

**IN THE HIGH COURT OF BOMBAY AT GOA**

MISC.CIVIL APPLICATION NO. 452 OF 2016

IN

STAMP NUMBER MAIN NO. 1664 OF 2016

STATE OF GOA, THR. DIRECTOR  
GENERAL OF POLICE/INSPECTOR  
GENERAL OF POLICE AND ANR.

... Applicant

Versus

MARY VAS ALIAS MARY FERNANDES AND  
ANR.

... Respondent

Ms. Susan Linhares, Additional Government Advocate for the  
Applicants.

Shri Shailesh Redkar, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 30th August 2018

**ORAL ORDER:**

This is an application for condonation of delay of 1124 days in filing an appeal, challenging the judgment and award dated 02.01.2013, passed by the Motor Accident Claims Tribunal, Margao in Claim Petition No. 106/2009. By the said award, a compensation of Rs.6,06,475/- has been granted to the respondent nos. 1 and 2 alongwith interest at the rate of 9% per annum, from the date of the application, till realisation.

2. It appears that there was an application for review filed by the applicant-State, being Civil Review Application No. 8/2015, only on the point whether, the award is inclusive of the

compensation on, 'no fault liability', under Section 140 of the Motor Vehicles Act or whether, it is excluding the same. The said review application has been allowed on 28.06.2016. The learned Tribunal has held that the award is inclusive of the compensation of Rs.50,000/- towards, no fault liability and accordingly, the amount was reduced to Rs.5,56,475/-.

3. Be that as it may, the contention is that the respondents having filed an execution application, a proposal was moved for sanction of funds to be deposited in the execution case, which moved from one table to another, as a result, the matter about challenging the impugned award took a back seat.

4. In my considered view, the said contention cannot be accepted in view of the decision of the Hon'ble Supreme Court in the case of POSTMASTER GENERAL & OTHERS Vs. LIVING MEDIA INDIA LIMITED & ANOTHER, (2012) 3 SCC 563. There is a gross delay of 1124 days and in view of the law laid down by the Hon'ble Supreme Court in the case of ESHA BHATTACHARJEE Vs. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY AND OTHERS, (2013) 12 SCC 649, the case of such a gross delay cannot be considered liberally.

5. The pendency of the review application, on the limited

aspect as to whether, the amount awarded was inclusive of the compensation granted under the no fault liability, could not have precluded the applicant-State from filing the appeal. The proposal moved for sanction of funds, for compliance of the award has nothing to do with the proposal for challenging the award and one cannot wait for the other. In this case, admittedly, the applicant-State has deposited the entire amount of the award before the Executing Court. The amount has been withdrawn by the respondents, except an amount of Rs.one lakh, which is stated to be lying before the Executing Court.

6. On hearing the learned Additional Government Advocate and the learned Counsel for the respondent, I do not find that the applicant-State has made out sufficient cause for not filing the appeal in time. The delay, therefore, does not deserve to be condoned. The application is accordingly dismissed. Registration of Stamp No. 1664/2016 is hereby refused.

Out of Rs.one lakh, which is lying before the Executing Court, an amount of Rs.50,000/- along with proportionate interest shall be paid to the respondents and the remaining amount of Rs.50,000/- alongwith proportionate interest shall be returned to the applicant-State, by the Executing Court.

C. V. BHADANG, J.

EV