

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**919 CIVIL APPLICATION NO.15410 OF 2016  
IN FAST/31770/2016**

**BHARAT @ SHATRUGNA LAXMAN KOLI  
VERSUS  
KAMALPRIT SING LAKHVIR SINGH AND ANR**

...  
Advocate for Applicant : Mr. Madhav M. Bhokarikar  
Advocate for the Respondent No.2 : Mr. S.S. Dargad, holding  
for Mr. S.G. Chapalgaonkar

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**CORAM : S. M. GAVHANE, J.  
DATED : 05/02/2020**

**PER COURT:**

. The applicant-original claimant has filed this application to condone delay of 1594 days caused in filing appeal against the judgment and award dated 29/02/2012 passed by the Member, Motor Accident Claims Tribunal, Jalgaon in MACP No.226/2006, as according to applicant the compensation awarded by the Tribunal is inadequate.

2. Mr. Bhokarikar, learned counsel appearing for the applicant referring the grounds of delay mentioned in paragraph Nos.2, 3, 4 and 5 of the application submitted that the applicant suffered 85% permanent disability as per the medical certificate in the accident, but in fact, he suffered 100% loss of earning capacity. The petition was filed by the applicant through his father as a guardian, as he was minor. During pendency of the petition, the applicant attained majority and he continued with the petition. It is

submitted that after the judgment and award passed by the Tribunal, awarding compensation of Rs.5,04,000/-, though, the applicant has claimed compensation of Rs.7,00,000/-, he could not prefer appeal within time as he is poor and has no source of income to make expenses of appeal. It is submitted that the applicant's left leg is amputated from hip joint and therefore, due to loss of 100% earning capacity, the applicant independently couldn't approach anybody for the purpose of filing an appeal. It is submitted that the applicant incurred medical expenses of more than Rs.54,000/-, but the Tribunal has awarded medical expenses of only Rs.10,000/-. Therefore, according to the learned counsel for the applicant, the Tribunal has not awarded just and fair compensation. Further, it is submitted that the applicant is the resident of village Viroda, Tq. Yawal Dist.Jalgaon and therefore, it was difficult for him to contact Advocate from Aurangabad and therefore, delay has been caused to file an appeal. It is submitted that the valuable right of getting just and fair compensation from the respondent is involved in the appeal. The applicant has chances of success in the appeal. It is submitted that on the technical ground of delay, meritorious case of the applicant cannot be thrown. Learned counsel for the applicant submitted that the applicant will not claim interest of the period of delay, in case, amount is enhanced in the appeal by this Court. It is submitted that delay may be condoned by allowing the application.

3. Mr. Dargad, Advocate holding for Mr. Chapalgaonkar, learned counsel appearing for the respondent No.2, referring the affidavit in-reply submitted on behalf of the respondent No.2-insurance company, submitted that statements made in the application are incorrect, false and misleading. The application is not maintainable in the eyes of law. The petition never proceeded ex-parte against the applicant. There is an inordinate delay in filing the appeal. The judgment and award is dated 29/12/2012. It is submitted that the applicant has withdrawn the amount as per award passed by the Tribunal and therefore, it was possible for him to arrange for the expenses to file an appeal. According to the learned counsel, the applicant has not shown sufficient cause to condone the delay and therefore, the application may be rejected.

4. Respondent No.1 is served with the notice but nobody has appeared for him.

5. I have carefully considered the submissions made by the learned counsel appearing for the applicant and the respondent No.2-insurance company, so also I have perused the application and affidavit in-reply filed on behalf of the respondent No.2. There is no dispute that the applicant was minor, when he met with an accident and due to accidental injury, his left leg has been amputated from the hip joint. The petition was filed by the

applicant through his father-guardian and during the pendency of the petition, the applicant attained majority. It appears that the applicant had filed claim petition claiming compensation of Rs.7 lakhs. As per case of the applicant, he had claimed Rs.54,000/- towards the medical expenses and it appears that the Tribunal awarded Rs.10,000/- towards the medical expenses. Considering these circumstances and the submissions made by the learned counsel appearing for the applicant that there is 100% loss of earning capacity of the applicant due to accidental injury, the grounds referred to above and particularly, referred in paragraph Nos.2, 3, 4, and 5 of the application, I find that the applicant has shown sufficient cause to condone the delay. There is no material to show that the applicant is benefited by making delay. In the circumstances present in the case, if the delay is condoned, no prejudice will be caused to respondent No.2, on the contrary, the matter will be decided on merits, if the delay is condoned. In all the above circumstances applying the decisions of Apex Court in Collector, Land Acquisition, Anantnag V/s. Mst. Katiji and others reported in AIR 1987 SC 1353 and Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 Supreme Court Cases 649, I am of the view that the delay needs to be condoned by allowing the application. Therefore, the application is allowed in terms of Prayer Clause "B" on the condition that the applicant will not claim interest of the

period of delay caused in filing the appeal, in case, the amount of compensation is enhanced by this Court in the appeal filed by the applicant.

6. Appeal be registered. After registering the appeal, it be placed for further consideration admission on 20/03/2020.

7. Copy of this order be placed in the appeal filed by the applicant.

**[S. M. GAVHANE, J.]**

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