

GAHC010246752018



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

Case No. : I.A.(Civil)/4012/2018

PRIOM CHOUDHURY,
S/O- BIDYUT KR. CHOUDHURY
R/O- AZAD HIND ROAD, CHENGKURI ROAD, LANE NO. 3, P.O.- SILCHAR-7,
P.S.- SILCHAR, DIST.- CACHAR, ASSAM

VERSUS

M/S. ORIENTAL INSURANCE CO. LTD.
REP. BY THE DIVISIONAL MANAGER, M/S. ORIENTAL INSURANCE CO.
LTD. PWD ROAD, TOWN CLUB BUILDING, P.O.- SILCHAR-1, DIST.-
CACHAR, ASSAM

2:MAINUL HAQUE LASKAR
S/O- MD. HABIB ALI LASKAR
R/O- VILL.- PANCHGRAM PART-I
P.S.- UDHARBOND
DIST.- CACHAR
ASSAM
PIN- 788802

3:M/S. ORIENTAL INSURANCE CO. LTD.
REP. BY THE DIVISIONAL MANAGER
M/S. ORIENTAL INSURANCE CO. LTD. PWD ROAD
TOWN CLUB BUILDING
P.O.- SILCHAR-1
DIST.- CACHAR
ASSA

Advocate for the Petitioner : MR. M TALUKDAR, MR. A SHAKIL

Advocate for the Respondent : MS. R D MOZUMDAR (R-1), MR. S P SHARMA(R-1),MS. C
MOZUMDAR(R-1)

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 22.06.2026

- 1.** Heard Mr. M. Talukdar, learned counsel for the applicant. Also heard Ms. R. D. Mozumdar, learned counsel for the respondent No. 1/Insurance Company.
- 2.** This interlocutory application has been filed by the applicant/claimant praying for re-admission of MAC Appeal No. 40/2012 which was dismissed for default by order dated 23.07.2018, by a Co-ordinate Bench of this Court.
- 3.** The learned counsel for the applicant has submitted that in preferring the present application for re-admission of the appeal, there was a delay of 69 days. However, the said delay has been condoned by this Court in a connected interlocutory application. He submits that it is due to lapse committed by the engaged counsel for the applicants who failed to appear before this Court when the matter was called on for hearing on several occasions and finally on 23.07.2018. He submits that the applicant is suffering from physical disability and financial crisis and he is a resident of the district of Cachar and, therefore, he was not in a position to come to Guwahati to engage another set of counsel to pursue the instant application for re-admission.
- 4.** He submits that it is a settled proposition of law that a poor litigant should not suffer for default or carelessness or negligence of his engaged counsel in pursuing the matter for which he was engaged. In support of his submission, he has cited a ruling of a Division Bench of this Court in the case of "***Binod Barua v. Ratul Chandra Goswami***" reported in "***1987 AIR (Gau) 7***". He submits that unless the connected MAC Appeal No. 40/2012 is restored, the applicant would suffer great prejudice due to no fault on his part.

5. On the other hand, the learned counsel for the respondent/Insurance Company has opposed the re-admission of MAC Appeal No. 40/2012 mainly on the ground of old pendency of the original application. She submits that in the event, the petition is allowed, the learned counsel for the applicant should fairly give an undertaking that in the event of allowing of the connected MAC Appeal No. 40/2012, the applicant/appellant would not claim interest over the enhanced compensation if awarded for the period from 2008 till the allowing of the aforesaid appeal.

6. I have considered the submissions made by learned counsel for the both sides and have gone through the materials available on record. I have also considered the ruling cited by learned counsel for the applicant in support of his contention.

7. It appears that the connected MAC Appeal i.e., MAC Appeal No. 40/2012 was filed in the year 2012 impugning the judgment and award of the Motor Accident Claims Tribunal which was passed on 03.06.2011 and same was dismissed for default when none had appeared when the matter was called on for hearing on 23.07.2018, the present applicant had attributed the entire negligence to their earlier engaged counsel.

8. The proposition of law regarding as to whether for the default or carelessness or negligence of a lawyer should the litigant be made to suffer has been settled by the Apex Court in several of its judgments. The ruling cited by the learned counsel for the petitioner of this Court in the case of "**Binod Barua v. Ratul Chandra Goswami**" (supra) also refers to such decisions of the Apex Court, where it was observed by the Apex Court that a poor litigant should not be penalized for fault of his lawyer.

9. In the instant case, the petitioner, who suffers from a physical disability hails from Cachar district and it is apparent that when the appeal was called on for hearing on 23.07.2018, the engaged counsel for the applicant did not appear before the Court. Hence, this Court is of considered opinion that the present applicant may not be made to suffer due to the negligence of his engaged counsel. As such, this application for re-admission of MAC Appeal No. 40/2012 is allowed.

10. The Registry is directed to list the connected appeal for admission on 29th of July, 2026.

11. As regards the submissions regarding claim of interest during the period from the date of filing of the appeal till disposal of the connected appeal, in the event of passing of a favorable order in favor of the present applicant is concerned, this Court is of considered opinion that the said question is premature at this stage. The said plea may be raised by the Insurance Company during consideration of the appeal at the appropriate stage.

12. With the above observation, this interlocutory application is accordingly disposed.

13. The learned counsel for the appellant is requested to furnish a copy of memo of appeal to the learned counsel for the respondent/Insurance Company.

JUDGE

Comparing Assistant