

GAHC010033262019



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

Case No. : I.A.(Civil)/613/2019

NATIONAL INSURANCE CO. LTD
HAVING ITS REGISTERED AND HEAD OFFICE AT 3, MIDDLETON STREET,
KOLKATA 700071 AND ONE OF THE REGIONAL OFFICES AT G.S. ROAD,
BHANGAGARH, GUWAHATI 781005

VERSUS

SMTI PRAMILA GOGOI AND 2 ORS
W/O LATE JUGAL GOGOI, R/O VILL. P.O. AND P.S. JONAI, DIST. DHEMAJI,
ASSAM, PIN 787060

2:ON THE DEATH OF DILIP PEGU
S/O LATE GANESWAR PEGU
R/O DHEMAJI IRRIGATION COLONY
P.O. ARADHOL
P.S. DHEMAJI
DIST. DHEMAJI
ASSAM
PIN 787057

2.1:SMTI JAYANTI PEGU
WIFE OF LATE DILIP PEGU

2.2:SHRI DHANUSH PEGU
SON OF LATE DILIP PEGU

2.3:SRI PABITRA PEGU
S/O LATE DILIP PEGU

2.4:SMTI SUSMITA PEGU KARDONG
DAUGHTER OF DILIP PEGU

ALL ARE RESIDENT OF DHEMAJI IRRIGATION COLONY

P. O. ARADHAL P.S. DHEMAJI
DISTRICT. DHEMAJI
ASSAM
PIN. 787057

3:DHONESH PEGU
S/O SHRI DILIP PEGU
R/O WARD NO. 3
DHEMAJI
P.S. DHEMAJI
DIST. DHEMAJI
ASSAM
PIN 78705

Advocate for the Petitioner : MR. A J SAIKIA,

Advocate for the Respondent : A G CHOUDHURY, MR K K BHATTACHARYYA

Linked Case : I.A.(Civil)/118/2023

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Advocate for : MR. A J SAIKIA
Advocate for : A G CHOUDHURY appearing for SMTI PRAMILA GOGOI AND 2
ORS

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SMTI PRAMILA GOGOI AND 2 ORS

Advocate for :

Advocate for : appearing for SMTI PRAMILA GOGOI AND 2 ORS

Linked Case : I.A.(Civil)/119/2023

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B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

21.08.2024

Heard Mr. A.J. Saikia, learned counsel for the applicant. Also heard Ms. A.G. Choudhury, learned counsel appearing for the respondent No. 1.

2. Pertinent that the Office Note dated 05.08.2024 indicates that the A/D cards in respect of respondent Nos. 2, 8, 2b, 2c and 2d have been received back after due serves. However, none appears today when the matter has been called.
3. This is an application seeking condonation of delay of 442 days in preferring the accompanying appeal under Section 173 of the MV Act, 1988 r/w Section 5 of the Limitation Act, 1963 against the Judgment and Award dated 06.07.2017 passed by the learned Member, Motor Accident Claims Tribunal No. 3, Kamrup (Metro), Assam in MAC Case No. 722/2013.
4. Mr. A.J. Saikia, learned counsel for the applicant submits that the delay occurred is unintentional and beyond the control of the applicant inasmuch as pursuant to the passing of the impugned Judgment and Award dated 06.07.2017 by the MACT, a review petition was filed which after being rejected the present appeal has been preferred and therefore a delay has occurred.
5. Ms. A.G. Choudhury, learned counsel for the respondent No. 1 submits that she has not received any instructions to object to the prayer for condonation of delay.
6. I have given my prudent consideration to the arguments made by learned counsel for the parties and perused the grounds of appeal in the appeal memo as well as the averments and explanation for condonation of delay as averred in the Interlocutory Application.
7. Paragraphs 4 and 5 of the Interlocutory application is reproduced hereunder for ready reference:-

“That, your humble Applicant / Petitioner begs to state that the judgment was delivered on 06-07-2017. But, the copy of it was not furnished to the Insurance Company. Then the certified copy was applied for on 18-07-17 by the trial court Advocate and same was received on 21-08-17. Then the dealing Advocate had sent his opinion along with the certified copy of judgment and it was received by the Divisional Office No.1 of the Company on 01-09-17. There after the concerned officials of the Divisional Office No.1 had

deliberated among themselves and had decided to prefer a review petition against the judgment and award dated 06-07-17. The matter was handed over to the concerned dealing Advocate to prepare and file the review application. As per instruction of the Company / petitioner review petition was filed. The learned trial court by order dated 29-05-18 was pleased to reject the petition filed by the insurance company observing that there was no iota of ingredients to review the judgment.

5. That, the certified copy of said order was applied for by the trial court Advocate on 31-05-18 and same was received on 25-06-18. The copy of the order along with opinion of the trial court Advocate was received by the Insurance Company's Divisional Office on 29-08-2018. Then the Divisional Office of the Company had processed the file and after completing necessary formalities had sent the file to the Regional Office on 03-10-18 to file appeal in the case. The Regional Office after receipt of the file had perused the record and after deliberation among themselves had decided to prefer an appeal in the case. Accordingly the file was processed and entire file was handed over to High Court Advocate to prepare the Memo of Appeal and connected Interlocutory applications after completion of all necessary formalities on 05-11-18. Sometime were required to prepare the Memo of Appeal, stay petition, and the instant petition for condonation of delay. Necessary formalities were carried out by instructing the concerned Accounts department to prepare the Statutory deposit cheque. Due to some technical snag the cheque could be prepared only on 10-12-18 which was handed over to the High Court Advocate on 17-12-18 after receipt of the same from concerned Accounts Department and after receipt of the cheque the appeal could be filed. The reason for delay, as mentioned above, could not have been avoided in view of the circumstances narrated above. Hence in spite of best efforts made by the Company, the appeal could not be filed within time."

8. Reading of the aforesaid averments indicates that the delay was due to the

time taken in obtaining instructions from the concerned officials to prefer review against the impugned Judgment and thereupon after the review was rejected the appeal was filed.

9. The aforesaid explanation appears to be sufficient and bonafide.
10. The delay of 442 days in preferring the accompanying appeal stands condoned.
11. The Registry to register the accompanying appeal.

The IA stands disposed of.

JUDGE

Comparing Assistant