



O R D E R S H E E T

District: WEST JAINTIA HILLS

Before : SHRI. N.A KHAN (MHJS), [MG00006]
Member, MOTOR ACCIDENT CLAIM
TRIBUNAL, JOWAI.

MISC CASE NO. 1 & 2 of 2026
(Arising out of MACT Case No. 1 of 2011)

Date of Order of proceeding	O R D E R	Signature of Court	Office action taken on order with date and dated signature of Pleaders of parties when necessary
28-07-2026	1. Ld. Counsel Shri. L.S Ymbon for the petitioner present. 2. Ld. Counsel Shri. P. Pde for Opposite Party present. 3. The petitioner has filed the instant application for condonation of delay of 421 days in preferring a review of the order dated 26.02.2025, passed in Misc. Case No. 1 of 2024, arising out of MAC Case No. 1 of 2011. 4. The Opposite Party has filed a reply to the condonation application. 5. It will be helpful to briefly summarise the facts giving rise to the instant application for condonation. 6. The petitioner/claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for damages to a BSF vehicle, specifically a Tata Bus with registration number HR-55B-7829. The vehicle was involved in an accident on 26.08 2008, near Wapung village on NH-44, under the jurisdiction of the Lad-		

	Rymbai Beat House. The claim petition was submitted on 03.02.2011. Both Opposite Party No. 1 and Opposite Party No. 2 entered an appearance and filed written statements, leading to the framing of issues. The claimant presented six (6) witnesses, who were examined, and the case was scheduled for further evidence. However, the claimant failed to appear and contest the case, resulting in the dismissal of the claim petition for default on February 05.02.2018. 7. Subsequently, the claimant filed an application under Order 9 Rule 4 of the Civil Procedure Code (CPC) read with Section 151 of the CPC, seeking to recall the dismissal order. Although this restoration application is recorded, the order sheets do not indicate that it was disposed of. Additionally, the case information system (CIS) indicated that the dismissal order was revoked; however, upon thorough examination, this Tribunal did not find any judicial order that recalled or set aside the dismissal dated 05.02. 2018. 8. This Tribunal was initially led to believe that the case had been restored, prompting the issuance of notices to the respondent to appear. Without any judicial order on record confirming that the case had been restored after the dismissal on 05.02.		
--	--	--	--

	2018, the case proceeded. 9. During the proceedings, it was brought to the Tribunal's attention that Opposite Party No. 2 passed away on May 10.05.2023. The claimant was given the opportunity to file a substitution application. Instead of doing so, the claimant submitted an application under Order XXII Rule 4(4) of the CPC, seeking to exempt the legal heir of Opposite Party No. 2 from being substituted, which was registered as Miscellaneous Case No. 2 of 2024. After hearing the case, the Tribunal dismissed Miscellaneous Case No. 2 of 2024 on February 26.02.2025, on the grounds that the right to sue does not survive if the legal heir of Opposite Party No. 2 is not brought on record. Consequently, the main claim petition, MAC Case No. 1 of 2011, was also dismissed. 10. The petitioner is before this Tribunal, with an application U/s 151 of CPC, <i>inter alia</i> praying for recalling of order dated 26.02.2025, on the ground that they have been able to trace the legal heir of O.P No. 2 and they intend to substitute the legal heir of O.P No. 2. The petitioner has also filed the instant condonation application for delay of 421 days in preferring the recall application. However, the petitioner has given the impression to this		
--	---	--	--

	Tribunal that the application filed U/s 151 of the CPC for recalling the order dated 26.02.2025 is an application for review. There is a vast distinction between review and recall. The application filed by the petitioner for recalling the order dated 26.02.2025, registered as Misc. Case No. 2 of 2026, cannot be construed as a review application. The time period prescribed for filing a review application is 30 (thirty) days from the date of the order under Article 124 of the Limitation Act, and the time period prescribed for filing a substitution application is 90 (ninety) days from the date of the death of the party (Article 120 of the Limitation Act). 11. It appears that the petitioner has filed the instant condonation application believing that the application for recalling the order dated 26.02.2025 (Misc Case No. 2 of 2026) is a review application. 12. This Tribunal finds that, since the application is not a review application but an application for recalling the order dated 26.02.2025, the limitation period prescribed under Article 124 of the Limitation Act, 1963, will not be applicable. 13. This Tribunal deems it fit and proper to dispose of the Misc Case No. 2 of 2026 on merit. The prayer in Misc Case		
--	---	--	--

