

IN THE HIGH COURT OF BOMBAY AT GOA.

**MISC. CIVIL APPLCIATION NO.238/2016
IN
STAMP NUMBER MAIN NO.713 OF 2016**

NATIONAL INSURANCE COMPANY LTD. ...Applicants

Versus

MR.MAHADEV KESHAV ADVAIKAR (SINCE
DECEASED) AND ANR. ..Respondents

..
Shri A. Kakodkar, Advocate for the applicants.
Shri V.Amonkar, Advocate for the respondents no.
1(a)(b) and (c).

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**CORAM : NUTAN D.SARDESSAI, J.
RESERVED ON : 18/08/2016.
PRONCOUNED ON : 20/10/2016.**

1] The applicants seek for the condonation of delay of 45 days in preferring the Appeal by the application coming up for disposal today.

2] Heard Shri A. S. Kakodkar, learned Advocate for the applicants who submitted that during the course of handling the judgment and award dated 30.09.2015 passed by the learned Motor Accident Claims Tribunal, North Goa, at Mapusa in the Claim Petition No.46/2004, it was found in the Accident Information Report that the Police had referred to the driving license of the insured-driver having

expired and for that reason the file was referred to the Regional Office for their opinion and approval. A letter was also made to the Directorate of Transport seeking the details of the driving license of the insured-driver and by a letter dated 14.12.2015 the Assistant Director of Transport informed the appellants about the validity or otherwise of the license. This letter was in conflict with the statement in the Accident Information Report and therefore the applicants once again sought a clarification from the Directorate of Transport to ascertain when the license was actually renewed. There were internal correspondence within the applicants-Company at various levels and it is only by the letter dated 21.1.2016 of the Assistant Director of Transport was it learnt that the driver-insured was not holding a valid and effective license.

3] The applicants had entrusted the file to the current Advocate who sought an additional information and prepared the Appeal which was submitted for approval and filed on 19.2.2016. The circumstances of the case were such that the applicants were prevented from filing the appeal in time and which constituted a sufficient cause for the delay. The delay was not intentional nor malafide nor did the applicants' stand to gain whatsoever by delaying the

filing of the appeal. Quite on the contrary, they would suffer grave prejudice, irreparable loss and injury and therefore the application had to be allowed, the delay of 45 days had to be condoned and the Appeal had to be registered for being heard on merits. It was duly supported by the affidavit of the applicants' Officer as also the correspondence addressed by the erstwhile Advocate and the correspondence received from the Office of the Assistant Director of Transport.

4] The respondents no.1(a) to 1(c) vehemently opposed the application on the premise that it was frivolous and devoid of any merits and the applicants had not approached this Hon'ble Court with clean hands. The grounds for condoning the delay were unsubstantiated and baseless and therefore the application had to be dismissed. Negligence per se was not a ground for the condonation of delay and in any event the delay had occurred on account of wilful acts of the applicants and delay ought not to be condoned. The mere statement regarding the movement of the file from one Office to another could not be construed as a satisfactory explanation for the condonation of delay. The applicants had adopted a totally casual approach and the grounds set out for condoning the delay could not be

accepted and the application had to be dismissed.

5] The respondent no.2 too opposed the application and pressed for its dismissal with costs as no sufficient cause was made out to condone the delay. The existence of the sufficient cause was a condition precedent to exercise the discretion for condoning the delay. The applicants were required to account for the delay in filing the appeal by a sufficient cause which the applicants had failed to do. The applicants had neither shown sufficient cause nor justified the delay and on all these grounds the application had to be dismissed.

6] Shri A.S. Kakodkar, learned Advocate for the applicants reiterated his case as set out in the application and otherwise adverted to the correspondence to buttress his case that the delay had to be condoned. Shri V. Amonkar, learned Advocate for the respondents no.1 (a), (b) and (c) reiterated the contents of his reply and submitted that the applicants were aware even before the Claims Tribunal that the license was not valid and could have pursued the objection on that ground even before the Motor Accident Claims Tribunal. The applicants had also failed to set out the source of their information in the

affidavit. He relied in **Brijesh Kumar and Others Vs. State of Haryana and others [(2014)11 SCC 351]**.

Shri D.Gaonkar, learned Advocate for the respondent no.2 adopted the arguments of Shri Amonkar and submitted that the applicants had made no reference to the letter of the Police giving the details in the Accident Information Report. The learned Motor Accident Claims Tribunal framed the issues also on the license. The applicants had refrained from producing the letter on record as it would reveal the truth when the relevant details were sought for by them. No ground was made out and hence, the application had to be dismissed. Shri Kakodkar, in reply, contended that the Advocate on the Panel was negligent and for which the party could not be penalised. Even assuming without admitting that the letter was written by the applicants during the course of the trial, the Assistant Director of Transport had given its reply only on 14.12.2015 and the subsequent reply on 21.1.2016 on probing inquiries and therefore it ruled out any knowledge to the applicants prior to that date. He had sufficiently accounted for the delay and hence, the application had to be allowed.

