

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

**CIVIL APPLICATION NO. 2092 OF 2016
IN
FIRST APPEAL (ST.) NO. 6565 OF 2016**

The National Insurance Co. Ltd.Applicant/Appellant
V/s.
Govind Ramdas Kulkarni & ors.Respondents

Ms. Poonam Mittal for the applicant in CAF/2092/2016,
CAF/2093/2016 and for the appellant in FAST/6565/2016
and for the respondent in CAF/3447/2018.
Mr. Vaibhav Gaikwad for respondent no.1 and for the
applicant in CAF/3447/2018.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 07th AUGUST, 2019**

P.C.:-

ORDER IN CIVIL APPLICATION NO.2092/2016 :-

1. By this application, the applicant has sought to condone the delay of 77 days in filing the appeal against the judgment and award dated 03/09/2015 passed by the learned Member, MACT, Vaduj in MACP No.156/2010.
2. The learned counsel for respondent no.1 has no objection for condoning the delay. In the light of the said statement and in view of the reasons stated in paragraph no.3 of the application, which in my

considered view, constitute sufficient cause, delay is condoned. Appeal be registered.

3. Civil Application No.2092/2016 stands disposed of.

ORDER IN CIVIL APPLICATION NO. 2093/2016 :-

4. Ms. Poonam Mital, learned counsel for the appellant / applicant states that the appellant – insurance company has deposited the entire amount as per the judgment and award dated 03/09/2015. The said statement is not controverted by the learned counsel for respondent no.1 – original claimant.

5. In the light of said statement, the execution and implementation of the impugned judgment and award dated 03/09/2015 is stayed till the disposal of the appeal.

6. Civil Application No.2093/2016 stands disposed of.

ORDER IN CIVIL APPLICATION NO. 3447/2018 :-

7. The applicant who is the original claimant herein has sought withdrawal of the compensation deposited by the appellant – insurance

company pursuant to the judgment and award dated 03/09/2015 passed by the learned Member, MACT, Vaduj in MACP No.156/2010.

8. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.20,00,000/- with interest @ 9 % p.a. from the date of filing of the claim petition till final realization. The claimant has stated that the injuries sustained in the accident has resulted in permanent disablement. He states that he is unable to work and earn his livelihood and that he requires money to meet educational expenses of his children.

9. Considering the reasons stated in the application and also considering the ground of contributory negligence raised by the appellant, in my considered view, it would be just and proper to allow withdrawal of 50% of compensation awarded by the Tribunal along with the proportionate interest accrued thereon. Suffice it to say that the withdrawal of the compensation is subject to the final outcome of the appeal. The applicant / original claimant shall give an undertaking that he shall refund the compensation along with interest in the event it is held that the respondent – insurance company is not liable to indemnify the insured.

10. Civil Application No.3447/2018 stands disposed of.

ORDER IN FIRST APPEAL (ST.) NO.6565/2016 :-

11. Mr. Vaibhav Gaikwad, learned counsel waives service of notice on behalf of respondent no.1.

12. The learned counsel for the appellant and respondent no.1 states that the parties are interested in settling the matter amicably and they request to refer the matter to the Lok Adalat.

13. In the light of the said statement, Registry to list the appeal before the Lok Adalat scheduled on 14/09/2019. In the event the matter is not settled before Lok Adalat, Registry to issue notice to the respondent no.2 and list the appeal for 'admission' as per CMIS date.

(SMT. ANUJA PRABHUDESSAI, J.)