

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

CIVIL APPLICATION (CAO) NO.09 OF 2022
WITH
CROSS OBJECTION ST. NO. 453 OF 2021
IN
FIRST APPEAL NO.118 OF 2011

(THE NEW INDIA ASSURANCE CO. LTD.....VS.. NASEEMABI MOHD. SADIQUE & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms Anita Mategaonkar, Advocate for Appellant-Insurance Company.
Shri C.A.Joshi, Advocate for Respondent Nos.1 to 3/Cross Objectors.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 21, 2022.

1. Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard.

3. By this application, the applicants/ cross-objectors have sought to condone the delay of 3263 days in filing Cross-Objection.

4. Ms Anita Mategaonkar, learned counsel for the appellant-Insurance Company vehemently objects to the application on the ground that the delay is inordinate and that no justifiable reasons are made out for condoning the delay.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The appellant-Insurance Company has filed appeal under Section 173 of the Motor Vehicles Act. The learned counsel for the cross-objectors states that the cross-objectors have not received notice of final hearing after admission of the appeal. It is stated that the cross-objectors were under bonafide belief that the cross-objections were to be filed within 30 days from date of fixing of the appeal for final hearing.

7. Learned counsel for the cross-objectors states that in *VIDC Wardha..vs.. Kawadu*, reported in **2017(6) Mh.L.J. 780** this Court (Shri S.B.Shukre, J) had held that the period of one month contemplated under Order 41, Rule 22(1) of the Civil Procedure Code must be calculated from the date of service of notice upon the cross-objector of final hearing of appeal and that this date should not be confused with date fixed for taking some steps in between admission of appeal and fixing of appeal for final hearing. Learned counsel for the Cross-Objectors states that in view of the said judgment the Cross-Objectors were under a bonafide belief that the Cross-Objections have to be filed within 30 days from fixing of the appeal for final hearing.

8. It is not in dispute that as on the date of filing of the appeal the judgment in VIDC Wardha (supra) was in force. In the subsequent decision in *Vasant Builders ..vs.. Mohan*, reported in **2021(1) Mh.L.J. 585**, it is held that the appeal has to be filed within 30 days from the date the cross-objectors were served with the notice of the day fixed for hearing of appeal. The explanation given by the applicants is thus probable and possible. It has also to be borne in mind that the provisions of the Motor Vehicles Act, 1988 are beneficial and the Tribunal as well as the Court is under obligation to award 'just and reasonable' compensation. It is also well settled that the compensation can be enhanced even in absence of cross-objections. Reliance is placed on the case of *Reliance General Insurance Co. Ltd. .vs.. Manju and Ors.*, reported in **2021(6) ALL MR 171**.

9. Considering the above facts and circumstances, the cross-objections cannot be rejected only on the ground of delay. The reasons stated in the application constitute sufficient grounds, hence, the delay is condoned.

10. Cross-Objections be registered.

11. The Civil Application stands **disposed of** in the above terms.

CROSS-OBJECTION ST.NO.453/2021

1. Heard.
2. **ADMIT.**
3. Ms Anita Singh-Mategaonkar, Advocate waives notice on behalf of appellant-Insurance Company.
4. Since R & P are received and the appellant has filed paper book, the appeal as well as cross-objections be listed for final hearing on **7th February 2022.**

(SMT.ANUJA PRABHUDESSAI, J)

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