

HIGH COURT OF SIKKIM
Record of Proceedings

I.A. No.01 of 2024 in MAC App./134/2024 (Filing No.)

THE BRANCH MANAGER, CHOLAMANDALAM MS
GENERAL INSURANCE COMPANY AND ANOTHER
VERSUS

APPLICANTS

SELINA BIBI AND OTHERS
RESPONDENTS

Date: 29.04.2025

CORAM:

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

For Applicants Mr. Nirankush Dahal, Advocate.

For Respondents

R-1 to R-6 Ms. Lidya Pradhan, Advocate.

R-7 & R-8 None present.

ORDER

1. I.A. No.01 of 2024, is an application under Section 173(1) of the Motor Vehicles Act, 1988, filed by the Applicants, seeking condonation of delay, in filing the Appeal.

2. Learned Counsel for the Applicants advanced the argument that the Learned Motor Accidents Claims Tribunal, Gangtok, Sikkim (hereinafter, the "MACT"), pronounced the impugned Judgment, in MACT Case No.03 of 2021 (*Selina Bibi and Others vs. The Branch Manager, Choramandalam MS General Insurance Company and Others*), on 21-08-2023, whereupon the Memo of Appeal was to have been filed on or before 19-11-2023.

3. However, the delay of 357 days' occurred on account of the following grounds;

- (i) After obtaining the impugned Judgment on 12-09-2023, it was forwarded to the Branch Office, at Siliguri, on 15-09-2023.
- (ii) From the Siliguri Office, it was forwarded to the Regional Office, at Kolkata, on 30-09-2023.

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- (iii) The Kolkata Office sent the File to its Legal Department on 15-10-2023 for opinion.
- (iv) On 30-10-2023, the Legal Department opined that Appeal ought to be filed.
- (v) The File was returned to the Regional Office, at Kolkata, on 02-11-2023.
- (vi) On 15-11-2023, the Siliguri Office received the File.
- (vii) On 03-12-2023, the File was handed over to the Learned conducting Counsel, Mr. Manish Kumar Jain, who also received the security deposit cheque for a sum of ₹ 25,000/- (Rupees twenty five thousand) only, and deposited it before the Learned MACT on 21-12-2023.
- (viii) Thereafter, the Learned Counsel failed to file the Appeal and remained untraceable.
- (ix) On 16-10-2024, the File was taken back from the conducting Counsel.
- (x) The Memo of Appeal was then prepared on 21-10-2024 and filed on 11-11-2024.

The delay having been explained with sufficient cause, may be condoned and the Appeal admitted.

4. Learned Counsel for the Respondents No.1 to 6 on the other hand submitted that, apart from the fact that the sufficient cause for the delay has not been put forth, the conduct of the Applicants is also not above board, for the reason that, after the pronouncement of the impugned Judgment on 21-08-2023, wherein compensation of ₹ 23,62,843/- (Rupees twenty three lakhs, sixty two thousand, eight hundred and forty three) only, was granted to the Claimants-

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Respondents No.1 to 6, since the Applicants failed to make good the compensation, after almost a year the Respondents No.1 to 6, were before the Learned MACT, in MACT (Execution) Case No.09 of 2024 (*Selina Bibi and Others vs. The Branch Manager, Choramandalam MS General Insurance Company and Another*), with the Execution Petition filed on 03-09-2024. Notice was issued to the Applicants as Judgment Debtors (hereinafter, the "JDs"), on the same date. The JDs thereafter entered appearance in the matter on 21-10-2024, through their Counsel before the Learned MACT as well as on 15-11-2024 i.e., dates fixed by the Learned MACT. On 15-11-2024, the Bank Account of the Judgment Debtors were ordered to be attached for a sum of ₹ 32,06,245/- (Rupees thirty two lakhs, six thousand, two hundred and forty five) only, inclusive of the interest accrued. On 21-11-2024, the execution proceeding was completed with payment of compensation completed and MACT (Execution) Case No.09 of 2024 disposed of. Although, the Counsel for the JDs had appeared before the Learned MACT, no prayer was made by them for stay of the execution proceedings. Besides, the delay of 357 days' has not been sufficiently explained, as the movement of File and reasons for non-filing of Appeal by the Counsel, engaged previously, have not been explained. Hence, the application does not deserve consideration and ought to be dismissed.

5. I have heard Learned Counsel for the parties *in extenso*. I have also perused the Orders of the Learned MACT. The Orders in MACT (Execution) Case No.09 of 2024, reveals *inter alia* as follows;

- (i) On 03-09-2024, the Learned MACT in the Execution Case has recorded *inter alia* that, the execution petition had been filed by the Award Holders

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(hereinafter, the "AHs"). Notice was ordered to be issued to the JDs.

