

GAHC010046182024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : I.A.(Civil)/833/2024

GEETA CHETRY AND ANR.
W/O LATE RAJU CHETRY,
PERMANENT RESIDENT OF BAZALTOLI, 5 NO. WARD, P.O.- BORGURI,
DIST.- TINSUKIA, ASSAM, PIN- 786125.

2: RINSINA CHETRY
D/O LATE RAJU CHETRY
PERMANENT RESIDENT OF BAZALTOLI
5 NO. WARD P.O.- BORGURI
DIST.- TINSUKIA
ASSAM PIN- 786125.
(BEING MINOR DAUGHTER OF APPELLANT NO. 1
IS REP. BY APPELLANT NO. 1)

VERSUS

THE DIVISIONAL MANAGER AND 3 ORS.
NEW INDIA ASSURANCE CO. LTD.,
HAVING ITS OFFICE AT RANGAGORA ROAD, TINSUKIA, P.O., P.S. AND
DIST.- TINSUKIA, ASSAM, PIN- 786125.

2:SUSIL MOHAN
S/O LATE JADU MOHAN
R/O NA MAITHON
P.O.- KAKOPATHER
DIST.- TINSUKIA
ASSAM PIN- 786152.

3:RAJESH CHETRY
S/O SRI NARAYAN CHETRY
R/O BORJOHABARI
P.O.- BORONGABARI
P.S.- GOHPUR DIST.- SONITPUR
ASSAM PIN- 784172.

4:ICICI LOMBARD GENERAL INSURANCE CO. LTD.
REGIONAL OFFICE AT 3RD FLOOR
OFFICE NO. 305 AND 306
KAMAKHYA TOWER
G.S. ROAD
GUWAHATI
KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. S NAG, MR. N D SARMA,MR. M MORE

Advocate for the Respondent : MR T KALITA (R-3,4), MR. A KAKATI (R-3,4)

Linked Case :

GEETA CHETRY AND ANR

VERSUS

THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO. LTD AND 3 ORS F

Advocate for : MR. S NAG

Advocate for : appearing for THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO. LTD AND 3 ORS F

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 16.08.2024

Heard Mr. A. Rahman, learned counsel for the applicant/appellant. None appears for the respondents, despite service of notice having been completed.

The instant application is filed under Section 5 of the Limitation Act, read with Section 173 of the M.V. Act for condoning the delay of 186 days in filing the accompanying appeal before this Court against the judgment dated 26.05.2023 passed by the learned Member, Motor Accident Claims Tribunal, Tinsukia in MAC Case No. 38/2020.

Mr. A. Rahman, learned counsel for the applicant/appellant submits that due to medical reasons of the applicant's minor daughter and being occupied with the consequent treatment, the delay of 186 days occurred in filing the accompanying appeal, which was beyond the control of the applicant and therefore the same may be condoned.

I have given my prudent consideration to the materials available on record, including the explanation given in the application for condonation of the said delay.

Para Nos. 2, 3, 4, 5, 6 & 7 of the application are reproduced hereunder for ready reference:-

“2. That the applicants/appellants being dissatisfied with the impugned Judgment and award dated 26.05.2023 passed by the Learned Member, Motor Accident Claims Tribunal, Tinsukia in MAC Case No.38 of 2020 has applied for the certified copy of the judgment and order dated 26.05.2023 and received the same on 20.06.2023, but unfortunately the minor daughter of the applicant No.1, i.e the applicant No. 2 fell sick and she was taken to Dr. P.S Ray, Pediatrics and there she was diagnosed with appendicitis and the doctor suggested for a Ultra sound of whole abdomen and Radiography of Barium Meal, which was conducted on 22.06.2023 at Apolo Clinic, Tinsukia, Assam.

3. That after the tests the applicants had to visit the doctor again on 18.07.2023 and thereafter the doctor suggested her to continue the same medicines.

4. That, again on 20.08.2023, the applicant No. 2 fell ill and she had to visit Dr. P.S Ray, MD Pediatrics and she was diagnosed with intermittent pain in abdomen and since then the applicant No. 2 was continuously sick and had to visit the doctor several times till 24.01.2024 and as such the applicant No. 1 could not come to Guwahati to hand over the brief to the engaged counsel.

5 That, the applicant states that due to continuous sickness of the applicant No.

2, the applicant No. 1 could not hand over the documents to the engaged counsel to prepare the appeal and the applicant No. 1 being alone had to accompany her minor daughter to doctor every now and then.

6. That a delay of 190 days has occurred in preferring the MAC Appeal before the Hon'ble Court due to the aforementioned facts and circumstances and not because of any deliberate and willful default on the part of the applicants and as such considering all the above the delay of 190 days in preferring the appeal may be condoned.

7. That, the applicant No.1 came to Guwahati on 16th February, 2024 and handed over the brief of the case to the engaged counsel and after going through the brief, the engaged counsel decided to prefer the appeal. The engaged counsel took few days in preparing the appeal and accordingly the appeal is filed today and in the process the delay has occurred in preferring the MAC Appeal."

Apparent that due to medical urgency that has arisen, the accompanying appeal could not be filed within the stipulated time. The explanation given in the application appears to be sufficient and bona-fide. Accordingly, the delay of 186 days in filing the accompanying appeal stands condoned.

I.A. is accordingly disposed of.

Registry to register the accompanying MAC Appeal.

JUDGE

Comparing Assistant