

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CIVIL APPLICATION NO. 3818 OF 2018

IN

FAST/6013/2018

GANESH PUNJABA KANDE AND ANR.

VERSUS

SHESHRAO RAMRAO GHUGE

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Mr. S.R.Sapkal, Advocate for applicants.

Mr. K.B.Jadhav, Advocate for Respondent.

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CORAM: VL.ACHLIYA, J.

DATE : 08/08/2018

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ORAL ORDER :

1. Heard learned counsel for the applicants and respondent.
2. Issue notice to the respondent. Mr. K.B.Jadhav, learned counsel for the respondent – caveator accepts notice.
3. By consent, the application is taken up for hearing.
4. The applicants – original respondent Nos. 1 and 2 in claim petition have moved this application for condonation of 130 days delay in filing appeal against the impugned Judgment and Award dated 18/07/2017 passed by Motor Accident Claims Tribunal in M.A.C.P No. 124/2015.
5. In short, it is the contention of the learned counsel for the applicants that delay caused in filing appeal is not deliberate. It is submitted that for want of legal knowledge and proper advise, appeal

could not be filed within time. When the applicant received the notice of execution proceeding filed by the respondent and they approached Advocate, they were advised to file appeal and accordingly the appeal has been prepared and filed. He submits that appellants have good case to succeed in appeal. The F.I.R. in respect of the incident was lodged after a period of more than five months of alleged accident. It is contended that the respondents have failed to prove the claim and more particularly the involvement of the vehicle owned by the applicants.

6. On the other hand, learned counsel for the respondent opposed the application with contention that the reasons assigned are after-thought and not amounts to sufficient cause to condone the delay. He submits that on the assurance made by the applicants to pay compensation, the F.I.R. was lodged after the incident. As the applicants failed to settle the matter, the complaint came to be filed after five months. Having regard to the overall facts of the case and the cause assigned to condone the delay, I am of the view that delay deserves to be condoned. In case if delay is not condoned, there is every likelihood that the meritorious matter may be rejected due to technical reason. On the other hand, if delay is condoned no serious prejudice would cause to the respondent. The delay caused in filing appeal can be compensated in terms of money. I am, therefore, inclined to allow the application subject to cost of Rs. 10,000/- [Rupees Ten Thousand]. The application is allowed subject to deposit of cost of Rs. 10,000/- [Rupees Ten Thousand] within two weeks from the date of this order. On deposit of costs, the appeal be registered and place for admission. In case the amount of cost as directed is not deposited within the stipulated period, the order to condone the delay stands recalled and the application be treated as rejected. On deposit of cost, the respondent will be at liberty to withdraw the same.

8. The application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP/C.A. 3818..2018 in FA.St. 6013.2018