

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

**CIVIL APPLICATION NO.3545 OF 2013
IN
FIRST APPEAL (ST) NO.2736 OF 2013**

Smt.Laxmibai Vinod Madane & Ors. ..Applicants/Appellants

V/s.

Shri.Anandrao Dattu Patil & Anr. ..Respondents

Mr.Akshay Kulkarni h/f Mr.A.M. Kulkarni for the
Applicants/Appellants.

Ms.S.S. Dwivedi for Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 20 MARCH 2017.

P.C.

1. Heard learned counsel for the parties.

2. This Civil Application seeks condonation of delay of 1072 days in instituting the appeal as against impugned judgment and award dated 24-11-2009 made by the Commissioner for Workmen's Compensation, Kolhapur.

3. In paragraph No.6, the applicants have stated as under:-

“6. The Applicants state that they were completely dependent upon the earnings of the deceased and he was

the only earning member in the family. After his death the Applicants are only able to meet the daily expenses. The Applicant No.2 was also only of 15 days when the accident occurred and therefore the whole responsibility of the Applicant No.2 was on Applicant No.1. The Applicants were hoping that their claim application would be allowed entirely. However the Ld. Commissioner was pleased to partly allow the application and granted compensation to the extent of Rs.1,27,074/- only. After the impugned judgment and award was passed the Applicants were required to spend the same on the medicines of the Applicant No.2,3 and 4. The Applicant Nos.3 and 4 both are of above 55 years of age and are suffering from age old deceases. Even as of now, the entire family is arranging the daily livelihood at the mercy of the relatives and the meager savings made in their lifetime. As such basically the applicants had no sufficient financial arrangement for the purpose of filing the Appeal before this Hon'ble Court. Therefore although the certified copies were ready, they could not arrange for even the amount of Court fees muchless the other expenses for filing the present Appeal. However, after the lapse of around of three years, the Applicant could arrange sufficient funds for the purpose of filing the present Appeal and accordingly have filed the present Appeal. In short only and only on account of disability to arrange for necessary funds for filing the present Appeal, the delay has occurred.”

3. The respondent-Insurance Company has filed a reply. The averments in paragraph No.6 of the application seeking condonation of delay have been dealt with in the following manner:-

“6. With reference to the paragraph No.5 to 6 of the Application this Respondent deny that the entire family was arranging the daily livelihood at the mercy of the relatives and the meager savings made in their lifetime. This Respondent deny that after lapse of around three years the Appellant could arrange sufficient funds for the purpose of filing the present Appeal and accordingly have filed the present Appeal. This Respondent deny that delay caused due to disability to arrange for necessary funds for filing the present Appeal. This Respondent deny the contents in totality and put the Appellant strict proof thereof.”

4. The record indicates that Vinod, husband of the applicant No.1, father of applicant no.2 and the son of the applicant Nos.3 and 4 died at the age of 22 years in the accident arising out of and in the course of his employment. Mr.Kulkarni, the learned counsel for the appellant states that on the date of such demise, the applicant No.2 was only 15 days old. He states further that the applicants were so poor that their earning were only sufficient to meet the daily expenses. Taking into consideration, the expenses

shown in paragraph No.6 of the application for condonation of delay, the Civil Application is liable to be allowed. In the rejoinder filed by the respondents, the basic facts set out in the Civil Application have not been disputed. Only the inference has been disputed. The delay in this case, appears considerable. However, the length of delay is itself not a relevant criteria, acceptability of the explanation is the main criteria for condoning the delay and in the present case, the same has been fulfilled.

5. Accordingly, the Civil Application is allowed. The delay in institution of the appeal is condoned.

6. The Civil Application is disposed of without any order as to costs.

(M. S. SONAK, J.)