

**THE HIGH COURT OF BOMBAY AT GOA****MISC. APPLICATION NO. 293 OF 2016****In****Stamp Number Main No.972 of 2016**

National Insurance Company Ltd.  
Having Office at Div. NO. 10,  
Flat no.101 to 106, N-1, BMC House,  
Coonought Place, New Delhi, 11001,  
having its branch at  
First Floor, Town Centre,  
Bicholim.

.... Applicants.

V e r s u s

1. Shri Kashiram Yeshwant Dharne  
son of late Yeshwant Dharne, aged,  
about 50 years, Farmer, married  
Indian National  
and 4 others.

..... Respondents

Shri Amey Kakodkar, Advocate for the Applicants.  
Shri Sagar Dhargalkar, Advocate for the Respondent nos.1. and 2.  
Shri J. J. Mulgaonkar, Advocate for the Respondent no.5.

**CORAM: NUTAN D. SARDESSAI, J.**  
**Reserved on: 6TH APRIL, 2017.**  
**Pronounced on :11TH APRIL, 2017.**

**ORAL ORDER:**

The applicants are seeking the condonation of delay of 304 days in filing the appeal to assail the judgment and award dated 6<sup>th</sup> February 2015 passed by the learned Motor Accident Claims (MACT for short) Tribunal North Goa, Mapusa,

2. Shri A. Kakodkar, the learned Advocate for the Applicants

submitted that though the judgment and award was passed on 6/2/2015, the applicants had knowledge thereof only on 1/12/2015 upon notice in the execution proceedings thereupon they had applied for a certified copy of the judgment and award and on its receipt had forwarded the certified copy to the applicants. The appeal was filed within three months thereafter. The applicants have not to be penalized for the fault of their advocate and considering the factual matrix, costs would have to be imposed. He relied in **Ashok Ravji Vadodriya and others Vs. Municipal Corporation of Greater Bombay [2003 (4) Bom.C.R.28]** in support of his case.

2. Shri J. J. Mulgaonkar, learned Advocate for the respondent no.5 submitted that though a specific defence was taken by the applicants in the petition filed before the MACT that the driver did not possess a valid and effective driving licence, however, no evidence was led in the matter and the award came to be passed accordingly saddling the respondents with the liability to pay the compensation as awarded by the learned MACT. No purpose would be achieved by condoning the delay and quite on the contrary there was a possibility of a reopening of the trial which could not be ruled out as remote. The applicants have filed the appeal only on 10/3/2016 after a considerable length of time. Though an affidavit was filed of an advocate who had accepted the blame for the delay, there was no dispute of the fact that there was no participation by the applicants in the proceedings before

the MACT and therefore on all these counts the application has to be dismissed.

3. Shri S. Dhargalkar, the learned Advocate for the respondents no. 1 to 3 submitted that he had no serious objection to the condonation of delay, but costs have to be imposed against the applicants for the delay in filing the appeal and besides the said respondents had to be permitted the liberty to file their cross objections.

4. i have considered their submissions and otherwise perused the records from which it is borne out that the applicants were duly served with the notice of the petition as early as January 2012 but had failed to appear on the scheduled date of appearance precipitating an order from the learned MACT to order the proceedings ex parte against them. The applicants had accordingly not participated in the proceedings for whatever reasons and proceedings continued ex parte against them till the learned Presiding Officer of the MACT pronounced the judgment allowing the petition in favour of the respondent nos.1, 2 and 3 and fastening the liability on the applicants along with the other respondents.

5. By the present application the applicants claim knowledge about the impugned judgment for the first time only when they were

served with a notice of the execution proceedings and thereupon did they endeavor to apply for a certified copy and thereafter to process the copy to their office and followed by the appeal in assailing the impugned judgment and award. The applicants have set out at length in their application that the petition was handled by their panel advocate but on account of his failure to inform them about the impugned judgment and award, there was a delay in applying for the certified copy and thereafter processing the appeal and ultimately filing it resulting in the delay of approximate 304 days. The lapse on the part of the advocate which had resulted in the proceedings going ex parte against the applicants and the consequential delay has been shouldered by the advocate on record by ascertaining these facts on oath and which facts have not been controverted seriously on oath on behalf of the respondent no.5. It is otherwise a matter of record that the respondent at some stage had filed an application for setting aside the ex parte order and filed their written statement in defence taking a specific plea that the rider i.e. respondent no.4 was not holding a valid and effective driving licence at the time of the accident and therefore they were not liable under the policy to indemnify the registered owner.

6. Shri Mulgaonkar may have a case that allowing the condonation of delay would result in putting back the clock inasmuch as once the delay is condoned, the matter would necessitate a remand of the file to deal with the specific defence of the applicants that the rider

did not possess a valid and effective driving license at the time of the accident and which would delay the proceedings further. However, on that ground alone, a valuable plea taken by the applicants cannot be brushed aside which would have the effect of determining their liability rightly in the matter.

7. i have considered the judgment in **Ashok Ravji Vadodriya and others Vs. Municipal Corporation of Greater Bombay (supra)** where the learned Judge as His Lordship then was found the approach of the learned City Civil Court wrong as it failed to understand from where the learned Judge had found the practice and procedure to hold that it was the duty of the litigant to attend court and convey the adjourned date to the advocate. The judgment would broadly apply to the facts of the case in as much as having engaged the services of an advocate, there was no responsibility of the applicants to attend the each date of hearing and to find out what had transpired in Court having engaged a lawyer and entrusted the brief to him. The applicants to my mind have amply demonstrated from the application and the supporting affidavit of their advocate that the delay in filing the appeal was occasioned on account of the lapse of the advocate in pursuing the matter diligently before the Court. The hardship which may be suffered by the respondent no.5 would will be understood but on that premise alone. The applicants cannot be denied the valuable right of appeal which they would otherwise be entitled to pursue but for

the delay. i, therefore, allow the application condoning the delay in filing the appeal subject, however to the applicants paying the costs of ₹5000/- to each set of the respondents and with liberty to the respondents no. 1 to 3 to file their cross objections if any.

**NUTAN D. SARDESSAI, J**

**Ap/**