

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3065 OF 2019
IN
FIRST APPEAL (ST) NO. 11315 OF 2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Vaibhav Ugale for the Applicant.

CORAM: K.K.TATED, J.
DATED : 03/09/2019

P.C.

1 Not on board. At the request of the learned Counsel for the Applicant, matter is taken on board for urgent order.

2 Heard learned Counsel for the Applicant.

3 By this Civil Application, Applicant original Claimant is seeking condonation of 4 years and 61 days delay in filing First Appeal challenging the judgment and award dated 06.12.2014 passed by the Commissioner of Workmen Compensation, First Labour Court, Thane in Application No. WCA 437/C-118/2011 dismissing the

Applicant's claim application for compensation.

4 The learned Counsel for the Applicant submits that the Applicant by profession is driver. He submits that during this period his family member expired. Because of financial crisis, it is remained on part of Applicant to present First Appeal in this Court immediately. In support of this contention, Advocate for the applicant relied on Para 6 of application which reads thus :

6. The applicant states that in the meanwhile the mother of the applicant become sick and had been suffering from various ailments for which also the applicant have been made to make arrangement for her treatment, even the some of the arrangement made by the applicant for filing the present appeal is also being used for the treatment of mother of applicant and accordingly hereto annexed and marked as **Exhibit "A"** is the copy medical documents of applicant mother."

5 The learned Counsel for the appellant submits in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing First

Appeal and matter be heard on its own merits.

6 I heard the learned Counsel for the Applicant at length. It is to be noted that in the present proceeding, Tribunal passed the impugned Judgment and Award dated 06.12.2014. Thereafter, the Applicant immediately filed application for certified copy on 31.12.2014. The same was ready for delivery on 02.01.2015 and same was collected by the Applicant on 05.01.2015. Though the certified copy was collected by the Applicant in 2015, the present First Appeal filed before this Court in April 2019. There is no explanation in the entire Civil Application, why the Applicant took more than 4 years for filing First Appeal from the date of issuance of certified copy. The reasons given by the Applicant for financial crisis cannot be considered because Applicant can approach to the legal aid committee also for filing appeal before this Court.

7 Even trial Court held that applicant failed to prove relationship of employer and employee. Not only that accident caused due to the negligent

act of the applicant himself. This finding of trial Court is in para 10 of impugned judgment which reads thus :

10. The applicant has failed to prove that he was driver on the Sumo Jeep MH-06-W-3057 as per the complaint dtd. 08.05.2011 Anil Acharya he has received information from Datta Gunjal owner of the vehicle that his brother has taken vehicle for the family function alongwith their mother brother, uncle and etc. Thus, there was no employer-employee relationship. The vehicle was driven by the applicant for family purpose. The applicant has not proved that though on the date of accident he has taken his family members in the vehicle owned by his brother for family function but in fact he is a driver on the said vehicle used for transport of passengers. There is no evidence of employer-employee relationship. Secondly as per the said complaint the accident was caused when the applicant was driving the vehicle without considering traffic rules tried to overtake the truck and could not control the vehicle and dashed on the divider. Thus the accident was caused due to the negligent act of the applicant and therefore as per section 3 of the Employee's Compensation Act there was willful disobedience by the

applicant. The applicant is not entitled for compensation. I answer issue No.4 in negative. In result I pass following order.

8 Considering this fact, I do not find any substance in the civil application.

9 Hence, the following order is passed:

a) Civil Application stands rejected.

b) No order as to costs.

(K.K.TATED, J.)