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

**CIVIL APPLICATION NO. 318 OF 2007
WITH
CIVIL APPLICATION NO.319 OF 2007
WITH
CIVIL APPLICATION NO.3636 OF 2016
WITH
CIVIL APPLICATION NO.4449 OF 2007
IN
FIRST APPEAL (ST) NO. 425 OF 2007
WITH
FIRST APPEAL (ST) NO. 425 OF 2007**

The Oriental Insurance Co. Ltd. ...Applicant/Appellant
vs
Jeet Raj Karamchand Raj & Ors. ...Respondents.

.....
Mrs Shalini Shankar for the Applicant/Appellant.
Mr A.M.Gokhale for Respondent Nos.1 and 2.
.....

**CORAM : M. S. SONAK, J.
13 FEBRUARY, 2017**

P.C. :

Although there is no prayer in Civil Application No.318 of 2007 to seek condonation of delay in instituting the appeal against the order dated 19.04.2005 made by the Commissioner of Workmen's Compensation, the application is styled as one for condonation of delay of 611 days in instituting the appeal.

2 Perusal of the application indicates that the same has been filed with utmost carelessness and insensitivity. The application was filed in the year 2007 and the period of 10 years was spent only in order to serve the respondents / claimants. The order awards compensation of hardly Rs.80,000/- to the claimants. However, on account of pendency of this application, the claimants have been deprived of such compensation for over last 12 years.

3 In paragraph 1, the appellant – insurance company has stated that it has bright chances of success. In paragraph 2 the appellant has stated that it is “*heart fully apologetic for the enormous time which has been taken for administrative and other grounds*”.

4 In paragraph 3 it is stated that the certified copies of the award dated 19.4.2005 was available with the appellant along with the opinion of the advocate in the first week of June 2005. However, it is stated that according to the practice, the dealing Divisional Office of the appellant has to study the case. After such study for some time, it was felt that it should be referred to the Regional Office. The Regional Office in 2005 sought second opinion in the matter.

5 Again in paragraph 5 there is reference to practice of “*final discussions of various officers of the applicant*”. It is stated that on 5.4.2006 a decision was taken to file an appeal. The file was entrusted to the advocate in the High Court who submitted a bill for expenses and costs on 9.4.2006.

6 In paragraph 6, the following statement is made:

“6. At this juncture, Appellant faced unusual difficulty; viz. The computer system in the office had failed and while repairing re-hauling of the software in the computer to facilitate the payment of cheques was necessary. There was unprecedented technical delay and the cheques could not be drawn.”

7 In paragraphs 7,8 and 9 the following averments have been made;

“7. On 31.8.2006, cheque for the filing expenses remained, however, the cheque for advocate's fee alone was drawn.

8. Due to transfer of the dealing officer, the file was lost sight of. However, on 4.10.2006, a reminder was issued by the advocate, at that time the aforesaid misunderstanding was noticed.

9. Finally on 19.12.2006, the cheques for appeal expenses were sent to the advocate. Thus, there is an enormous delay of 611 days for which once again the Appellant sincerely begs to be excused”

8 On the basis of the aforesaid, it is stated in the application that the delay as explained was *“unwillful and bonafide”*.

9 The aforesaid is not the manner for explaining inordinate delay of 611 days. None of the statement in the application inspire any confidence at all. The appellant – insurance company is a public sector undertaking and cannot rely upon such “practices” which involve such delay. The officers must assume responsibility for such matters realizing that they are also dealing with the public monies. The so called reasons stated in the Civil Application are backed by no material. The so called reasons hardly constitute any sufficient case.

10 In the prayer clauses, the applicant has applied for the following reliefs;

“11. The Applicant, therefore, prays that;

- (a) this Hon'ble Court may be pleased to take up this application for hearing *immediately* and issue notice to the other side.
- (b) Pending the service of notice, the Appellant may be protected by ad-interim orders in the nature of stay of the impugned Judgment and Award dated 19.04.2005 passed by the Commissioner of Workmen' Compensation and Judge IInd Labour Court Mumbai in Application No.(WCA) No. 45/B-47 of 1998.
- (c) Such other and further reliefs as this Hon'ble Court may deem fit and proper be passed.”

11 This means that the applicants have not even bothered to pray for condonation of delay. Casualness and insensitivity is writ large in the application. On basis of such an application the insurance company has deprived claimants' meagre compensation of Rs.80,000/- for last 20 years.

12 Ms Shanti Shankar wants to clarify that she has received the case papers only recently and she is not the one who has drafted the Civil Application. It is made clear that this Court is not concerned with the advocates who have drafted this Civil Application. This Court is seriously concerned at the manner in which the Insurance Company seeks to explain such inordinate delay, particularly in the matter where some meagre compensation is awarded under the Workmen's Compensation Act.

13 No sufficient cause is shown for condonation of delay of 611 days. However, on the basis of such application, the Insurance Company has succeeded in depriving the claimants of the meagre compensation of Rs.80,000/- or thereabouts for last over 10 years. The accident in this case, had taken place sometime in the year 1988. This means that for last almost 20 years, the claimants have not been paid the compensation awarded to them. This, accordingly, is a fit case for award of substantial costs. It is also a fit case where the Regional Manager of the Insurance Company should order an inquiry fixing the responsibility upon the officers who were responsible for this

kind of delay, not only in instituting the appeal after delay but the delay in pursuing this matter after the same, which has lodging resulted in depriving claimants' compensation for all these years. This exercise should be undertaken seriously as otherwise none of the officers assume responsibility in such matters.

14 This application is dismissed with costs of Rs.25,000/-. Such costs to be deposited before the Commissioner of Workmens Compensation within a period of four weeks from today and compliance is to be reported to this Court within a period of eight weeks from today. The Regional Manager of the appellant – insurance company is directed to hold inquiry into the matter, fix the responsibility and thereafter, recover such costs from the officers who are responsible for the delay.

15 In case any amounts are deposited before the Workmen's Compensation Commissioner, the original claimants shall be entitled to withdraw the same unconditionally together with accrued interest, if any, thereof. Civil application No.318 of 2007 is disposed of accordingly. Civil Application No.3636 of 2016 is disposed of accordingly in the aforesaid terms. In view of dismissal of Civil Application Nos.318 of 2007, other Civil Applications as well as First Appeal will not survive and the same are disposed of accordingly.

(M. S. SONAK, J.)