- (ii) On 16-09-2024, both the AHs and the JDs were absent. Fresh Notice was issued to the JDs with information to the empanelled Advocate, Shri Rahul Rathi and to the Nodal Officer, Shri Souvik Chatterjee. Later, the same day, it is noticed that Ms. Lidya Pradhan, Learned Counsel for the AHs appeared before the Learned MACT and noted the next date.
- (iii) On 21-10-2024, Mr. K. B. Chettri, Learned Counsel for the JDs entered appearance for the first time in the matter and sought adjournment. Learned Counsel for the AHs however prayed that attachment order may be passed. The Learned MACT declined to do so allowing the JDs to take a few days time to make the payment, if any. In the event of the failure to do so, the attachment order would be issued.
- (iv) On 15-11-2024, both the parties were present before the Learned MACT, through their Learned Counsel. Counsel for the JDs submitted that an Appeal has been filed before the High Court and was pending registration because of the defects in filing.
- (v) Despite the Counsel for the JDs having furnished a photocopy, mentioning the defects in the filing, allegedly issued by the filing counter of the High Court, the Learned MACT went on to record that the JDs had been provided with sufficient time as the award was passed in August, 2023, and the Appeal

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before the High Court had not even been registered. Consequently, the HDFC Bank Account of the JDs was attached was the sum awarded to the AHs.

(vi) On 21-11-2024, the Learned MACT recorded that all the six cheques had been handed over to the Counsel for the AHs and the matter disposed of as duly executed.

6. In the first instance, it is worth noticing that the previous Counsel Mr. Manish Kumar Jain, who was engaged by the Applicants, received the File from the Siliguri Office of the Applicants on 03-12-2023 along with security deposit for a sum of ₹ 25,000/- (Rupees twenty five thousand) only, and deposited it before the Learned MACT on 21-12-2023. Thereafter, the Learned Counsel failed to file an Appeal for the next ten months' and the File was taken back from him on 16-10-2024. The Memo of Appeal was prepared on 21-10-2024 by the new Counsel engaged by the Applicants. Indeed, the entire fault has been foisted on Mr. Manish Kumar Jain, Learned Counsel, however the Applicants have failed to establish why they continued to remain a mute spectator when the Appeal was not filed by him for more than ten months.

(i) The challenge in the instant case is to the compensation of ₹ 23,62,843/- (Rupees twenty three lakhs, sixty two thousand, eight hundred and forty three) only, granted to the Respondents No.1 to 6 herein, despite the alleged violation of the terms of the insurance policy i.e., the driver was alleged to be driving the vehicle in an inebriated condition. Indubitably, before the Learned MACT no evidence whatsoever was furnished by the Applicants to establish that the driver was inebriated.

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(ii) Considering the entirety of the facts and circumstances placed before this Court, it is apparent that the Applicants also took about three weeks only to obtain a copy of the impugned Judgment. No reason has been advanced for this delay. It is settled law that when limitation has been allowed to expire without the Appeal being filed and the delay is sought to be condoned, the delay must be traced to a cause arising “within” the period of limitation.

(iii) In *Ajit Singh Thakur Singh and Another vs. State of Gujarat*¹, the Supreme Court while considering a Petition in which the High Court had condoned the delay in filing the Appeal, it was brought to light that initially the State Government took the decision not to file an Appeal and it allowed the period of Appeal to lapse. Subsequently, it was filed three months after the limitation had expired. The Supreme Court *inter alia* observed as follows;

“6. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay.”

(emphasis supplied)

(iv) The same would hold true in the instant matter, the Applicants have failed to explain the delay arising within the period of limitation, commencing from the delayed obtainment of the impugned Judgment. The File after being sent to office after office of their Company was returned to the Siliguri Office on 15-11-2023 and handed over to the conducting Counsel on 03-12-2023, much after the period of

¹ (1981) 1 SCC 495

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limitation of ninety days', which admittedly expired on 19-11-2023. The application is devoid of reasons for this delay, apart from which, even if this delay was to be condoned, there is no explanation as to why the Applicants took no steps before the Executing Tribunal. Be that as it may, the entire exercise for filing this application appears to be with the concerted intention of thwarting the Respondents No.1 to 6 from utilising the award granted by the Learned MACT which has already been paid to them in its entirety on 21-11-2024 and the matter disposed of.

(v) As seen from the orders of the Learned MACT when the execution proceedings were initiated, there was no prayer by the JDs for keeping the proceedings in abeyance.

7. Learned Counsel for the Applicants on enquiry by this Court was unable to assist this Court about the date on which the Appeal was filed before the High Court and was reported to be in defects.

(i) Ofcourse in this thread, it is worth remarking that the Learned MACT ordered the attachment, despite the Learned Counsel for the JDs informing that an Appeal had been filed before this Court. The conduct of the Tribunal cannot be lauded, as time and again this Court has observed that, when the Trial Court/Tribunal is informed by any party that they have approached the High Court, the Court/Tribunal is expected to stay its hands from passing any effective orders as a matter of judicial propriety. The Learned MACT failed to take such a step.

(ii) Nevertheless, for the foregoing reasons, I am of the view that the delay is inordinate and unexplained with satisfactory cause. I am thus not inclined to exercise the discretion vested in this Court to condone the delay. Petition is accordingly rejected and dismissed.

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

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9. Copy of this Order be forwarded to all the Learned MACTs of the State for information.

Judge
29.04.2025

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