

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.607 of 2023

National Insurance Company, Appellant
T.P.HUB, Cuttack Divisional, Cuttack-II
Mr. G.P. Dutta,
Advocate

-Versus-

MaheswarHati & Others Respondents
Mr. S.K. Patri, Advocate for Respondent Nos.1 and 2

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
13.02.2024

I.A. No. 1242 of 2023

Order No.
05.

1. Instant I.A. under Section 5 of the Limitation Act is filed by the appellant Insurance Company for condonation of delay in filing of the appeal on the grounds stated therein.
2. Heard Mr. Dutta, learned counsel for the appellant Insurance Company and Mr. Patri, learned counsel for the claimants respondent Nos. 1 & 2. Since quantum of compensation is under challenge at the behest of the appellant Insurance Company, notice vis-à-vis respondent No.3, namely, owner of the offending vehicle is hereby dispensed with.
3. Mr. Dutta, learned counsel for the appellant Insurance Company submits that there has been delay of 174 days as per the S.R. in filing of the appeal which has been duly explained. It is submitted that procedural delay is the reason behind, hence, therefore, taking a liberal view, the same should be condoned. According to Mr. Dutta, the impugned award was passed on 27th August, 2022, whereas, the opinion from the concerned counsel

was received on 10th October, 2022 along with a certified copy of the judgment and thereafter, the file was processed and hence, the delay. While advancing such an argument for delay condonation, Mr. Dutta refers to a decision in **Brahampal @ Sammay Another Vrs. National Insurance Company Ltd. AIR 2020 SC (Supp.)590** to apprise the Court that it has jurisdiction to condone the delay, if the appeal is filed after expiry of the statutory period in view of second proviso to Section 173 of the Motor Vehicles Act. It is further submitted that the reason shown by the appellant Insurance Company towards the delay is reasonably sufficient to condone it and to admit the appeal for a disposal on merit. At the same time, Mr. Dutta relies on a decision on **Esha Bhattacharjee Vrs. Managing Committee of Raghunathpur Nafar Academy & others 2013 AIR SCW 6158** to contend that there should be a liberal, pragmatic, justice-oriented, approach while entertaining a request for delay condonation, which has been reiterated therein by the Apex Court.

4. On the contrary, Mr. Patri, learned counsel for claimants respondent Nos. 1 & 2 referring to the objection filed submits that at the time of condonation of delay, the principles as enunciated by this Court in **Oriental Insurance Co. Ltd. Vrs. Sumitra Sahoo MANU/OR/0337/2014** as well as in **New India Assurance Co. Ltd. Vrs. Rasana Sahoo & others MANU/OR/0326/1994** are to be adhered to and as such in the present case, the appellant Insurance Company has not satisfied and shown any sufficient cause for the delay.

5. Considering the pleading on record and the reason shown by the appellant Insurance Company as to how the delay has occasioned since the time the impugned award was passed with the file being processed at the Divisional Office, the Court is of the

considered view that though each days delay is not literally explained but having regard to the fact that the explanation is found to be just and reasonable, it should be condoned in the interest of justice keeping in view the settled principles of law as laid down by the Apex Court in **Esha Bhattacharjee**(supra) which is to the effect that a Court should follow liberal, pragmatic, non-pedantic approach and it is not supposed to legalize injustice and for the fact that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation. In other words, considering the explanation offered and treating the same as sufficient cause shown from the side of the appellant Insurance Company and recording the objection of Mr. Patri, learned counsel for claimants respondent Nos. 1 & 2, the Court is inclined and in favour of condoning the delay.

6. Hence, it is ordered.
7. In the result, I.A. stands allowed.
8. Consequently, delay of 174 days in filing of the appeal by the appellant Insurance Company is hereby condoned.

(R.K.Pattanaik)
Judge

I.A. No.607 of 2023

06. In view of the order in I.A. No. 1242 of 2023, list this matter on 12th March, 2024 for final hearing and orders.

(R.K.Pattanaik)
Judge

Signature Not Verified

Digitally Signed
Signed by: KABITARANI MAJHI
Reason: Authentication
Location: OHC, CTC
Date: 15-Feb-2024 19:37:51

