

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

CIVIL APPLICATION NO. 1244 OF 2012
WITH
CIVIL APPLICATION NO. 1246 OF 2012
IN
REJECTED CASE NO. 179 OF 2012

Oriental Insurance Co. Ltd. ..Applicant

v/s.

Meerabai Zumbarlal Mudgul & Ors. ..Respondents

Mr. Saumen Vidhyarthi a/w. Ms. Ishita Bhole h/f. Asim Vidhyarthi for
the Applicant.
None for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 30th JUNE, 2022.**

P.C.

1. The Applicant herein had filed appeal under Section 173 of Motor Vehicles Act along with delay condonation application, seeking to condone the delay of 151 days in challenging the award dated 21.1.2008 in MACP No. 13 of 2003.

2. The Appellant Insurance Company has assailed the judgment and Award on the ground that it is held liable to indemnify the insured despite the defence that the vehicle was driven without valid license. The Respondent No.5 the insured, expired on 12.03.2004, i.e. during pendency of the application under Section 166 of the Motor Vehicles Act. The appeal was filed against a dead person. Furthermore, Order

dated 26.03.2010 indicates that the Applicant had sought time to bring on record legal representatives of deceased Respondent No.5. The Applicant was put to notice that if no steps were taken within a period of four weeks, the first appeal would be abated as against Respondent No.5. Despite the said order, Applicant did not take steps to bring on record legal representatives of the deceased Respondent No.5. Hence, by order dated 31.08.2010 this Court held that the appeal as a whole stands abated and hence the application for condonation of delay does not survive, and accordingly disposed of the application for condonation of delay.

3. Almost a year after the said order, the Applicant has filed Application No.1244 of 2012 seeking recall of order dated 31.08.2010, and by application No.1246 of 2012 have sought to condone the delay of 6 years 39 days, and to bring on record the legal representatives of deceased Respondent No.5

4. The records reveal that the Applicant had learnt about the death of Respondent No.5 in the year 2010. Despite granting time, the Applicant did not file any application, hence the appeal was dismissed as abated, vide order dated 31.08.2010. Even after dismissal of the Appeal, the Applicant did not take expeditious steps for setting aside abatement, but waited for a period of almost 7 months to file the application. The reasons assigned in para 10 of the application reflect negligence and inaction, which cannot be construed as sufficient cause. Moreover, such

inordinate delay cannot be condoned by ignoring the rights accrued in favour of the claimants, who are the victims of the motor vehicular accident.

5. Considering the above facts and circumstances, in my considered view, the reasons stated in the application do not constitute sufficient grounds either to condone the delay or to recall the order. Hence the applications are dismissed.

(ANUJA PRABHUDESSAI, J.)