

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

**CIVIL APPLICATION NO. 1150 OF 2017
IN
FIRST APPEAL STAMP NO. 5615 OF 2017**

Iffco-Tokio General Insurance Co.Ltd.	... Applicant
Versus	
Rafique Hussain Shaikh and another	... Respondents
.....	
Mr. A. P. Kulkarni for Applicant.	
Ms. Sushma P. Gor for Respondent No.1.	
.....	

CORAM : K. K. SONAWANE, J.

DATE : 3rd AUGUST, 2018.

P. C.:

1. Heard learned Counsel for the applicant-insurance company and the learned Counsel for respondent No.1-original claimant. Despite service, no one else appeared on behalf of respondent No.2.

2. The present application is filed for condonation of delay to present an appeal against the impugned judgment and award passed by the learned Commissioner for Workmen's Compensation, Mumbai in Application (WCA) No. 670/C-179 of 2011. Learned Counsel for the applicant-insurance company

submits that the impugned order came to be passed by the Commissioner for Workmen's Compensation on 6th December, 2012. Thereafter, the applicant-insurance company moved application for review of the order before application for condonation of delay with the Commissioner for Workmen's Compensation. The application for review with condonation of delay application came to be rejected by the learned Commissioner on 19th November, 2016. According to the learned Counsel, the time consumed for approaching to the wrong forum by filing review petition instead of first appeal, that may be excluded and if, it is considered, there is only delay of 100 days in filing present proceeding which is not intentional and deliberate, but caused for compliance of office process. Therefore, he requested to condone the delay.

3. Learned Counsel for the respondent-original claimant raised objection and submits that delay has not been properly explained and therefore, same may not be condoned.

4. In view of nature of the subject matter and the reasons mentioned in the application as well as period consumed to

approach the Commissioner for review of the impugned order on the part of applicant, I find that reasonable opportunity is essential to be given to the applicant to approach to the appellate forum to redress its grievances. It would unjust and improper to preclude the applicant-claimant on technical issue to ventilate its grievances before the appellate forum. Hence, it would justifiable to condone the delay. However, there is an inordinate delay caused for filing present appeal. Therefore, it is imperative to impose some monetary fetter on the applicant-insurance company for inconvenience if any, caused to the respondent-original claimant. In such circumstances, application deserves to be allowed.

5. Accordingly, civil application stands allowed. Delay caused for filing appeal against the impugned judgment and award passed by the Commissioner for Workmen's Compensation in Application (WCA) No. 670/C-179 of 2011 is hereby condoned, subject to condition that the applicant-insurance company shall pay cost of Rs.25,000/- to the claimant or deposit the same in this Court within a month from the date of this order, failure to which the present civil application for condonation of delay shall stand

dismissed automatically without further reference to this Court. In case, the cost is deposited or paid to the claimant, the Registry to take requisite steps for further process for registration of appeal.

6. On registration of appeal, issue notice of admission to the respondents, returnable on 3rd October, 2018. Ms. Sushma P. Gor, learned Counsel waives notice on behalf of respondent No.1.

(K. K. SONAWANE, J.)

Shridhar
Marutirao
Sutar

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