IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2715 OF 2013
IN
FIRST APPEAL (STAMP) NO. 20167 OF 2013

National Insurance Co. Ltd. .. Applicant/Appellant
vs.
Mr. Ajay D. Nikam & Anr. .. Respondents

Mr. Amol Gatne i/b. Mr. Atul Gatne for Applicant / Appellant.
Mr. T. J. Mendon for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE : 06 MARCH 2017

P.C :

1] Heard learned counsel for the parties.

2] Mr. Gatne, learned counsel for the applicant submits that the appellant will restrict the appeal only to the following three grounds for adjudication in which the presence of respondent no. 2 is not necessary. The civil application and consequently the appeal has already been withdrawn as against respondent no. 2. The three grounds are as follows:

(A) That the claimants contribution to the negligence be assessed at 50% instead of 20%;

(B) That there was no material on record to conclude that the income of the claimant was was Rs.10,000/- per month;

(C) That the disability in this case was wrongly assessed at 25% permanent partial disability, when in fact there was no material on record to sustain such a finding.

3] There is delay of 56 days in instituting the appeal. There is sufficient explanation in the application seeking condonation of delay. No doubt, the applicant could have been more diligent in the matter. However, the lack of diligence is not of such nature, as cannot be compensated by payment of costs.

4] Accordingly, civil application no. 2715 of 2013 seeking condonation of delay is allowed. The delay is condoned subject to payment of costs of Rs.3,000/- (Rupees Three Thousand) within a period of four weeks from today. Such costs should be either paid or deposited in this court within a period of four weeks. If deposited, the claimants shall be at liberty to withdraw the same unconditionally. Civil application is disposed of in the aforesaid terms.

5] Taking into consideration the submissions made, appeal is admitted. Mr. Mendon waives notice for respondent no. 1 – claimant no. 1.

6] The appellant to file paper book within a period of six months from today.

7] Since, the applicant / appellant has already deposited the awarded amount, ad interim relief granted earlier is hereby confirmed. The application for stay, if any, already disposed of,

is hereby disposed of.

Chandka **(M. S. SONAK, J.)**