

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915. WRIT PETITION NO. 12820 OF 2017

Kailas S/o Haridas Lohar,
age 30 years occupation nil
R/o Narkhed Taluka Mohol District Solapur
at present Osmanabad

...Petitioner

VERSUS

1. Xavier S/o Remedios Fernandes,
age major occupation business
R/o H.No. 185, Rivana Kallam,
P.O. Rivana Kepem, Goa State.

2. The Oriental Insurance Co. Ltd.,
through the Oriental Insurance Co. Ltd.,
near S.T. Stand, Osmanabad
Taluka and District Osmanabad

...Respondents

Mr. S.B. Solanke, Advocate for petitioner

Mr. M.K. Goyanka, Advocate for respondent No.2.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 25th January, 2019

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally with consent.

2. After hearing learned counsel, it appears that petitioner had filed W.C.A. bearing No. 29 of 2008 against respondent No.1 as he had suffered certain injuries due to negligence of

respondent No.1 while driving tempo bearing registration No. GA-02/Z-9186. It appears that in respect of another employee suffering under the same accident, respondent No.1 has been directed to pay compensation. Whereas, W.C.A. No. 29 of 2008 had been dismissed in default on 21st July, 2010. An application for restoration of the same had been belated by about 4 months and 16 days. Petitioner had filed his affidavit stating that for treatment to injuries, he had been to the hospital. However, he could not give particulars about the same in application for condonation of delay occurred in filing restoration application. Learned counsel for petitioner submits that petitioner is uneducated person and he had been working as labourer. In the circumstances, his approach may not be as was desired by the court, however, beyond resistance on behalf of respondent about that there was no submission of documents, veracity of the claims under the application had not been seriously disputed. In the circumstances, while the person is before authority seeking employee's compensation, facts and circumstances stated, veracity of which is not disputed, shall receive some due for condonation of delay.

3. It would also be worthwhile to refer to decisions of the Supreme Court in the case of *Collector, Land Acquisition, Anantnag Vs. Mst. Katiji*, reported in *AIR 1987 Supreme Court 1553*; and *Esha*

Bhattacharjee Vs. Managing Committee of Raghunathpur, Nafar Academy and others, reported in 2013 (2013) 12 SCC 649, giving guidelines in respect of condonation of delay and for consideration of application for condonation of delay. Having regard to the same, it would be expedient to condone delay and restore W.C.A. No. 29 of 2008.

4. As such, writ petition is allowed. Impugned order is set aside. Application for restoration is granted.

5. W.C.A. No. 29 of 2008 be proceeded with expeditiously.

6. It would be further expedient to consider the period consumed during the period from the date of impugned order i.e. from 21st July 2010 to the date of filing writ petition. As such, the petitioner shall file undertaking before the Commissioner for Workman's Compensation Act to the effect that he will not claim for payment of interest for the period from the date of dismissal of application i.e. 21st July 2010 to the date of filing writ petition

7. Rule is made absolute, as aforesaid.

8. Writ petition is disposed of.

**(SUNIL P. DESHMUKH)
JUDGE.**