

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

**CIVIL APPLICATION NO. 1349 OF 2015  
WITH  
CIVIL APPLICATION NO. 1350 OF 2015  
IN  
FIRST APPEAL (Stm) NO. 24159 OF 2014**

The New India Assurance Co. Ltd.

... Applicants

**vs.**

Shri. Mohd. Tajnoor Dawoodbaksh Gazi and anr. ... Respondents

Mr. D. S. Joshi, Advocate for the applicants.

Mr. V. M. Parkar, Advocate for respondent No.1.

**Coram :** Smt. R. P. SondurBaldota, J.

**Date :** 11<sup>th</sup> March, 2016.

**P. C. :**

1. This civil application is for condonation of delay of 287 days in filing the appeal to challenge the judgment and award dated 20<sup>th</sup> August, 2013 passed by the Motor Accident Claims Tribunal, Mumbai ('MACT' for short). The present civil application along with the first appeal was filed on 27<sup>th</sup> June, 2014.

2. The proceedings in the MACT had been contested by the applicant. After the same was disposed off by the judgment and award dated 20<sup>th</sup> August, 2013 the advocate for the applicant

filed application for certified copy as late as on 12<sup>th</sup> December, 2013. The certified copy copy was ready on 18 December, 2013 and was received by the application on 19<sup>th</sup> December, 2013 and the present application along with first appeal was filed on 27<sup>th</sup> June, 2014. These facts will show that the application for certified copy of the impugned judgment and award was made after the period of limitation for filing of the appeal is expired. Therefore, time taken for issuance of the certified copy will not be available to the applicant for deduction. There is no explanation offered in the application for delay in applying for certified copy. The explanation offered is only for the period subsequent to receipt of the certified copy. At para 4 of the application, the applicant states that it being a Corporate body the files were required to be moved from one table to another. Thereafter the papers were compiled and sent to the Regional office for scrutiny by the Regional Manager. He scrutinized the file and granted sanction for filing appeal on 21<sup>st</sup> April, 2014. Then, the papers were allotted to the learned advocate for preparation of the first appeal. Further time was consumed for receipt of the amounts towards court-fees and mandatory deposit under Section 173 of the Motor Vehicle Act, 1988 by the appellant. The cheque in respect of the mandatory deposit was handed over to the advocate on 9<sup>th</sup> June, 2014.

Thereafter, the authorised signatory of the applicant was on leave for two weeks, which added to the delay.

3. Mr. Joshi, the learned advocate for the applicant vehemently submits that the applicant being a Government body, though a corporation, has to follow a definite procedure before the decision for filing first appeal is taken. Since the procedure is a mandatory procedure it was not possible for the applicant to file the application within the prescribed time. He also submits that the learned advocate representing the applicant in the Tribunal was negligent in applying for the certified copy of the judgment and award and that the applicant should not be made to suffer for the negligence of the advocate.

4. Mr. Parkar, the learned advocate for the respondents - claimants opposes the application submitting that there is no case made out by the applicant for condoning the delay. He also points out that the compensation awarded by the Tribunal to the respondents is a meagre amount of Rs.64,000/-, which is inclusive of no fault liability amount. According to him the claim is so small that it actually is not viable for the applicant to challenge it.

5. In my opinion, there is no case made out by the applicant for condoning the delay. Firstly there is no explanation

for the delay in applying for certified copy. Though that delay can be attributed to the advocate appearing before the Tribunal, it is not in dispute that the learned advocate continues to be on the panel of the applicant – Corporation. This would mean that the Corporation has condoned the negligent conduct on the part of the learned advocate. Next the excuse of file being moved from table to table can also not be said to be a sufficient cause because any procedure settled by the applicant for itself for taking decision to challenge the award is expected to be ordinarily completed within the period of limitation prescribed so as to file the appeal within time. There are no extra-ordinary circumstances pleaded for not completing the formalities in time. As regards the officer going on leave the applicants could have authorised another person to sign the proceedings. Hence, Civil Application No. 1349 of 2015 is dismissed.

6. In view of the dismissal of the said application, Civil Application No. 1350 of 2015 does not survive. The same is accordingly disposed off.

**[Smt. R. P. SondurBaldota, J.]**