7] **Brijesh Kumar (supra)**, were the petition filed challenging the judgment and order passed by the High

Court of Punjab and Haryana at Chandigarh dismissing the Civil Miscellaneous Applications for the condonation of delay of more than 10 years in filing the Appeal under Section 54 of the Land Acquisition Act 1894 ("Act" for short hereinafter). In the brief facts, the lands of the petitioners stood notified under Section 4 of the Act and an Award was made by the Collector on 8.10.1997 assessing the market value of the petitioners land at ₹1,75,000/- per acre. The petitioners and other interested persons filed references under Section 18 for enhancement and the Reference Court made the Award on 7.9.2001 assessing the market value at ₹1,85,000/- per acre and gave them other statutory benefits. Some persons aggrieved by the Award filed Appeals but the petitioners chose not to file appeal at the initial stage which were filed in 2012 after a lapse of 10 years 2 months and 29 days. The High Court refused to condone the delay giving rise to the Petition before the Apex Court which found that the High Court had given cogent and valid reasons and relied upon a large number of the judgments of the Court while rejecting the application for condonation of the delay.

8] In **Brijesh Kumar (supra)**, it was observed that the rules of limitations are not meant to destroy the

rights of the parties and rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. The Apex Court observed that the Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay but while allowing such application had to draw a distinction between delay and inordinate delay for want of bonafides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause was a condition precedent for the exercise of discretion by the Court for condoning the delay. It had found in the facts that the petitioners were not diligent but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided and therefore the High Court had not found sufficient grounds to condone the delay and dismissed the Petition.

9] In **Special Land Acquisition Officer and another Vs. Jose Prazeres de Piedade Pinto and Ors [2006 (2) Bom.CR 773]**, this Court held that the delay had occurred on account of either wilful acts on the part of the concerned Officer or for any other reason which could even defeat the rights of the Government or Acquiring Body in relation to the provision for Appeal against the

Award passed by the Reference Court. Mere statements regarding the movement of the file from one office to the other office and from one table to the other table could not be construed as a satisfactory explanation for the delay in filing the Appeal and dismissed the application.

10] Shri A. Kakodkar, learned Advocate for the applicant invited attention to the letter of the Panel Advocate dated 9.10.2015, Annexure A to the application pursuant to which he had written to the Divisional Manager of the applicants that they were fastened with the liability to pay the compensation and that the amount had to be settled as in his opinion it was just and reasonable. The applicants had carved a case that on a perusal of the Accident Information Report it was revealed by the Police that the driving license of the driver-insured had expired and that the file was referred to the Regional Office for their opinion and simultaneously a letter was made to the Directorate of Transport seeking the details of the license. The letter received from the Director of Transport reveals that the insured held the license for non-transport category from **17.10.1995 to 11.07.2022** and for a transport vehicle from **17.12.1995 to 10.12.2016** thus apparently covering the **date of the accident on 22.6.2010**.

11] The applicants had not assisted with this reply of the Assistant Director of Transport but had made a further letter to the Director of Transport to elicit when the license was renewed since there was a conflict with the details of the license in the Accident Information Report drawn by the Police. During such time, the Assistant Director of Transport had furnished the details vide their letter dated 21.01.2016 pursuant to which it was revealed that the license was renewed for non-transport category from 12.7.2010 to 11.7.2022 and for transport vehicle from 12.7.2010 to 11.7.2013 meaning thereby that there was no valid driving license on the date of accident i.e. 22.6.2010.

12] The applicants, no doubt, were duly represented by an Advocate on the Panel but from the records it is borne out apart from the submission that there was no valid driving license on the date of accident. No attempt whatsoever was made to discharge the burden of proving this issue and ultimately the Motor Accident Claims Tribunal held that the Insurer i.e. the applicants herein had failed to discharge their burden of proving that there was a valid license on the date of accident and fastened the liability on the applicants to pay the compensation to the original

claimants. It is otherwise not borne out from the records nor was it the case of any of the parties that the Accident Information Report formed a part of the records before the Motor Accident Claims Tribunal which was seized of the proceedings. Therefore, it is apparent that the applicants had made a genuine endeavour to seek the information from the Registering Authority having been faced with the conflicting claim arising from the Accident Information Report drawn by the Police that there was no valid license on the date of the accident.

13] The applicants therefore were not casual in their approach but had taken all steps to gather the information and it is only on receipt of the subsequent letter of the Assistant Director of Transport was it brought to their knowledge that there was no valid license on the date of the accident resulting in a delay in filing the Appeal. Moreover, as rightly submitted by Shri Kakodkar, the inaction or negligence on the part of the Panel Lawyer cannot be bane of the applicants nor can they be penalised for the negligence or inaction of their Panel Advocate in pursuing the case entrusted to him properly to its logical end. The judgments relied upon are clearly distinguishable on facts and hence the respectful departure. There is sufficient merit

in the application when the applicants have duly accounted for the delay in filing the application to prefer the Appeal which is required to be condoned. i, therefore, allow the application and condone the delay in filing the appeal. The Registry to register the appeal.

14] The application stands disposed off accordingly.

(NUTAN D. SARDESSAI, J)

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