

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1037 OF 2015
IN
FIRST APPEAL (STAMP) NO.17800 OF 2014

The New India Assurance Co. Ltd., Mumbai Applicant
V/s.
Kusum Ashok Kumar Singh & Ors. Respondents

Ms. Poonam Mital for the Applicant.

Mr. R. Mehta, i/by M/s. KMC Legal for Respondent Nos.1 and 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH SEPTEMBER 2016.

P.C. :

1. Heard learned counsels for the parties.
2. This is an application seeking condonation of delay of 536 days in preferring the First Appeal, against the Judgment and Order dated 18th October 2012 passed by the Commissioner for Workmen's Compensation and Judge, 9th Labour Court, Mumbai in Application (WCA) No.292/B-63 of 2004. It is submitted that, after the said Judgment was passed, certified copy was applied for and it was received on 1st November 2012. However, as it was torn and in bad condition, the appellant again applied for certified copy on 10th March 2014, which was ready on 15th March 2014 and delivered on 15th March 2014. Hence, there is delay in filing the First Appeal.

3. Further it is submitted that, the applicant-Insurance Company has to go through the lengthy procedure for filing First Appeal in the Court; as the file has to go through various Departments and further to Regional Office and then to the Head Office. Only after it is approved by the Administrative Department, the sanction is given by the Legal Manager of the applicant-Insurance Company. This entire process takes a long time and, therefore, there is a delay.

4. Further it is submitted that, in this case, in respect of the same accident, two claims were reported; one under Motor Accident Claims Tribunal and another under Workmen's Compensation Act. M.A.C.T. Claim was reported in Solapur Office and WCA claim was reported in Mumbai Office. Solapur Office of the applicant-insurance Company had already made payment to the tune of Rs.1,98,428/- under WCA as well as MACT case and hence the investigation was carried out as to how two claims were made.

5. Since the record of the applicant-Insurance Company's was showing double payment by the Regional Office in Pune, the records were called for by the Regional Office in Mumbai in May, 2013 to verify from Solapur Office, as to whether both the cases were same or different. Solapur Office directed the Regional Office that payment was made in September, 2008 and as the file was old, it has been sent to godown,

which is situated in other premises. It is submitted by learned counsel for the applicant-Insurance Company that, as the papers were in the old file and not traceable, again the time has been consumed in search of the papers and to find out the details. Only after it was noticed that the date of the accident was different in two claims, the decision was taken to file the First Appeal.

6. Learned counsel for respondent Nos.1 and 2 has strongly resisted this Civil Application preferred for condonation of delay on the ground that, the delay is inordinate one and such delay cannot be condoned merely because there were some administrative reasons.

7. Reliance is placed by learned counsel for respondent Nos.1 and 2 on the order dated 20th January 2015, passed by this Court in Civil Application No.13 of 2015 in First Appeal (St.) No.33973 of 2014, (*New India Assurance Company Ltd. Vs. Dattaram Balkrishna Narvekar & Anr.*) [*Coram : K.K. Tated, J.*], to advance the submission that, such delay cannot be condoned merely because the applicant-Insurance Company is a Statutory Authority and there is total lethargy and, at time, utter negligence of State Officers, machinery or agency in taking the requisite action promptly.

8. There can be absolutely no two opinions about the legal position

that merely because the time was consumed in some administrative exigencies or getting the approval and sanction, the delay caused cannot be condoned. However, the facts of the present case reveal that there was genuine concern about the two claims being filed in respect of the same accident and, therefore, apprehension of double payment has been made. This specific cause is pleaded with all the details in the application itself and in view thereof, in my considered opinion, the delay caused in the instant case, being explained satisfactorily, this Civil Application for condonation of delay needs to be allowed. However, in order to compensate respondent Nos.1 and 2 for this delay, the Civil Application is allowed in terms of prayer clause (a), subject to payment of costs quantified @ Rs.10,000/- to be paid by the applicant-Insurance Company to respondent Nos.1 and 2 within a period of four weeks from today, failing which this Civil Application will stand automatically dismissed without any further reference to the Court.

9. Office is directed to register and number the First Appeal (Stamp) No.17800 of 2014 and place it for admission on 26th October 2016.

[DR. SHALINI PHANSALKAR-JOSHI, J.]