

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

**CIVIL APPLICATION (CAF) NO. 2108 OF 2022
IN
FIRST APPEAL (ST) NO. 14032 OF 2022**

Prakash Mohanlal Balwani

Vs.

Smt. Pratibha wd/o Narayan Kotambkar and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.M. Tahaliyani, Advocate for appellant.
Mr. Dhiraj R. Bhoyar, Advocate for respondent Nos.1 to 4.
Mr. P.P. Pendke, Advocate for respondent Nos.5 & 6.

CORAM : ABHAY AHUJA, J.

DATE : 13.10.2022.

This is an application seeking condonation of delay of 92 days in preferring appeal against judgment dated 03.09.2021, passed by the Chairman, Motor Accident Claims Tribunal, Wardha, in M.A.C.P. No.26/2014, whereby the Tribunal has directed the appellant herein and the appellant in First Appeal No.649/2021, to jointly and severally pay an amount of Rs.10,46,000/- inclusive of 'No Fault Liability' (NFL) together with interest @7% per annum, from the date of the application to actual realization.

2. Mr. Tahaliyani, learned counsel for the appellant/applicant submits that although his client was a party to First Appeal No.649/2021, as respondent No.5 and he did file Vakalatnama on behalf of the appellant herein (the respondent No.5 therein), pursuant to order dated 30.03.2022, in that appeal, however, in view of his own health condition, family circumstances and his wife's illness, was unable to file an appeal.

3. Learned counsel submits that on 24.09.2021, he underwent a bypass surgery for heart blockages diagnosed earlier, that the appellant has had three grafts for the bypass. Learned counsel further submits that on 17.12.2021, the appellant's brother-in-law passed away and thereafter, on 02.03.2022, a pacemaker had to be installed in his mother's body. Thereafter, on 26.05.2022, the appellant's wife was diagnosed with breast cancer and the histopathology report confirming carcinoma came on 13.06.2022.

4. Learned counsel further submits that by way of pursis, all the investigation reports, the discharge summary as well as the hospital bills have been filed in this Court. He submits that with these

overwhelming situations faced by the appellant in his life, he was unable to pay attention to these matters. That, he also had financial difficulties during this period taking care of himself and the members of his family.

5. Learned counsel submits that although, the appellant was represented in First Appeal No.649/2021, however, until the order dated 12.08.2022, no steps could be taken until after passing of the order dated 12.08.2022, when this Court granted liberty to the claimants to proceed with the execution against the appellant being the owner of the vehicle. The appellant sought legal advice and was advised to file this appeal. Mr.Tahaliyani, learned counsel therefore, urges this Court to condone the delay of 92 days and direct the Registry to register the first appeal.

6. Mr. Bhoyar, learned counsel for the claimants has opposed the application for condonation of delay by filing a reply dated 08.10.2022. Learned counsel submits that the appellant was having knowledge of the First Appeal No.649/2021, filed by the nephew and brother, and he was also respondent No.5 therein, continuously

watching as well as participating in the Court hearing has failed to file the appeal in time and is now, urging this Court to condone the delay, on the ground of false sympathy. Learned counsel further submits that the appeal is being preferred only to delay in execution of the judgment of the Tribunal and to deprive the claimants of their rightful claims as observed by the Tribunal.

7. Mr. Pendke, learned counsel for respondents No.5 & 6, (the appellants in First Appeal No.649/2021), submits on instruction that he has no objection, if the delay is condoned.

8. I have heard the learned counsel for the parties and with their able assistance, I have perused the application and the reply, as well as the relevant orders.

9. The background facts are that the respondents/claimants are the heirs of the respondent No.1 – Narayan, who died in an accident caused by a two wheeler owned by the appellant and driven by respondent No.5, who was a minor then. The deceased – Narayan was returning from his village and after reaching Wardha bus stand when he was proceeding to his house at Dhantoli, then in

front of Agrasen Bhavan, Wanjari Chowk, the respondent No.5, who was riding the two wheeler came from Ram Nagar side in high speed and hit the deceased from the front, after which the deceased fell down and was taken to Kasturba Hospital Sewagram, then referred to Orange City Hospital, Nagpur, and finally he passed away on 19.12.2012, during his treatment.

10. The Motor Accident Claims Tribunal, Wardha, after considering the evidence has directed the appellant herein, as well as the respondent No.5 to jointly and severally pay an amount of Rs.10,46,000/- inclusive of NFL interest etc. to the claimants. The appellant herein is the owner of the offending vehicle and the respondent No.5 (the appellant in First Appeal No.649/2021) is the driver of the offending vehicle.

11. On 12.08.2022, a single Bench of this Court in Civil Application No.2538/2021, in First Appeal No.649/2021, has directed the respondent No.5 herein to deposit Rs.3,50,000/- subject to which a stay had been granted on the execution of the order of the Tribunal.

12. By the said order, the claimants were granted liberty to proceed with the execution against the owner of the vehicle viz. the appellant herein.

13. There is no doubt that the appellant herein was represented and was appearing in First Appeal No.649/2021, as respondent No.5 and was aware of the proceedings. It also appears that it was only after the liberty that has been granted to the claimants to proceed with the execution against the appellant, it has been thought appropriate by the appellant to prefer this appeal.

14. However, it also cannot be ignored that the appellant did suffer from family emergencies including his health condition, his mother's and wife's health condition as described earlier, which were also serious in nature. In my view therefore, sufficient cause has been made out by the appellant for condoning the delay of 92 days in preferring this appeal.

15. Let the delay be condoned and the appeal be registered as soon as possible.

16. Considering the fact that the accident is of the year 2012, the owner and the driver of the

vehicle, are related to each other and that the vehicle was not insured, it is recommended that the parties settle this matter and bring an end to this litigation and to the misery of the claimants, as soon as possible.

17. At this stage, all the learned counsel jointly request that the matter be referred for settlement in the upcoming Lok Adalat.

18. Let the matter be referred to the Lok Adalat on 12th November, 2022.

JUDGE