

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

**CIVIL APPLICATION NO. 2191 OF 2018
IN
FIRST APPEAL [ST] NO. 31742 OF 2017**

Suresh Mulchand Rathod (Pawar)

...Applicant

Versus

Snajeev Trambaklalji Agrawal & Anr.

...Respondents

.....

Shri. M. M. Bhokarika, Advocate for the applicant

Shri. C. V. Bodkhe, Advocate h/f Shri. R. V. Gore, Advocate for
respondent No. 1

Shri. A. G. Kanade, Advocate for respondent No. 2

.....

CORAM : B. U. DEBADWAR, J.

DATE : 25th January, 2021

PER COURT : -

1. This is an application for condonation of 426 days delay caused in filing an appeal against the Judgment and Award dated 29.03.2016 passed by Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No. 495 of 2010, whereby the disability claim has been allowed partly with simple interest @ 7.5% p.a. from the date of the petition till the realization of the entire amount.

2. Heard Shri. M. M. Bhokarikar, learned Advocate for the applicant, Shri. C. V. Bodkhe, learned Advocate on behalf of respondent No. 1 and Shri. A. G. Kanade, learned Counsel for respondent No. 2.

3. Shri. Bhokarikar submitted that, the applicant, who was 20 years old college-going youth, met with an accident involving the offending vehicle driven by the driver employed by respondent no. 1, in a rash and negligent manner. Due to injury caused in the said accident, the applicant suffered permanent disability. Though the Tribunal has accepted the evidence of medical expert regarding disability, the disability has not been assessed properly. The applicant/appellant has good case on merits for enhancement of the compensation. Due to disability suffered by the applicant, it was difficult for him to take necessary steps for preferring appeal in time, however, with great efforts he managed to collect necessary documents, engaged a lawyer and preferred appeal along with this application.

4. Looking to the condition of the applicant and the difficulties being faced by him, the delay of 426 days caused in filing the appeal cannot be said to be intentional or deliberate.

5. Per contra, Shri. A. G. Kanade, learned Counsel for respondent No. 2, vehemently argued that, the impugned Judgment and Award is correct, proper and legal in all respects. There is no merit in the appeal sought to be preferred by the applicant. The explanation tendered for the delay in paragraph no. 3 of the application is not sufficient within the meaning of Section 5 of the Limitation Act and, therefore, the application for condonation of delay is liable to be dismissed.

6. Shri. C. V. Bodkhe appearing on behalf of respondent no.1 – owner of the offending vehicle adopts the aforesaid arguments advanced by Shri. A. G. Kanade.

7. In the light of the aforesaid submissions made at bar, I have carefully gone through the record, more particularly, age of the applicant and disability suffered by him in the said accident. Looking to the amputation of right lower limb, it cannot be said that whatever difficulties being suffered by him stated in the paragraph no. 3 of the application, are hypothetical and not genuine. The explanation for delay given in the application referred to in paragraph supra, in my view, it is a sufficient explanation to condone the same.

Shri. Bhokarikar, on instructions, submitted that, the applicant waives right to claim interest on the enhanced amount, if any, in the appeal for the period of 426 days i.e. period of delay caused in preferring appeal.

8. In view of above, I pass the following order: -

ORDER

- [i] The Civil Application is allowed.
- [ii] The delay caused in preferring the appeal against the Judgment and Award dated 29.03.2016 passed by Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No. 495 of 2010, is condoned.
- [iii] Appeal be registered.
- [iv] Copy of this order be annexed to the appeal.

[B. U. DEBADWAR]
JUDGE