

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

CIVIL APPLICATION NO. 746 OF 2017
IN X-APLST/36801/2016

VIJAYA DILEEP PATIL AND OTHERS
VERSUS
RAMESH RAMCHANDRA MAHAJAN AND ANR

...
Advocate for Applicants : Mr. M. M. Bhokarikar.
...

CORAM : K.K. SONAWANE, J.

DATED : 7TH NOVEMBER, 2017.

Order :-

Heard learned counsel for applicant. Despite service of notice none appears for respondents No.1 and 2.

2. This is an application for condonation of delay of 1222 days caused in filing First Appeal against impugned Judgment and Award passed by the learned Motor Accident Claims Tribunal in Motor Accident Claim Petition No. 116 of 2009 dated 4th May, 2013.

3. Mr. Bhokarikar, learned counsel contends that the owner of offending vehicle i.e. respondent No.1 has already preferred the Appeal No. 1519 of 2014 and same is pending before this Court. The delay caused in filing First Appeal is not intentional or deliberate, but it was caused due to unavoidable circumstances. He prayed for condonation of delay in the interest of justice.

4. As referred above, despite service of notice, none appears for both respondents. Therefore, the opportunity of hearing into the matter could not avail of these respondents. However, in view of the nature of subject matter, I prefer to proceed further for adjudication of application for condonation of delay on merit.

5. Admittedly, as per the contention put-forth on behalf of learned counsel for applicant, respondent No.1 i.e. owner of the offending vehicle has filed First Appeal No. 1519 of 2014 before this

Court for agitating the findings expressed by the learned Tribunal in the impugned proceedings. The applicants-claimants are also intending to put in controversy the validity and propriety of the quantum of compensation amount awarded by the learned Tribunal. In such circumstances, I do not find any impediment to allow the applicants for presenting appeal to get the relief of enhancement of compensation by approaching to the Appellant Forum. Admittedly, there is huge delay caused in filing First Appeal. But, in view of the nature of subject matter, the circumstances constrained to adopt liberal and pragmatic approach for substantial justice into the matter. It would not cause injustice and prejudice to the respondents. Therefore, the application deserves to be allowed.

6. In view of the above as well as reasons mentioned in the application for condonation of delay, application stands allowed in terms of prayer clause 'B'. The delay caused in filing First Appeal against impugned Judgment and Award is hereby condoned. The Registry to take requisite steps for further process.

7. After registration of appeal, issue notice to the respondents, returnable on 14th December, 2017.

8. In addition to regular mode of service, appellant/applicant to serve notice to the respondents privately by fastest legally acceptable mode and file affidavit of service of notice on record with tangible proof to that effect by the returnable date.

9. Meanwhile, call for record and proceedings from the concerned Tribunal and tag the present appeal after it's registration with First Appeal No. 1519 of 2014 for it's simultaneous hearing on merit in the interest of justice.

[K. K. SONAWANE]
JUDGE

rrd.