

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1939/2015
WITH
CIVIL APPLICATION NO.1940/2015
IN
FIRST APPEAL (ST) NO. 27940/2014

The New India Assurance Co. Ltd. ... Applicant

Vs.

Mast. Omkar Pravin Sakpal & Anr. ... Respondents

Mr. D. R. Mahadik for the Applicant

CORAM : K. K. TATED, J.
DATE : JANUARY 4, 2016

P.C.:

1. Heard. This Application is made by Insurance Company for condonation of 208 days delay in preferring the appeal challenging the award dated 07/10/2013 passed by MACT, Mumbai in Application No.128/2007 by which the Tribunal awarded sum of Rs.35000/- with 7.5% p.a. interest by way of compensation to the Respondent claimant minor, who was of 7 years.

2. In the present proceedings, in an accident which occurred on 26/10/2005, the Respondent minor claimant sustained the injuries i.e. fracture of left radius ulna bone, CLW on (R) parietal region and contusion left wrist joint with other injuries. In support of this, the

claimant placed on record a certificate issued by the Cottage Hospital, Mangaon (Exhibit- 17). The minor claimant was indoor patient for the treatment. Therefore, the Respondent claimant filed Application u/s. 166 of the Motor Vehicles Act, 1981 for compensation of Rs.1 lac. Considering the evidence on record, the Tribunal awarded a meager amount of Rs.35000/- with 7.5% p.a. interest by way of compensation.

3. Said award is challenged by the Insurance Company by preferring the First Appeal. There was delay on the part of the Insurance Company to file the appeal. Hence, the Civil Application for condonation of delay.

4. The learned counsel for the Applicant submits that as soon as the impugned award was passed by the Tribunal, they applied for certified copies on 12/12/2013. Same were ready for delivery on 06/02/2014 and collected by their officer on 10/02/2014. He submits that thereafter the concerned advocate who appeared in the Trial Court forwarded a proposal to the Insurance Company for preferring an appeal which was considered by the Officer and taken decision to file an the appeal. He submits that initially, the Insurance Company forwarded 50% amount of the court fees to the Advocate and thereafter when the Advocate called upon the Insurance Company to deposit the entire court fees, the same was provided after 6 months i.e. on or before 06/09/2014. Hence, there is delay to file the appeal. In support of this contention, the learned counsel for the Applicant relies on paragraph 2 of the Civil Application, which reads thus:

“2. The Petitioners/ Appellants state that the Judgment and Order was passed on 07/10/2013 and that the certified copy was applied on 12/12/2013 and that the same was ready on 06/02/2014 which was taken delivery on 10/02/2014. The learned Dealing Advocate forwarded the same to the Appellant's legal hub department at Mumbai Regional Office-II in third wee of February 2014 to recommend the filing of appeal against Judgment and Order dated 07/10/2013. Legal Department of third party hub, after thoroughly studying the matter and scrutinizing the facts and circumstances of the matter, forwarded the said Judgment and Order along with papers and proceedings to their competent authorities to get it approved in order to file appeal which was approved in third week of March 2014. After approval competent authorities, the Legal Department of said MRO-II, forwarded the said judgment & order along with the papers and proceedings to the present Advocate on or about 25-04-2014 to file appeal. The present Advocate, vide his letter dated 29/04/2014, interalia requested Petitioners/ Appellants Mumbai Regional Office-II to send cheque for depositing u/s.173 of M.V.Act and towards Court Fees etc. Unfortunately, copy of the Judgment and Order along with folder got mixed up with some other folders in the Appellant's Legal Department M.R.O.II and the same was not traceable in spite of repeated efforts. The said claim folder was traced out in the fort week of May 2014. The said cheques were received by the present Advocate on or about 14/06/2014, however entire amount of court fees not received due to internal computer system not accepting entire amount of court fees. The present advocate vide letter dated 23/06/2014 requested to issue cheque remaining court fees. The said cheque of remaining court fees received by present advocate on about 06/09/2014. The cheque received for depositing u/s. 173 of M.V.Act on or about 14/04/2014 which was validity date expired due to remaining court fees not received present Advocate. After received court fees present advocate returned cheque to their Appellant Mumbai Regional Office-II vide letter dated 10/09/2014 and requested issue fresh cheque.”

5. The learned counsel for the Applicant submits that before filing any appeal, they have to take decision at several level and as such there is delay in preferring the First Appeal. He submits that the Applicant

has good chance of success. He submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. On the basis of this submission, the learned counsel for the Applicant submits that the delay in preferring the Appeal may be condoned.

6. Heard the learned counsel for the Applicant at length. It is to be noted that in the present proceedings, the Respondent claimant who was of 7 years old, sustained injuries in an accident which occurred on 26/10/2005. The claimant was indoor patient for his treatment. Even the Cottage Hospital, Mangaon issued injury certificate Exhibit- 17 showing injuries sustained by the claimant. The claimant sustained permanent partial disability of 28% as assessed by AW-2 Dr. Kshitij Shah by issuing certificate Exhibit 20. AW-2 Dr. Kshitij further deposed that the claimant sustained loss of functioning of left hand and inability to participate in sports activities including carrying school bag. Considering the age of the claimant and evidence on record the Tribunal awarded meager amount of Rs.35,000/- as compensation.

7. The reasons given by the Applicant in paragraph 2 of the Civil Application for condonation of delay do not show sufficient cause. It is to be noted that though the certified copies were made ready to the Applicant only on 10/02/2014, they filed the First Appeal in this court on 26/09/2014. There is no explanation as to why the officer of the Appellant took time to take decision.

8. This Court in the matter of **Laxman Divekar Vs. State of**

Maharashtra 1998 (1) Mh.L.J 745 held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice just because the applicant happens to be a Corporation.

9. The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation.

10. This Court in the matter of **Special Land Acquisition Officer & Anr. Vs Jose Prezares De Piedade Pinto, 2006(2) Bom.C.R 773** held that delay caused due to movement of file from one table to another cannot be a reason for condonation of delay.

11. The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

12. The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

13. The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

14. The Apex Court in the matter of Esha Bhattacharjee Vs. Managing Committee of **Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay needs to be rejected.

15. Considering the reasons disclosed by the Applicant in paragraph 2 of the Civil Application and the law declared by the Apex Court as well as this court, I am of the opinion that the Applicant has failed to make out any case for condonation of 208 days delay in filing the appeal. Apart from that, the amount awarded by the Tribunal is very meager amount. Hence, following order is passed:

- a. The Civil Application stands rejected.
- b. In view of rejection of the Civil Application for condonation of delay, nothing survives in the First Appeal. Registration of the same stands rejected.
- c. Consequently, the Civil Application for stay of the impugned order stands dismissed as infructuous.
- d. The learned counsel for the Appellant submits that the Appellant has deposited a sum of Rs.17500/- in the Registry of this court at the time of filing this appeal. Hence, the Registry is directed to transfer the said amount to the MACT, Mumbai in the account of Application No.128/2007, immediately.

JUDGE