

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.253 OF 2014
IN
CROSS OBJECTION (ST.) NO.32550 OF 2014
IN
FIRST APPEAL NO.374 OF 2007

Parvez Framroz Billimoria	... Applicant/ original claimant
<i>In the matter of</i> National Insurance Company Limited	... Appellant
vs. Parvez Framroz Billimoria and Others	... Respondents

Mr. M.A. Khan, for the Applicant.
Mr. Amol Gatne i/b. Atul Gatane, for the Appellant
Mr. D.S. Joshi, for Respondent No. 3.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 16th DECEMBER, 2015

P.C.:

. This is a motor accident claim. In this matter the application is moved for condonation of delay. The Applicant/original claimant has filed the counter claim praying that the delay of 660 days be condoned.

2. The Applicant has filed the injury claim as he has sustained multiple fractures due to road accident. His Application No. 2743 of 1987 was partly allowed on 5th August, 2006 by the Member, M.A.C.T., Mumbai and against which the insurance company has filed the First Appeal. The said Appeal was admitted on 17th July, 2007 and the counter claim is filed on 10th December, 2014 by the original claimant.

3. The learned counsel for the Applicant/original claimant has submitted that the claimant is now 65 years old and due to accidental injuries he has suffered physically more even today. He submits that as the then learned counsel was not well, he could not file the counter claim within time.

4. The learned counsel Mr. Amol Gatne appearing for the Appellant/Insurance company opposed this application mainly on the ground that the reasons mentioned in the application are not justifiable as it do not reveal any sufficient cause. Secondly, he relied on the judgment of the Hon'ble Supreme Court in the case of *“Mahadev Govind Gharge and Others vs. Special Land Acquisition*

*Officer, Upper Krishna Project, Jamkhandi, Karnataka”*¹. He submitted that the Hon'ble Supreme Court has dealt with the same issue and condoned the delay when the cross objection were filed. He submitted that the delay is inordinate. The delay is not of 660 days but 2555 days as when the cross objections were to be filed.

5. Considering the submissions of the learned counsel for the Appellant and so also of the Insurance Company and considering the judgment cited above, I am of the view that the counter claim is filed under Rule 22 Order 41 of the Code of Civil Procedure. The Court has discretion to extend the time to file the counter claim. The Court has inherent powers under Rule 22 and so there is no necessity to look into Section 5 of the Limitation Act. The counter claim is in respect of enhancement of the compensation. Hence, the following order is passed:

- 1) The application for condonation of delay is allowed.
- 2) The delay is hereby condoned subject to the original claimant shall not claim any interest on the amount till the date of the filing of the counter claim i.e. 10th December, 2014.

1. (2011) 6 Supreme Court Cases 321

- 3) The Appeal filed by the insurance company is admitted.
- 4) The matter will come on board in due course.

(MRS.MRIDULA BHATKAR, J.)