

GAHC010027802015



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

**Case No. : I.A./2725/2015
In MAC App. No. 252428/2015 (filing number)**

SMTI RINA PATOR and ANR,
W/O LATE HORTOL PATOR

2: MISS AOMI PATOR
DAUGHTER OF LATE HORTOL PATOR
BOTH ARE R/O VILL. LOUBHOURANGA
P.O. and P.S. LAHARIGHAT
DIST.MORIGAON
ASSAM THE APPELLANT NO. 2 BEING MINOR IS REPRESENTED BY HER
MOTHER
APPELLANT NO.

VERSUS

DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD. DIVISIONAL OFFICE-1, ULUBARI,
GUWAHATI-7

Advocate for the Petitioner : MR.M TALUKDAR

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

27.06.2024.

Heard Shri M. Talukdar, learned counsel for the applicant. Also heard Ms. M. Choudhury, learned counsel for the opposite party no. 2, who has also filed

objection.

2. This is an application filed under Section 5 of the Limitation Act, 1963 for condition of delay of 1044 days in preferring the appeal for enhancement of an Award by an MACT.

3. It is submitted that the claim was pertaining to the death of the husband of the applicant no. 1 and the father of the applicant no. 2 in a motor vehicle accident and according to the learned counsel, the amount granted is wholly inadequate and therefore the connected appeal has been preferred. It is submitted that the applicants who are residents of the district of Morigaon were prevented by sufficient reasons for not being able to prefer the connected appeal within time as there was no supporting family members. The learned counsel has referred to the averments made in paragraphs 3 & 4 of the petition. Reliance has also been placed on a decision dated 01.08.2022 of this Court passed in IA(C) No. 1548/2019 wherein delay of 1566 days was condoned by taking into account the objective of the legislation which is a benevolent one.

4. Ms. M. Choudhury, the learned counsel for the opposite party no. 2 has, however vehemently objected to the said prayer for condonation of delay. She contends that the delay is inordinate and the explanation is not trustworthy or acceptable. It is submitted that delay of this nature clearly reflects negligence and lack of *bona fide* and therefore the petition is to be rejected.

5. It is a settled law that a petition for condonation of delay is to be considered by taking a justice oriented and pragmatic approach. However, this Court is also required to look into the reasons for explanation of such delay as

by the law of limitation, a substantive right accrues upon the adverse party.

6. In the case of ***Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and Ors.*** reported in **(2013) 12 SCC 649** the Hon'ble Supreme Court has laid down certain principles to be followed in deciding a delay- condonation application which are extracted herein below:-

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

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

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.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

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

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

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

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

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.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

7. The connected appeal is for enhancement of the amount given in the impugned award.

8. Considering the above and also the case laws on the subject, the instant application is allowed and the delay of 1044 days in preferring the appeal is condoned. It is however made clear that in the event, the applicant is successful in the appeal, no interest would accrue for this period of delay.

9. IA stands disposed of.

JUDGE

Comparing Assistant