

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

CIVIL APPLICATION NO. 2019 OF 2005
IN
FIRST APPEAL (ST) NO. 32159 OF 2004

Kantadevi w/o. Vijaykumar Thole ..Applicant

v/s.

Khanderao Rambhau Gaikwad & Ors. ..Respondents

WITH
CIVIL APPLICATION NO. 2021 OF 2005
IN
FIRST APPEAL (ST) NO. 32155 OF 2004

Archana Vijaykumar Thole @ Archana Jain ..Applicant

v/s.

Khanderao Rambhau Gaikwad & Ors. ..Respondents

Mr. Mihir Govilkar i/b. Mr. R.V.Govilkar for the Appellant/Applicant
Petitioner.

Ms. Sarita Suryawanshi i/b. Urmila Sanil for Respondent No.4.(NIC)

Mr. Sanjay Shinde for the Respondent No.1.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 7th JUNE, 2022.**

P.C.

1. By these applications the Applicants have sought to condone the delay of 222 days in filing the appeal under the provisions of MACT Act.

2. Heard Mr. Govilkar learned Counsel for the Appellant, Mr. Shinde

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for the Respondent No.1 and Mr. Suryawanshi for the NIA.

3. The aforesaid Claimants had filed Claim Petition under Section 166 of the Motor Vehicles Act, in view of motor vehicle accident involving Jeep No. MH 15 A-4391 and Maruti Car No. MVA 888. Vijaykumar, the driver of the Maruti Car expired in the said accident. Appellant Kantadevi Thole is the widow, whereas Appellant Archana Thole is the daughter of deceased Vijaykumar. By the impugned judgment dated 11.02.2022 the Claims Tribunal partly allowed the Claims Petition No. 392 of 1994 filed by the Appellant Archana Thole and dismissed the Claim Petition No.393 of 1994 filed by Kantadevi Thole.

4. Being aggrieved by the impugned judgment the Appellants have preferred these appeals along with applications for condonation of delay. It is the case of the Applicants that Archana Thole, the Appellant in First Appeal (St) No. 32155 of 2004 has become quadriplegic due to the injuries sustained in the accident and was under continuous medical treatment. It is stated that the Applicants were in total mental shock and depression, due to which it was not possible for them to pursue the matter and/or to travel to Mumbai to file an appeal.

5. It is well settled that in exercising discretion under Section 5 of the Limitation Act, the Court should adopt a pragmatic and not pedantic approach. In Collector, Land Acquisition Anantnag & Anr. vs. Mst. Katiji & Ors. AIR 1987 SC 1353, the Honourable Supreme Court while

laying down certain principles for condonation of delay has observed that refusing to condone delay can result in meritorious matter being thrown out at a very threshold and cause of justice being defeated. Similarly, in *S. Ganesh Raju (Dead) through L.R. & Anr. vs. Narisamma (Dead) through LR & Ors.* (2013)11SCC 341, the Hon'ble Supreme Court has held that expression 'sufficient cause' has to be given a liberal construction as to advance substantial justice and unless the respondents are able to show malafides in not approaching the Court within the prescribed period of limitation, generally as a normal rule, delay should be condoned.

6. In the instant case the explanation offered by the applicant is plausible and bonafide. These Applicants who have suffered mental and physical pain due to the death of their dear one in a motor vehicular accident would not stand to benefit by filing the appeal date, hence they cannot be accused of deliberate inaction or culpable negligence.

7. Under the circumstances, the application is allowed. Delay in filing the appeals is condoned. Appeals are ordered to be registered.

(ANUJA PRABHUDESSAI, J.)