

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2075 OF 2018
IN
FIRST APPEAL (ST.) NO. 5478 OF 2018**

Smt. Chabibai Ananta Khandagale and ors. Applicants
v/s.

Mr. Sayad Ali Mohiddin and anr. Respondents

Ms. Rina Kundu i/b. Mriganka Kundu for the Applicants.
Ms. Poonam Mital for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 01st JULY, 2022.

P. C. :-

. By this Application, the Applicants have sought to condone the delay of 4 years and 136 days in filing the Appeal under section 173 of Motor Vehicles Act.

2. Heard learned counsel for the respective parties.

3. The records indicate that the Applicants who are the original claimants had filed Application under section 166 of the Motor Vehicles Act being M.A.C. Application No.969/2005 claiming compensation in view of death of Anant Khandagale who expired in a motor vehicular accident on 25/01/2005 involving auto rickshaw bearing no.MH-03-V-

8149. The Claims Tribunal partly allowed the Application by judgment and award dated 10/01/2013. The learned Judge observed that the Applicants who are the original claimants are entitled for compensation of Rs.5,61,600/-. However, since they have claimed an amount of Rs.4,00,000/-, the Tribunal awarded compensation of Rs.4,00,000/- with interest and held the insurer and insured jointly and severally liable to pay the said compensation.

4. Aggrieved by the said judgment, the Respondent No.2 – Insurance Company had filed Appeal being First Appeal No. 1373 of 2017 with an Application for stay of execution and implementation of the impugned judgment and award. The Applicants have stated that this Court had stayed execution of the impugned judgment as a consequence thereof, they were unable to withdraw the compensation. The Applicants claim that they were not able to file the Appeal for challenging the impugned judgment due to financial constraints. The Applicants have stated that the Appeal filed by the Insurance Company came to be dismissed and it is only after they contacted the advocate that he advised them to file an Appeal. Hence, they borrowed the money for court fees and filed the Appeal.

5. Though the delay is inordinate, the same in my considered view is sufficiently explained, bonafide and refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold thus defeating cause of justice. Taking a justice oriented approach, the delay needs to be condoned. Accordingly, delay is condoned. Civil Application is allowed. Appeal is ordered to be registered after removal of office objections, if any.

6. Civil Application stands disposed of.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)