

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

**CIVIL APPLICATION NO. 8901 OF 2015
IN
FIRST APPEAL [ST] NO. 11576 OF 2015**

Archana wd/o Rameshwar Chavan & Ors.

...Applicants

Versus

National Insurance Company Ltd & Ors.

...Respondents

.....
Shri. S. B. Darwande, Advocate h/f Shri. M. R. Deshmukh, Advocate
for the applicants
Shri. V. R. Mundada, Advocate for respondent No. 1.
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CORAM : B. U. DEBADWAR, J.

DATE : 25th January, 2021

PER COURT : -

1. This is an application for condonation of 171 days delay caused in preferring the Appeal against the Judgment and Award dated 28th July, 2014 passed by Motor Accident Claims Tribunal, Aurangabad in MACP No. 165 of 2011, whereby the death claim came to be allowed partly.

2. Heard Shri. S. B. Darwande, learned Counsel on behalf of the applicants and Shri. V. R. Mundada, learned Counsel for respondent No. 1 – Insurer of offending vehicle.

3. Respondent nos. 2 & 3, owner and driver of the offending vehicle respectively, failed to appear though notices were served on them.

4. Shri. Darwande, learned Counsel for the applicants submitted that, late Rameshwar Chavan died in an accident, took place due to rash and negligent driving of offending vehicle by respondent no. 3 as driver of respondent no. 2. The compensation awarded by learned MACT, Aurangabad, is incorrect and inadequate. Applicants are the widow, minor children and aged parents of the deceased-Rameshwar. They were fully dependent on the deceased-Rameshwar. On sudden accidental death of bread earner of family, the family members went in a shock. It had become difficult for applicant no. 1 – Archana to maintain minor children and aged parents-in-law. She had no source of income of her own. Consequently, applicants could not manage to raise the money for preferring appeal. After getting the compensation amount determined by MACT, in pursuance of the application for execution of award, they have filed present appeal along with the present application. According to the learned counsel for the applicant, delay of 171 days caused in filing the appeal is neither intentional or deliberate nor due

to negligence. It is purely because of *bona fide* reasons and, therefore, the delay deserves to be condoned.

5. Per contra, Shri. V. R. Mundada, learned Counsel for respondent no. 1 – Insurance Company, vehemently argued that, the explanation given by the applicants in paragraph nos. 4 & 5 of the application, is not cogent and sufficient to condone the delay within the meaning of Section 5 of the Limitation Act. Therefore, the application for condonation of delay is liable to be dismissed.

6. In the light of the aforesaid submissions made at bar by learned Advocates representing both the sides, I have carefully gone through the record. The record shows that, the deceased Rameshwar Chavan met with an accident involving an offending motor vehicle and died at the early age of 35. Record further shows that, the applicants are the widow, two minor children and aged parents of the deceased - Rameshwar Chavan. The applicant no. 1 has stated on oath that, she has no source of income of her own and was fully dependent on the deceased – Rameshwar Chavan. It was natural on the part of the applicants to undergo the shock due to sudden death of Rameshwar Chavan. The reason for not preferring the appeal in time due to paucity of money and due to undergoing shock, are sufficient reasons

within the meaning of Section 5 of the Limitation Act. Nothing is brought on record by respondent no. 1 to falsify the aforesaid reasons.

7. Shri. Mundada, learned Counsel for respondent No. 1 submitted that, since 2015, the application for condonation of delay is pending. The applicants have not taken effective steps for hearing and disposal of the application. As such, they are not entitled for interest on the enhanced compensation, if any.

8. This objection cannot be decided at this juncture, since fate of the appeal is not known. However, respondent no. 1 is at liberty to raise this objection during the course of hearing of the appeal. The point raised by Shri. Mundada, learned Counsel for respondent No. 1, in respect of the interest for the period of five years i.e. during which the application for condonation of delay was pending, is kept open for decision while disposing of the appeal.

9. Thus, in view of the above, the application deserves to be allowed. Hence, the following order.

ORDER

[i] The Civil Application is allowed.

- [ii] The delay of 171 days caused in preferring the Appeal against the Judgment and Award dated 28th July, 2014 passed by Motor Accident Claims Tribunal, Aurangabad in MACP No. 165 of 2011, is condoned.
- [iii] Appeal be registered.

[B. U. DEBADWAR]
JUDGE