	No. 2 of 2026 filed by the petitioner is reproduced:- a) <i>Recall/review and set aside the order dated 26.02.2025 passed in the Miscellaneous Case No. 2 of 2024 arising out of MAC Case No. 1 of 2011;</i> b) <i>Permit the petitioner to bring on record the legal representatives of Late Shynrangbait Lyngdoh (Opposite Party No. 2) by way of substitution under Order XXII Rule 4 CPC;</i> c) <i>Pass any order(s) which this Hon'ble Tribunal may deem fit and proper in the interest of justice.</i> 14. From a cursory reading of the prayer, it emerges that the petitioner seeks to recall the order passed by this Tribunal holding that in the absence of the legal heir of O.P No. 2, the right to sue does not survive and the claim stands abated. It appears that the petitioner concurs with the order dated 26.02.2025, which is evident from the fact that the petitioner is praying for substitution of the legal heir. In the guise of recalling the order dated 26.02.2025, the petitioner is praying for substitution, which is highly unwarranted and appears to be misleading. 15. The petitioner was allowed to file a substitution application; instead, the petitioner filed an application		
--	---	--	--

	seeking exemption of the legal heir of O.P. No. 2 from substitution. This Tribunal was pleased to disallow the petitioner's prayer vide order dated 26.02.2025. Now, the petitioner is praying for substitution of the legal heir of O.P. No. 2. The petitioner's contention that the petitioner was not aware of the legal heir of O.P. No. 2 is highly misleading. This Tribunal say so, as the record reveals that on 31.08.2023 the son of O.P No. 2 appeared before this Tribunal and submitted the registered death certificate of O.P No. 2. The petitioner cannot now turn around and take a plea that they did not know who was the legal heir of O.P No. 2, which is an outright wrong statement made on affidavit. 16. The application for substituting the legal heir (O.P No. 2), registered as Misc Case No. 2 of 2026, is clearly barred by limitation, although it is presented as a request to recall the order dated 26.02.2025. According to Article 120 of the Limitation Act, an application for substitution of the legal heir must be filed within 90 days from the date of the party's death. If no application is submitted within this time frame, the proceedings automatically abate by operation of law. In such cases, fresh application must be filed, or a request made to set aside the		
--	--	--	--

	abatement within 60 days from the date of abatement (Article 121 of the Limitation Act). Therefore, a substitution application or a request to set aside the abatement must be filed within a total of 150 days. 17. This Tribunal previously held vide order dated 26.02.2025, that the right to sue does not survive and that the proceeding is abated. No request has been made to set aside the abatement. Instead, the petitioner seeks to recall the order dated 26.02.2025 and further requests the substitution of the legal heir. The petitioner had the opportunity to file an application for substitution but opted to request an exemption for the legal heir of O.P. No. 2 from substitution, which the Tribunal disallowed in its order dated 26.02.2025. 18. The petitioner has submitted a request to this Tribunal for substitution, seeking to replace a party to the proceeding. However, this application raises concerns, as it appears to constitute an abuse of the Tribunal's process and potentially undermine its procedural integrity. When a party is allowed to address a specific issue and opts not to do so, they are subsequently barred from raising that issue again under the doctrine of issue estoppel.		
--	---	--	--

19. In this instance, the Union of India, represented by Shri Raj Kumar, Deputy Inspector General at the State Headquarters in Gokulnagar, has filed the application. The Tribunal expresses surprise that the Union of India could be associated with such a meritless application, which warrants dismissal.

20. Due to the reasons outlined above, Misc Case No. 1 of 2026 (regarding the condonation application) does not warrant further consideration. Additionally, Misc Case No. 2 of 2026 (concerning the application to recall the order and for substitution) is dismissed. The petitioner is cautioned to exercise greater care in their dealings with the court or Tribunal in the future.

Sd/-
Member, MACT
Jowai.