

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 3144 OF 2017
IN
FIRST APPEAL ST. NO. 5972 OF 2017
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Smt. Kamal wd/o Daulatrao Deshmukh .. **Applicant**
Age 62years, Occu:Household . **/Appellant**
R/o Flat No.5, Saraswati Apartment,
Ashoknagar, Pune 411 007

VERSUS

1 Smt. Archana Raju @ Rajaram Bhujbal .. **Respondents**
Age 30 years, Occu: Household .

2 Rachit Raju @ Rajaram Bhujbal
Age 10 years, Occu: Education,
U/g Natural Mother- respondent no.1

3 Smt. Janabai Dnyandeo Bhujbal
Age 65 years, Occu: Household,

All r/o Shedgaon Tq. Shrigonda
District Ahmednagar.

4 The Branch Manager, ... **Respondents**
United India Insurance Co.Ltd.,
Kisan Kranti Building,
Station Road, Ahmednagar.

Mr. Shivaji T. Shelke, Advocate for the
applicant/appellant

Mr. Ashok S. Pavse, Advocate for respondent Nos.1 to 3

Mr. S. V. Kulkarni, Advocate for respondent No.4.

CORAM : K. L. WADANE, J.

DATE : 05.10.2017

ORDER:

1. This is an application filed by the applicant original respondent No.1 for condonation of delay of 1717 days caused in filing of first appeal against the judgment and order dated 13.03.2012 in MACP No. 559/2007.

2. Heard Mr. Shivaji T. Shelke, learned counsel for the applicant/appellant, Mr. Ashok S. Pavse, learned counsel for respondent Nos.1 to 3 and Mr. S. V. Kulkarni, learned counsel for respondent No.4.

3. The delay is sought to be condoned on the ground that when the claim petition was instituted by the respondent Nos. 1 to 3/claimants against the present applicant and respondent No.4, no notice was served upon the present applicant. It is contended that the applicant is a widowed woman, residing at Pune with her son sine 2011. Village of the parents of the applicant is Dhandarphal Budruk, Taluka Sangamner, District Ahmednagar. The applicant never received any court notice or summons from the learned Motor Accident Claim Tribunal, Ahmednagar. Recently, the applicant learnt regarding the decision in the claim petition filed by the claimants and thereafter obtained

certified copy and found that the liability has been put on her regarding the compensation to be paid to the claimants. It is contended that in fact, the driver was holding valid driving licence at the time of accident, which is evident from Exhibit 45, which is the letter issued by the RTO Office, Shrirampur, wherein, the renewal period of driving licence has been shown. Since the applicant had not been served with any Court notice, the applicant could not contest the claim petition.

4. From para No.4 of the judgment of the Tribunal, it appears that the learned Tribunal has recorded that owner of the offending Tanker was served with the notice of this petition. However, he did not appear in the Tribunal. Hence the petition was proceeded ex-parte against him. To know, whether the present applicant was served with the notice or otherwise, Mr. Shelke, the learned counsel for the applicant points out the copy of the notice issued by the Tribunal through RPAD, which shows that the notice was sent on the following address:

Smt. Kamal Daulatrao Deshmukh
R/o Dhandarphal Khurd, Tq. Sangamner,
Dist. Ahmednagar

5. From the record it appears that the notice of claim petition was served on the applicant at the aforesaid address. On perusal of the postal acknowledgement receipt, it appears that address of the recipient is shown as "Daulat Petrol Pump, Sangamner". Signature appearing on the acknowledgement receipt also appears to be different. So there is substance in the argument of Mr. Shelke that the applicant never received the notice of the claim petition nor she acknowledged the same.

6. In support of his argument, Mr. Shelke, the learned counsel has relied on the following judgments:

(1) (1995) 6 Supreme Court Cases 614, Nand Kishore Vs. State of Punjab

(2) AIR 1987 Supreme Court 1353, Collector, Land Acquisition, Anantng Vs. Katji

(3) 2015 (3) Mh. L.J.782, Comunidade of Malcornem Vs. Budo Custa Molic and another

The observations of the above cited authorities are considered and are applicable to the facts of the present case.

7. In view of the above, the contention of the applicant about the non receipt of the notice of the claim petition is acceptable. It cannot be said that the present applicant was served with the notice of the claim petition. She is deprived from contesting the claim petition. Therefore the delay has been properly explained, irrespective of its length. Hence, the delay caused in filing of the first appeal stands condoned. Civil application for condonation of delay is accordingly disposed of.

8. In first appeal, issue notice to the respondents. Mr.Ashok S. Pavse, learned counsel waives notice for respondent Nos.1 to 3 and Mr.S. V. Kulkarni, learned counsel waives notice for respondent No.4.

9. Heard learned counsel counsel for the respective parties. Perused the grounds of the appeal. One of the grounds is that the appellant was not served with the notice of claim petition amongst other grounds.

10. In view of the reasons recorded above while condoning the delay, it appears that the liability of the payment of compensation is fastened upon the appellant, though she was not served with the notice.

From record, it appears that the appellant was never served with the notice. It is recorded that she remained absent and therefore the claim petition was proceeded ex parte against her. In the circumstances, the matter needs to be remanded for hearing the claim petition afresh, after giving opportunity to both the parties to adduce evidence.

11. Hence the impugned judgment is quashed and set aside.

12. The matter is remanded to the learned Motor Accident Claims Tribunal, Ahmednagar with the direction to dispose of the claims petition in accordance with law, within a period of six month from the date of appearance of the parties.

13. The parties are directed to remain present before the tribunal on 06.11.2017.

14. First Appeal is accordingly disposed of. In view of disposal of the first appeal, civil application No.3145/2017 for stay also stands disposed of.

(K. L. WADANE, J.)

JPC