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

**CIVIL APPLICATION NO. 3323 OF 2015
WITH
CIVIL APPLICATION NO. 1599 OF 2016
WITH
CIVIL APPLICATION NO. 3324 OF 2015
WITH
CIVIL APPLICATION NO.997 OF 2017
IN
FIRST APPEAL (ST) NO. 26718 OF 2015**

National Insurance Co. Ltd.	...Applicant
In the matter between	
National Insurance Co. Ltd.	...Appellant.
vs	
Mrs Dipali Sunil Gijare & Ors.	...Respondents.

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Mr Amol Gatne for the Applicant/Appellant.
Mr Ramesh Chavanke a/w Mr S.S.Kothiya for the Respondent Nos.1 to 3.

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**CORAM : M. S. SONAK, J
APRIL 04, 2017**

P.C. :

1 Civil Application No.3323 of 2015 seeks condonation of delay of 406 days in instituting an appeal against the award passed by the M.A.C.T., Thane.

2 In paragraph 2 of the Civil Application, it is stated that after the certified copies of the impugned award dated 20.09.2014, was obtained on 30.10.2014 the matter was referred for opinion of

the panel advocate on 11.12.2014. In paragraph 2 it is stated that thereafter the matter was referred to the Panel Advocate, who submitted a legal opinion on 11.12.2014 requiring the appellant – Insurance Company to verify the deductions indicated in the salary certificate of the deceased/Police-Sub-Inspector.

3 It is further stated in paragraph 2 that in order to obtain a details of deductions, the appellant – Insurance Company appointed an Investigator. The Investigator submitted his report some time in January 2015. It is further stated that there were some mediation talks between the parties in March 2015 but said talks failed and on 29.4.2015 the file was forwarded to the Head Office in Calcutta in order to obtain approval for instituting an appeal on the point of quantum.

4 In paragraph 3 it is stated that certain queries were raised in regard to the defence available to the appellant under Section 149 of the M.V.Act, 1988. Accordingly, the applications were made to the R.T.O. and R.T.O. replied that it has no records in relation to the driving license of driver of the offending vehicle. Then it is submitted that the matter was once again sent to the Head Office and approval was obtained.

5 In paragraph 5 it is pleaded that:-

“However, in obtaining certified copies by the trial court Advocate and legal opinion at the level of Regional Office, much time has gone and after getting

the opinion from the Advocate to file Appeal, the file has been sent back to the Appellant. The appellant submit that the Appellant being a Public Institution, the decision to prefer appeal is not a individual decision. The said decision needs to be taken by following prescribed office procedure, at various levels. Thereafter, it was sent to Bombay for filing to the Panel Advocate. Thereafter, necessary Bill was raised for the purpose of filing Appeal. However, due to the non availability of necessary funds the appeal could not be filed till the present date.”

6 On the basis of the aforesaid, it is submitted that there is sufficient cause to condone the delay. Mr Gatne, learned advocate for the appellant submits that the entire exercise referred to in Civil Application No.3323 of 2015 constitute sufficient cause. He relies on the observations of Hon'ble Supreme Court in the case of **State of Nagaland Vs Lipok Ao and Ors.**¹ to submit that the expression “sufficient cause” should be construed in liberal construction.

7 Mr Chavanek, learned counsel for the respondents/ applicants submits that this is a case where no cause, much less as “sufficient cause” has been shown. He points out that in the proceedings before M.A.C.T., the salary certificate was produced and if no deductions were pointed out, nothing prevented the Insurance Company from pointing out the same at that stage itself. He submits that the deceased in this case was Police-Sub-Inspector and working

1 (2005) 3 Supreme Court Cases, 752

with the State Government. He submits that the exercise of appointing an Investigator was not at all necessary and in any case such an exercise ought to have been undertaken when the matter was pending before the M.A.C.T. He submits that no defence was ever raised, that the driver of the offending motor-vehicle was not having driving license. He submits that the circumstances set out in paragraph 2, neither constitute 'sufficient cause' nor can there really be have any reasons in delaying the appeal. He submits that the claimant is a widow and she has two daughters. He submits that even the amount towards “**no-fault liability**” was never paid to the claimants. For all these reasons, he submits that the application be dismissed.

8 Upon due consideration of rival contentions as also the reasons set out in the Civil Application, I am satisfied that no sufficient cause has been shown for condonation of delay of 406 days in institution of the appeal.

9 There is clear period of limitation prescribed, not just for instituting the appeal but also for depositing before the M.A.C.T., the amount determined by the M.A.C.T. in its award. The Insurance Company, therefore, has to act with utmost care and the usual reasons of files having to move at various levels or from Officer to Officer, cannot be accepted just for asking. The salary certificate, in this case, was very much part of the record. To say that, an Investigator was appointed to verify the correctness of the deductions shown in the Salary Certificate and such Investigator took some time to make his

report, is hardly an explanation for delay in institution of an appeal. The Investigator, if at all, was required to be appointed then the same should have been done when the matter was pending before the M.A.C.T. In any case, here we are concerned with the demise of the Police-Sub-Inspector working with the State Government. This means that had the appellant been slightly more diligent, it was not at all difficult to obtain the salary details of the deceased, when the proceedings were pending before the MACT. It does appear that, this case of appointment of Investigator has been pleaded only in order to make out some ground for seeking condonation, when in fact, no sufficient cause exist in reality.

10 There was never any defence raised that the driver of the motor-vehicle insured was not having driving license. If there was any doubt in this regard, the Insurance Company would have always taken up such a plea and thereafter proved the same. But nothing of this kind was done. Accordingly, it cannot be said that any sufficient cause has been shown for condonation of delay.

11 In the case of **State of Nagaland** (supra), the delay was of 57 days in filing the application for grant of leave in terms of Section 378(3) of the Code of Criminal Procedure. In the case of **State of Maharashtra & Ors. Vs Vithu Govari & Ors.**² the Division Bench of this Court has held that the reason of “**official hassle**” cannot be accepted. In this case also all that is stated is that the files moved from one place to other. Nothing is stated as to what

2 2008(6) Mh.L.J. 239

prevented the officials from taking a decision within the prescribed period of limitation. In the case of **Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and Ors.**³ the Supreme Court has made the following observations:-

- “(i)

 (xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
 (xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
 (xvi)
 (xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

12 Therefore, applying the aforesaid principles to the facts of the present case, the Civil Application, seeking condonation of delay, cannot be allowed and the same is accordingly dismissed. As a consequence of dismissal of the Civil Application, the Appeal does not survive and the same is also dismissed. In view of dismissal of the appeal, pending Civil Applications do not survive and the same are also disposed of. An amount of Rs.25,000/- deposited in this Court shall be transferred to the M.A.C.T., Thane.

(M. S. SONAK, J.)

3 (2013) 12 SCC 649