and the challenge is to the 30% granted under the head of “Future Prospects” and its reduction to 10%. If such was the

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case then the Applicant was required to have been vigilant about its rights and not to have taken for granted that delay would be condoned, sans proper and sufficient grounds to the satisfaction of the Court.

**9.** As the Applicant has failed not only to prove its *bona fides* but has failed to explain the delay satisfactorily, I am therefore, constrained to reject and dismiss the I.A. as also the accompanying Appeal.

**( Meenakshi Madan Rai )**  
**Judge**

06-08-2024

Approved for reporting : **Yes**

ds/sdl