IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2474/2019
with
First Appeal (ST) No.19346/2019
with
Civil Application No.2475/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr.Nikhil Mehta i/b .KMC Legal Venture for the Applicant.

CORAM: K.K.TATED, J.
DATED : AUGUST 19, 2019

P.C.

1 Heard. By Civil Application No.2474/2019 the Applicant Insurance Co. is seeking condonation of 1 year and 6 days delay in filing the First Appeal challenging the order dated 04.04.2018 passed by the MACT, Mumbai below Exhibit-2 in MACA No.236/2017 allowing the Respondent-Claimant's application u/s.140 of the Motor Vehicles Act, 1988 directing the Insurance Co. and owner of the offending vehicle to pay sum of Rs.25000/- to the claimants on account of No Fault Liability within one month from the date of order failing which they have to pay interest @ 7.5% p.a. from the

date of order till realisation.

2 The learned counsel for the Applicant submits that as soon as the impugned order was passed by the Tribunal, they applied for certified copy on 05.04.2018. He submits that there was 1 day's delay on the part of the advocate for the Applicant practicing in the Trial Court in applying for certified copy of the impugned order. He submits that it was ready on 27.04.2018 and collected on the same day. Thereafter the appeal filed before this court on 26.07.2018. In support of this contention, he relies on para 3 of the Civil Application.

3 The learned counsel for the Applicant submits that, the delay of 1 year and 6 days is not intentional but same is because of procedure which they have to following for filing the First Appeal before this court. He submits that they have good chance of success in the matter. He submits that the Tribunal, at the time of passing the order below Exhibit- 2 failed to consider the fact that there was breach of terms and conditions of the insurance policy. He

submits that once there is breach of policy there is no question of directing the Insurance Co. to pay compensation even u/s.140 of the said Act. Therefore, they preferred the First Appeal challenging the impugned order.

4 The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal and the matter be heard on merits.

5 It is to be noted that in the present proceedings in the accident which occurred on 05.11.2016 the Respondent-Claimant sustained injuries. Hence, he filed an application u/s.166 of the said Act for compensation. The Respondent-Claimant filed application u/s.140 of the said Act for No Fault Liability. It is the case of the Respondent-Claimant that offence was registered against the Driver of the tempo. He also placed on record medical treatment papers, showing that the claimant was treated at Hiranandani Hospital for fracture of pelvis with bladder neck rupture and other injuries. In support of this contention, the

claimant also placed on record a disability certificate issued by Dr. Naresh Khanna disclosing the injuries sustained by the claimant and disability.

6 Bare reading of the impugned order shows that the Tribunal has specifically recorded the finding in para 5 of the impugned order, that the Insurance Co. has failed to place on record any document to show, that the alleged tempo was not insured with them on the date of accident. The Tribunal relied on a copy of the policy on record to show that the tempo was insured with the insurer for the period from 03.08.2016 to 02.08.2017. Hence, the Tribunal held that the Respondent-Claimant is entitled to sum of Rs.25000/- towards NFL

7 It is to be noted that this court in the matter of ***Raphik Mehbub Pakhali Vs. Anantkumar Pravinkumar Jajal & Ors. 1996(1) Mh.L.J. 106*** held that the scope of enquiry in application u/s.140 of the said Act is extremely limited. What has to be ascertained is, if accident had arisen out of use of motor vehicle; whether the accident resulted in injury of the claimant or death of the person

whose legal representatives making the claim and whether the claim is made against the owner and insurer of the vehicle involved in the accident.

8 This itself shows that it is not necessary for the Tribunal to hold a detail enquiry at the time of deciding the application u/s.140 of the said Act.

9 Considering these facts and as the Applicant has failed and neglected to disclose sufficient cause for condonation of 1 year and 6 days delay in filing the First Appeal, I do not find any reason to entertain the Civil Application for condonation of delay.

10 Hence, following order is passed:

a. Civil Application No.2474/2019 for condonation of delay stands rejected.

b. In view thereof, the registration of the First Appeal stands rejected.

c. Civil Application No.2475/2019 for stay of the impugned order stands rejected.

d. The sum of Rs.12500/- deposited by the Appellant at the time of filing the First Appeal be transferred to the MACT Mumbai in MACA No.236/2017 immediately, along with accrued interest.

e. All contentions of the parties are kept open in MACA No.236/2017 pending before the MACT, Mumbai.

f. No order as to costs.

(K.K.TATED, J.)