

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC.CIVIL APPLICATION NO. 623 OF 2019
IN
STAMP NUMBER MAIN NO. 1493 OF 2019**

**RELIANCE GENERAL INSURANCE CO.
LTD., THR. LEGAL OFFICER, VIVEK
KARNE.,**

... Applicant

Versus

**KARUNA VISHWANATH KARKI AND 2
ORS.,**

... Respondents

Shri James Lopes, Advocate for the Applicant.

Shri A.D. Bhobe, Advocate for the Respondent no.1.

**CORAM: C. V. BHADANG, J.
Date: 30th September, 2019.**

Order:

This is an application for condonation of delay of 528 days in filing an appeal.

2. The first respondent who is an engineer had sustained 20% permanent disability on account of the injuries in a vehicular accident which took place on 30/11/2012. At the relevant time the first respondent was serving in Wipro

Company and was forced to resign on account of the permanent disability. The first respondent had suffered fracture of L-2 on the dorsal lumbar spine besides L-4 and L-5 disc sustained generalized posterior bulge indenting thecal sac.

3. The first respondent filed Claim petition no.3/2014 before the Motor Accident Claims Tribunal at Margao (Tribunal, for short). The Tribunal by a judgment and award dated 31/7/2017 has granted a composition of Rs.16,86,000/- to the respondent no.1 along with interest. The applicant which was the insurer of the offending vehicle involved in the said accident seeks to challenge the said award in which there is a delay of 528 days.

4. According to the applicant, the matter was entrusted to Advocate S. Naik, who did not communicate the award passed by the Tribunal to the applicant and the Legal Officer handling the matters of Goa Courts resigned for better prospects without updating the status of the matter in the system. The applicant learnt about passing of the award somewhere in the month August 2018, when the applicant received the notice of the execution of the award. After that the matter was processed at various levels including at the Head Office of the applicant at Mumbai and eventually the appeal along with the application for condonation of delay came to be filed on 6/4/2019. The

record discloses that the certified copy of the judgment and award was applied for on 20/3/2019 and it was delivered on 3.4.2019. It is contended the the delay was mainly on account of non communication of the judgment and award and time taken for processing the the proposal to challenge the award.

5. I have heard Mr. Lopes, the learned counsel for the applicant and Mr. Bhobe, the learned counsel for the Respondent.

6. Mr. Lopes, the learned counsel for the applicant submitted that the delay has been caused on account of the fact that the award was not communicated. On receipt of the notice in the execution application, that the applicant learnt about the award somewhere in August 2018. After which immediate steps were taken to file the appeal. However there was some delay on account of the fact that the file was required to be processed at various levels including at the Head Office at Mumbai. It is submitted that the delay is neither intentional, nor deliberate and the applicant has made out sufficient cause for condonation of delay.

7. Mr. Bhobe, the learned counsel for the first respondent has submitted that there is a gross delay of 528 days which has not been properly explained and the applicant ha not made out sufficient cause for condonation of delay.

It is submitted that the application is not supported by affidavit of the concerned advocate nor the applicant has disclosed the name of the Legal Officer who allegedly resigned without updating the status of the matter in the system. It is submitted that the application is vague. It is submitted that even after the applicant is said to have learnt about the passing of the award in August 2018, the certified copy was applied for in March 2019, which shows that the applicant has not acted diligently.

8. I have considered the submissions made and I do not find that the applicant has made out a sufficient cause for condonation of delay. There is a gross delay of 528 days which, as rightly submitted by the learned counsel for the respondent no.1 has not been properly explained. The period of delay is in two parts. The first part pertains to the alleged non communication of the award by the concerned advocate and the second part is about the time taken for processing the file at various levels. The application is not supported by an affidavit of the concerned advocate. The record discloses that even though the applicant learnt somewhere in August 2018 about the passing of the said judgment and award, the certified copy itself is applied on 20/3/2019. The copy was delivered on 3.4.2019 and although the limitation for filing the appeal had long expired, the applicant could file the present application only in the month of September 2019. In my considered view the applicant has

failed to make out sufficient cause for the said delay.

9. The Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others (2013) 12 SCC 649** has inter alia held that although a liberal view can be taken while considering the prayer for condonation of delay of short duration, a stricter view is required to be taken where there is gross delay as in the present case. The application is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/