

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

**901 CIVIL APPLICATION NO.7172 OF 2019
IN FIRST APPEAL STAMP NO.15513 OF 2019**

**S.T.LAWRENCE EDUCATION SOCIETY & ANOTHER
VERSUS
NATIONAL INSURANCE CO. LTD. & OTHERS**

...
Advocate for Applicants : Mr.Sharad S.
Halkude
Advocate for Respondent no.1 : Mr.Sudhir V.
Kulkarni.

...
**CORAM : V.L.ACHLIYA,J.
DATE : 19.12.2019**

PER COURT:

1] The applicants have moved this application seeking condonation of 638 days delay in filing Appeal for the reasons set out in detail in the application.

2] Heard learned counsel for the applicants – appellants and the respondent no.1 – Insurance Company. The respondent nos.2 to 4 though served, absent.

3] In brief, it is the contention of the learned counsel for the applicants-

appellants that the applicants—appellants have good case to succeed on merits. The Tribunal has allowed the Claim Petition filed by the respondent nos.2 to 4, vide judgment and award dated 5th May, 2017. By the judgment and award passed in the matter, the Tribunal has awarded compensation of Rs.14,18,952/- with interest @ 9% per annum from the date of filing of the Petition till realization. The respondent no.1 – Insurance Company [i.e. original respondent no.3 in Claim Petition] has been directed to pay the amount to the claimants and recover the same from the present applicants—appellants. The Tribunal has held that on account of breach of policy condition, the respondent—Insurance Company is not liable to indemnify the insurer, however, the Tribunal directed the Insurance Company to pay compensation and recover the same from the present applicants – appellants. It is submitted that the Claim Petition was filed in the year 2011 and on behalf of the applicants—appellants, a Clerk deputed to attend the court proceedings has failed to take necessary steps. The Lawyer engaged in the case also not intimated the Insurance Company about decision in the case. Although, the driver of the insured vehicle

was holding requisite licence, the Tribunal has held that the driving licence was not renewed covering date of accident. It is submitted that the Tribunal has relied upon the documents secured by the Insurance Company from the RTO pertaining to the licence issued in favour of the applicant no.2 – driver of the vehicle. It is submitted that RTO record was not updated, and therefore, the entries in respect of renewal of licence have not been recorded in the RTO record. Relying upon the record, which was not updated, the Tribunal has passed the order against the Insurance Company to pay the amount and recover the same from the present applicants–appellants. Only after receipt of the notice of recovery of amount in Regular Darkhast, the applicants – appellants came to know about the award passed in the matter. Immediately thereafter, the steps were taken and appeal has been filed. In the process, delay of 638 days has been caused in filing Appeal.

4] It is submitted that in the accident, which has taken place in the year 2010, two persons died. Dependents/legal heirs of both the persons died in the

accident, filed two separate Claim Petitions. The Claim Petition filed and registered as MACP No.830/2010 was decided on merits, vide judgment and award dated 30th June, 2011, passed by the Member, MACT, Aurangabad. By said judgment and award, the respondent no.1— Insurance company has been held liable to pay compensation jointly and severally along with owner and driver. The award under challenge in Appeal filed by appellants is arising out of same accident. Whereas in MACP No.232/2011 same claim arising out of same accident and filed by dependents of another person died in accident decided on 05.05.2017 dismissed claim application against respondent no.1 Insurance Company. In this background, it is submitted that there are two conflicting decisions rendered by same Tribunal arising out of the same accident. The applicants — appellants have good case to succeed on merits. Delay in filing Appeal was not deliberate and intentional. It was caused due to the negligence on the part of the person deputed by the applicants — appellants to attend the Court proceedings and the Advocate representing the applicants — appellants.

5] On the other hand, learned counsel for the respondent no.1 – Insurance company opposed the application with contention that the reasons assigned are false and concocted. It is submitted that cause assigned is not sufficient to condone 638 days delay in filing Appeal. It is submitted that no evidence adduced in the case on the part of the respondents to prove that the driver of the insured vehicle was holding valid and effective licence to drive the school bus, involved in the accident.

6] On due consideration of the submissions advanced in the light of unchallenged and uncontroverted pleadings made in the application, I am of the view that delay deserves to be condoned. There is a case to be considered in Appeal. There are two contradictory decisions rendered by the Tribunal arising out of the same accident. In the connected Claim Petition, the Insurance company has been held liable to pay compensation along with insured, whereas in the award under challenge, the Tribunal has held that the insured has committed breach of policy condition and the driver of the bus was not holding effective licence on the date

of accident and exonerated the Insurance Company. The Tribunal has passed order to pay and recover amount from insured.

7] It is the contention of the learned counsel for the applicants – appellants that the applicants have documents to show that on the date of accident, the applicant no.2 was holding valid and effective licence to drive school bus. It is the contention of the applicants – appellants that the Tribunal has passed the judgment by relying upon particulars of RTO produced by the respondent – Insurance company, which was not updated. In fact the licence, which was expired on 08.09.2008, renewed by Transport Authority and valid up to 07.09.2011. In that view there is case to be considered on merits. Thus, applying the broad principles laid down by the Hon'ble Apex Court in the case of *Esha Bhattarjee v. Managing Committee of Raghunathpur Nafar Academy & others* reported in (2013) 12 SCC 649 in dealing with application seeking condonation of delay, I am of the view that delay deserves to be condoned. If delay is condoned, no serious prejudice would cause to the respondents as ultimately the Appeal will be decided on

merits. I am, therefore, inclined to allow the Application subject to costs of Rs.50,000/-. Accordingly, application is allowed in terms of prayer clause-B, subject to costs of Rs.50,000/- to be paid within four weeks.

8] Out of Rs.50,000/- to be paid as costs, the applicants – appellants are directed to pay the amount of Rs.25,000/- to the Government Cancer Hospital, Aurangabad and balance amount of Rs.25,000/- to Prerana Trust, Aurangabad [Registration No.F-827] within four weeks from today and produce the receipts of payment.

9] On compliance of the order and production of receipts of payment, the registry is directed to register the Appeal. Failure to pay the costs in terms of order to condone delay stands recalled and cancelled.

10] List the matter for compliance on 29th January, 2020.

[V.L.ACHLIYA]
JUDGE