

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.267 OF 2000
WITH
CIVIL APPLICATION NO.14197 OF 2018**

1. Dnyandeo Kisan Garje
Age: 35 yrs, Occ.: Labour
R/o Ghotan Tq. Shevgaon
District Ahmednagar.
2. Bhausahab Dnyandeo Garje
Age 14 yrs, Occu. Education
3. Mina Dnyandeo Garje
Age 12 yrs, Occu. Education
4. Leela Dnyandeo Garje
Age 10 yrs, Occu. Education

Applicant No.1 for himself
& on behalf of Nos. 2 to 4.

= APPELLANTS
(Ori. Claimants)

VERSUS

1. Gangadhar Dashrath Borude

(Appeal stood dismissed
as against Resp.No.1)
2. The New India Insurance Co.
Branch Manager Abott Building
1st floor near Ashoka Hotel
Ahmednagar.

= RESPONDENT/S

Shri Amol P. Khedkar, Adv. for Appellants;

Shri MM Ambhore, Adv. For Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 20th February, 2019

ORAL JUDGMENT

1. Heard Shri Khedkar, learned counsel
appearing for applicants-appellants and Shri

Ambhore, learned counsel for Respondent No.2 – insurance company. The appeal stood dismissed as against Respondent No.1 on 18th November, 2003.

2. An application is filed seeking condonation of delay of more than fourteen years caused in filing an application, seeking restoration of the appeal against Respondent No.1. Respondent No.1 is owner of the offending vehicle which was insured with Respondent No.2 insurance company.

3. The learned counsel for the applicants-appellants, submitted that, at the time of filing of the appeal, present applicants were minor and even after they became major, since they were not aware of the pending proceeding, they could not take appropriate steps to prosecute the said appeal. The learned counsel further submitted that on merits, the applicants have a very good case and as such the appeal needs to be restored against Respondent No.1. The learned counsel further submitted that in the event any liability arises against the insurance company, which is contesting the present appeal, the applicants undertake not to claim interest on the said amount of liability of

the entire intervening period. The learned counsel, in the circumstances, prayed for condoning the delay which has occurred in filing the restoration application.

4. Shri Ambhore, learned counsel appearing for Respondent No.2 - insurance company, has opposed for condoning the huge delay. The learned counsel submitted that at the time of filing of the claim petition in the year 1991 itself, age of present applicant No.2 - Bhausahab was stated as 14 years; whereas ages of present applicant Nos.3 and 4 were stated respectively as 12 years and 10 years. The learned counsel submitted that in the year 2000 itself, the aforesaid applicants had become major. The learned counsel submitted that when all the applicants had become major in the year 2000 itself, the contention raised by the applicants is apparently unacceptable. The learned counsel submitted that in the entire application, no reason has been assigned explaining the inordinate delay, and as such, the application deserves to be rejected.

6. I have given due consideration to the submissions made by the learned counsel appearing

for the respective parties. I have carefully perused the contents of the application. Apparently, I agree with the objection raised by Shri Ambhore, learned counsel appearing for the insurance company, that, the contents of the application nowhere reveal any cogent and sufficient reason for occurrence of such huge delay of more than fourteen years. The material on record shows that the appeal was registered in the year 2000. It is stated in the application that applicant No.1 died on 6th July, 1998. It is thus evident that the appeal was registered after his death, meaning thereby it was registered at the instance of the remaining claimants. Considering the facts, as aforesaid, the contention that the applicants were not aware of the pending proceeding, is falsified. Further, it is nowhere mentioned as to how the applicants came to know about the appeal which was pending and remained unattended for a long period of more than fourteen years. In absence of any reason stated by the applicants, the delay cannot be condoned. I am, therefore, not inclined to allow the present application. In the circumstances, the application

is rejected.

7. In view of the fact that the appeal has been dismissed against Respondent No.1 , i.e. owner of the offending vehicle, the appeal filed against Respondent No.2 - insurance company, also deserves to be dismissed. The application as well as the appeal both, therefore, stand dismissed. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/