

HIGH COURT OF SIKKIM
Record of Proceedings

I.A. No.01 of 2024 in MAC App./129/2024 (Filing No.)

THE BRANCH MANAGER,
HDFC ERGO GENERAL INSURANCE COMPANY LIMITED

APPLICANT

VERSUS

DHAN KUMARI RAI AND OTHERS

RESPONDENTS

Date: 17.04.2025

CORAM:

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

For Applicant Mr. Rahul Rathi, Advocate.

For Respondents

R-1 to R-3 Mr. Tarun Choudhary, Advocate (*through VC*).

R-4 Mr. Kumar Sharma, Advocate.

R-5 None present.

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, seeking condonation of 370 days' delay, in filing the Appeal. The application is supported by an Affidavit.

2. Learned Counsel of the Applicant, while making out grounds for condoning the delay, contended that, as the impugned Judgment of the Learned Motor Accidents Claims Tribunal, at Namchi, Sikkim (hereinafter, the "MACT"), was pronounced on 30-08-2023, the Memo of Appeal ought to have been filed on 28-11-2023. The impugned Judgment was obtained on 15-09-2023 by the then conducting Counsel and forwarded to the Branch Office of the Applicant at Siliguri, the very next day. The said Office forwarded the File to the Regional Office at Kolkata on 19-09-2023, seeking their opinion regarding the filing of the Appeal. The Regional Office in turn forwarded it to their Legal Department on 25-09-2023, which returned the File on 30-09-2023 and made its way back to Kolkata Office on **31-10-2023**. That, the Siliguri Office received the File on **13-10-2023** and was subsequently received

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by the conducting Counsel on **24-10-2023**. The Learned Counsel also received the security deposit, which was duly deposited before the concerned Learned MACT. The Memo of Appeal was prepared and filed before the High Court on 30-11-2023. That, as Learned Counsel for the Applicant was not the conducting Counsel then, he was informed by the Applicant, that, the Appeal was in defects before the Registry and the Counsel without rectifying the defects, was not traceable for an entire year thereafter. That, on account of the conduct of the Counsel and steps not having been taken by him, the present Counsel was engaged by the Applicant-Company. The File then made its rounds for clearance from the various Offices of the Applicant-Company and the Appeal was filed on 02-12-2024, within fifteen days of the present Counsel being engaged. That, in view of the grounds put forth the delay being unintentional and *bona fide* and having been sufficiently explained may be condoned.

3. *Per contra*, Learned Counsel for the Respondents No.1 to 3 and Learned Counsel for the Respondent No.4, objected to the prayer for condonation of delay, on grounds that, the Applicant was well aware of his rights, being an educated person and ought to have taken steps well within time, even if the previous conducting Counsel was not traceable. That, in fact, the Appeal that was filed on 02-12-2024 has been filed without obtaining any no objection certificate from the Counsel engaged previously. Consequently, the Applicant could have done so earlier in time instead of harassing the Respondents. That, the delay having not been sufficiently explained the Petition deserves a dismissal.

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4. I have heard Learned Counsel for the parties at length and given due consideration to the submissions put forth. It is trite to mention that the Court can exercise its discretion while condoning the delay or refusing to do so. All that the Court is required to consider is whether the delay has been sufficiently explained and the grounds put forth are *bona fide*. Having considered the grounds given by Learned Counsel for the Applicant, it must be remarked that the Applicant has been remiss in drafting the Petition as there is a confusion about the dates mentioned. In Paragraph 5 of the petition, it is mentioned that the File was forwarded to the Regional Office, at Kolkata, West Bengal on **31-10-2023**, but in Paragraph 6, it is mentioned that the Siliguri Office then received it on **13-10-2023**. In Paragraph 7, the Applicant states that the File was received by the conducting Counsel on **24-10-2023**. If the Kolkata Office received the File only on 31-10-2023, it is unfathomable as to how petition mentions that the Counsel received the File on 24-10-2023. Learned Counsel failed to explain the anomalies appearing in the Paragraphs mentioned hereinabove or even to correct the typographical errors, if they were such errors. That apart, the records of the Registry before this Court do not indicate that any Appeal came to be filed on 30-11-2023 by the previous conducting Counsel. The Appeal pertaining to the parties was filed only on 02-12-2024 and not at any time prior thereto. The anomalies are being pointed out to ensure that drafting of such petitions are not done in undue haste and carelessly without a thought to the details. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***¹ the

¹ (2013) 12 SCC 649

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Supreme Court has cautioned parties to a *lis* at Paragraph 22.1(a) as follows;

"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."

The Applicant would do well to bear this in mind.

(i) That having been said, it is now settled law that "sufficient cause" is elastic enough for Courts to do substantial justice. When substantial justice and technical considerations are pitted against each other it is no more *res integra* that the former will prevail. Regardless of the errors in the dates, it appears that the delay occurred solely on account of the irresponsibility and tardiness of the previous Counsel engaged by the Applicant. As held by this Court in ***The Divisional Manager, National Insurance Company Limited and Another vs. Dhanesh Gupta alias Dhanesh Kumar Gupta and Another***², the Applicant cannot be held at ransom for the tardiness of his Counsel.

5. In view of the foregoing discussions, I am of the considered view that the delay has been sufficiently explained and ought to be and is accordingly condoned.

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

Judge
17.04.2025

ds/sdl

² I.A. No.01 of 2024 in MAC/App./137/2024 (Filing No.), decided by this Court on 24-02-2025.