

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

**CIVIL APPLICATION NO.1720 OF 2009
IN
FIRST APPEAL (ST) NO.9064 OF 2009
WITH
CIVIL APPLICATION NO.1721 OF 2009
IN
FIRST APPEAL (ST) NO.9064 OF 2009**

The Oriental Insurance Co. Ltd. ...Applicant/Appellant

Versus

Najmabani Wd/o Mohd, Mustafa
& Others

...Respondents

Mr.D.S. Joshi for the Applicant/Appellant.

CORAM : M. S. SONAK, J.

DATE : 30 MARCH 2017

P.C.

1. This Civil Application seeks condonation of delay of about 188 days in the institution of the appeal.

2. In paragraph No.2, all that pleaded is the manner in which the matter moved from table to table and from officer to officer. In paragraph No.3, the applicant has stated as follows:-

“The Petitioners/ Appellants say that the appeal has been filed on or about 01-04-2009 and therefore, there is delay of 188 days. The Petitioners/Appellants say and submit

that delay has been caused due to transferring of the Claim File/ papers and proceedings from Nasik D.O. to Pune Regional Officer, obtaining Legal Opinion and thereafter scrutiny by the concerned D.O. & R.D. i.e. scrutiny at every stage as required being Public Sector Undertaking and also due to official exigencies which were beyond the control of the Appellants above named, do hereby solemnly affirm and state that what has been stated hereinabove is based on record and information and I believe the same to be true.”

3. Circumstance that the appellant is public sector undertaking and therefore, the matter should be considered liberally for that the delay was on account of “Official exigencies which were beyond the control of the appellants” cannot be accepted in this case. On the basis of the such reasons, it cannot be said that any sufficient cause has been shown to condon the delay in a matter of this nature.

4. In *State of Maharashtra & Ors. V/s. Vithu Govari & Ors.*¹, a Division bench of this Court, has insisted on the necessity to explain the sufficient cause of delay in a condonation application. *“The submission that delay has occurred because of “official hassle” and approval at different levels. This is a case which can hardly justify*

1 2008 (6) Mh. L.J. 239

condonation of delay. The hassles which in any case are unspecified in the application can always be set right by the applicants and the approval can be granted expeditiously. However, as already noticed, in the present case, there is no explanation even for a period of two years. The other point raised on behalf of the applicant is that if delay is condoned, it would cause no prejudice to the claimants. This argument is equally without any merit. In law advantage has accrued to the non-applicants claimants and the same ought not to be withdrawn in a mechanical manner and that too without any sufficient cause being shown to the applicants. This itself is the prejudice to the claimants. Before the delay can be condoned and claimants can be subjected to a prolonged litigation, the onus to show sufficient cause lies is upon the applicant State.

5. That a part, the appeal in present case, was instituted in the year 2009 in order to question the award dated 06-06-2008 made by MACT, Malegaon. The matter could not be taken up all this while because no proper steps were taken to effect service upon the respondent. That a part, by the impugned award, compensation of hardly Rs.2,00,000/- has been awarded to the wife, minor children and aged mother of the deceased.

6. The main point raised in the appeal is that the driver of the vehicle, did not possess a valid licensee and therefore, the insurance company could not have been made a liable. The MACT has held that the driver did possess a learner licensee so far as a heavy vehicle is concerned and insofar as also possesses the licensee for autorikshaw. Relying upon the decision in the case of *National Insurance Company Ltd. V/s. Swaransingh & Others (2004-1-TAC-321-(SC))* and the decision in *National Insurance Company Ltd. V/s. Annappa Irappa Nesaria (2008-1-TAC-812-(SC))*, as held that this is not a case of any fundamental breach of terms of the policy, taking in the aforesaid circumstances the Civil Application for condonation of delay is dismissed. Consequently, the appeal itself been dismissed. Interim order, if any, stands vacated.

7. The amount of Rs.25,000/- deposited by the appellant in this Court is to be transmitted to the concerned MACT, so that, the claimants can receive the said amount together with other amounts deposited by the appellant insurance company before the MACT in accordance with impugned award. The Civil Application for interim relief also does not survive and the same is also disposed of.

(M. S. SONAK, J.)