

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.92 OF 2021

IN

FIRST APPEAL NO.894 OF 2021(F)

AND

MISC. CIVIL APPLICATION NO.94 OF 2021

IN

FIRST APPEAL NO.891 OF 2021(F)

ABCN LOGISTICS PVT. LTD.

... APPLICANT

Versus

RELIANCE GENERAL INSURANCE
CO. LTD. & ORS.

... RESPONDENTS

Mr. Vibhav Amonkar, Advocate for the Applicant.

Mr. James Lopes, Advocate for Respondent No.1.

**Mr. Sudesh Usgaonkar with Ms. R. Pereira, Advocates for
Respondent Nos.3 to 5.**

CORAM: M. S. SONAK, J.

DATE : 14th JULY 2022

P.C. :

1. Heard Mr. Vibhav Amonkar for the applicant, Mr. James Lopes for respondent no.1 and Mr. Sudesh Usgaonkar for respondent nos.3 to 5.

2. Mr. Amonkar states that respondent no.2 – the driver is served. He points out that even otherwise the driver was ex-parte before the Tribunal.

3. These applications seek condonation of delay of 674 days in instituting an appeal against judgment and award dated 16.02.2019.

4. The applicant is the owner of the vehicle involved in the accident. It is his case that no efforts were taken by the claimants to serve him through post or affixation. He submits that substituted service by publication in Free Press Journal should not have been allowed without exploring the possibilities of service by affixation. He states that there were difficulties to prefer the appeal due to COVID pandemic. He submits that in such matters the length of the delay is not the most relevant factor but the quality of explanation is most relevant. On instructions, he offers to compensate the respondents for the prejudice that they might suffer if the delay is condoned. On instructions, he offers to pay costs of ₹50,000/- in each of the applications. He submits that there are no malafides involved and the applicant has gained nothing by delaying the institution of the appeal.

5. Learned Counsel for the respondents opposed condonation of delay by submitting that there was valid service through publication and even otherwise the delay is inordinate and unexplained.

6. Having considered the rival contentions, to my mind, a case is made out to condone the delay. Though there is no scope to accept Mr. Amonkar's contention about invalid service, all factors like the intervening COVID pandemic, the possibility that the Insurance Company will contest the proceedings, etc. may have contributed to the delay in instituting this appeal. It appears that the applicant is mainly aggrieved by the order of pay and recover made by the Tribunal. The applicant was informed about the direction for pay and recover when steps were taken by the applicant.

7. The applicant has also offered to pay costs of ₹50,000/- in each of the applications. This is indicative of its bonafides. Mr. Amonkar is also justified in contending that the applicant has not gained anything from the delay.

8. Therefore, on cumulative consideration of the above facts and circumstances, the delay in instituting appeals is hereby condoned subject to the applicant depositing costs of ₹50,000/-

in each of the applications, that is a total amount of ₹1,00,000/- in this Court within four weeks from today. Mr. Amonkar states that necessary intimation will be given to Mr. Lopes and Mr. Usgaonkar before this amount is deposited.

9. From out of the amount of this ₹1,00,000/- the claimants are permitted to withdraw an amount of ₹50,000/- and respondent no.3 - Insurance Company is permitted to withdraw the balance amount of ₹50,000/-. However, if there is any default in deposit of the above amount of ₹1,00,000/- then both these applications shall be deemed to have been dismissed without further reference to this Court.

10. These applications are disposed of in the above terms.

M. S. SONAK, J.