

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1449 OF 2011
IN
FIRST APPEAL (ST) NO.9626 OF 2011**

ICICI Lombard General Insurance Co.Ltd. .. Applicant

vs.

Mohammed Sayeed Mohd.Anwar and Ors. .. Respondents

Mr.Rahul Mehta i/b M/s.KMC Legal Venture for the applicant

Mr.V.M.Parkar for the respondent

**CORAM : K.K.TATED, J.
DATED : 29TH JANUARY, 2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 Though this court granted liberty to the applicant to serve the respondent no.3 by publication, same is not done. Hence, Civil Application stands dismissed against respondent no.3 for want of service.
- 3 This application is preferred by opposite party no.2 Insurance Company for condonation of 297 days delay in filing the First Appeal challenging the judgment and award dated 13th April,

2010 passed by Commissioner for Workmen's Compensation and Judge, Fifty Labour Court, Mumbai in Application (WCA) No.23/B8/2009 holding that the respondents claimants are entitled compensation of Rs.3,25,365/- with 12% interest after one month from the date of accident till its final realisation.

4 The learned counsel for the applicant submits that as soon as the order was passed by the trial court, they immediately applied for certified copy on 20th April, 2010. The same was ready and received on 6th May, 2010. He submits that they filed the present First Appeal on 5th April, 2011. There is a delay of 297 days in filing the First Appeal.

5 The learned counsel for the applicant submits that advocate who appeared for them in the trial court failed to forward the certified copy immediately to the concerned authority for filing the First Appeal in this court. He submits that as soon as the authority received certified copy of impugned judgment, the concerned law officer verified the same and found that the impugned policy was not issued by them. Hence, he called upon the concerned Advocate who appeared in the Trial Court to explain why he has not brought all these facts before the court. He further submits that thereafter again the concerned officer searched the papers and found that the policy was issued by them in respect of offending vehicle. He further submits that the concerned officer took some time to take decision for filing First Appeal in this court. Hence, there is a delay of 297 days in filing the First Appeal. In support of this contention, the

learned counsel for the applicant relies on paragraph 2 of the Civil Application.

6 The learned counsel for the applicant submits that in the interest of Justice this Honourable Court be pleased to condone the delay in filing First Appeal. He submits that if delay is not condoned, irreparable loss and injury will be caused to them. He further submits that they have good chance of success in the present proceeding.

7 On the other hand, the learned counsel for the respondent nos.1 and 2 claimants vehemently opposed the present Civil Application. He submits that applicant has not shown sufficient cause for inordinate delay of 297 days in filing the First Appeal. He submits that if sufficient cause is not shown court should not condone the delay. In support of this he relies on the order passed by this court on 29.01.2015 in Civil Application No.13 of 2015 in First Appeal (ST) No.33973 of 2014.

8 On the basis of these submissions, the learned counsel for the respondents original claimants submits that there is no substance in the present Civil Application and same be dismissed with costs.

9 I have heard both the sides at length. It is to be noted that in the present proceeding though certified copy was received by the applicant on 6.5.2010 they filed the present First Appeal on

05.04.2011. The explanation given by the applicant in paragraph 2 is vague. They have not discussed the name of the concerned Law Officer, advocate who has delayed the matter and letter if any written by them. Paragraph 2 of the Civil Application does not disclose sufficient cause for condonation of delay.

10 In the present proceeding the accident took place on 01.01.2008 in which Insaf Ali died. The Tribunal has awarded compensation of Rs.3,25,365/- only directing applicant as well as respondent no.3 to pay jointly and severally. Considering the order passed by this court on 20.01.2015 in Civil Application No.13 of 2015 and the law declared by the Apex Court in several matters, I do not find any substance in the present Civil Application. Hence, Civil Application is rejected.

11 No order as to costs.

(K.K.TATED, J.)