

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Civil Application (F) No.1514/2020 in F.A. St. No.8721/2020

(ICICI Lombard General Ins. V Anuradha Nerkar and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms Ashwini Athalye, Adv for applicant.
Shri Mandhare, Adv h/f for Shri P.S. Mirache, Adv for resp. nos.1 to 3.

CORAM : S.M. MODAK, J.

DATE : 11-06-2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The respondent nos. 1 to 3 are represented by learned Advocate Shri Mirache. Respondent no.4 is dead when the proceedings were pending before the Claims Tribunal. Respondent no.5 is served and filed reply.

3. Heard learned Advocate Ms Athalye for the appellant and learned Advocate Shri Mandhare holding for Shri Mirache, Advocate for respondent nos. 1 to 3.

4. It is true that the Hon'ble Supreme Court as per the order passed on 08-03-2021 in Suo Motu Writ Petition © No.3/2020 was pleased to exclude the period from 15-03-2020 till 14-03-2021 while computing the period of limitation. In this case, the impugned judgment is delivered on 18-12-2019 and certified copy was delivered on 11-02-2020. The period of 90 days expired during the period directed to be excluded by the

Hon'ble Supreme Court. The appellant took sometime for completing the office procedure. The prayer for condonation of delay is opposed. I find convincing reason for condoning the delay. Hence, the delay of 157 days in preferring an appeal is condoned.

5. Application is disposed of.

First Appeal St No. 8721/2020

Heard.

Admit.

Issue notice to the respondents.

Call R and P.

Learned Advocate Shri Mirache waives notice for respondent nos. 1 to 3.

There is no need to issue fresh notice to respondent no.5.

The appellant to serve the copy of appeal memo and the documents on the respective learned Advocates.

Civil Application (F) No.754/2021

Heard learned Advocate Shri Mandhare for respondent nos. 1 to 3 and learned Advocate Ms Athalye for the appellant/ Insurance Company.

2. On one hand, contesting claimants are asking for withdrawal of the entire amount of Rs. 1,55,18,699/- (as respondent no.4 is dead) whereas on the other hand, the

appellant is asking for early final hearing. It is for the reason that the involvement of two wheeler Bullet has not been conclusively established. The appellant heavily relied upon the admission given by respondent-Anuradha in the cross examination. She has answered -

“while my husband was about to cross the road, one Car came and gave dash to two wheeler of my husband due to which my husband fell on the road near the footpath. I do not know the registration number of Car which gave dash to two wheeler of my husband.”

3. Whereas the contesting respondents claimed that “this answer during cross examination in response to the question put” is not supported by the pleadings in the written statement of the Insurance Company. Learned Advocate for the respondent relied upon the FIR, police papers and the evidence given by the first informant before the Court of Magistrate (wherein the criminal case against the owner of the Bullet is going on). Whereas the learned Advocate for the appellant emphasized that the burden of proof lies on the contesting respondents to prove the involvement of the Bullet driver. There was also an attempt made to submit about the affidavit of Bullet driver filed before the Magistrate Court. In which it is stated that in fact one car hit the two wheeler driven by the deceased and the Bullet driver driving on the same road and at the same time skidded off due to that accident. My attention is also brought to the findings given by the Claims Tribunal about the police papers and also to the admission given during cross examination.

4. At this stage it may not be proper to make any

observation and even prima facie observation about the involvement of the Bullet driver. Because if any observation is made it will affect the merits of the matter. I think the Court will have to balance the right of the parties. The Court is inclined to take up early final hearing of the matter. At the same time the interest of the claimants needs to be protected. The earning member of the family has expired and the accident took place in the year 2015. So this Court is inclined to allow them to withdraw 25% of the deposited amount on usual undertaking. Hence, the following order is passed :-

ORDER

- (a) The application is partly allowed.
- (b) The respondent nos. 1 to 3 are permitted to withdraw 25% of the deposited amount of Rs.1,55,18,699/- along with accrued interest on usual undertaking. They are directed to furnish bank details.
- (c) After withdrawal, remaining amount be invested in fixed deposit in nationalised bank.
- (d) The appellant is directed to file private paper book.
- (e) Hearing of the appeal is expedited.
- (f) If the appeal is not disposed of within the period of six months, in that case, the contesting respondents are at liberty to ask for withdrawal of the more amount.
- (g) It is made clear the none of the parties is entitled to delay the hearing and will have to to adhere to the time limit.

(h) Application is disposed of.

(S.M. Modak, J.)

Deshmukh