

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.963 OF 2004
WITH
CROSS OBJECTION (ST) NO.12420 OF 2023
WITH
CIVIL APPLICATION NO.1985 OF 2004
IN
FIRST APPEAL NO.963 OF 2004**

The New India Assurance Company ...Appellant

Versus

Surekh Sankar Jagtap & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.16150 OF 2023
WITH
INTERIM APPLICATION NO.16151 OF 2023
IN
FIRST APPEAL NO.963 OF 2004**

Surekh Sankar Jagtap & Ors. ...Applicants

Versus

The New India Assurance Company ...Respondent

Ms. Poonam Mittal for the Appellant.
Mr. Dilip Bodake for Respondent and Applicant in IA No.16151 of 2023.

CORAM : RAJESH S. PATIL, J.

DATED : 19 OCTOBER, 2023.

P.C.:

INTERIM APPLICATION NO.16150 OF 2023

1. This Interim Application is filed for condonation of delay

in filing cross-objection.

2. I have heard both the sides and I have gone through the contents of the Interim Application.

3. This Interim Application is filed by Applicants, out of whom Applicant No.4 was just two years at the date of the accident and Applicant No.3 was merely four years old. So also, Applicant No.2 was nine years old at the time of accident.

4. It is a case of the Applicants that the deceased who was father of Applicant Nos.2, 3 and 4 and husband of Applicant No.1 and met with an unfortunate accident when a truck gave a dash to S.T. Bus, as a result of which about 25 passengers were injured. The driver of the S.T. Bus lost his life. The driver of the S.T. Bus who was husband of Applicant No.1 and father of the Applicant Nos.2, 3 and 4, lost his life. A Claim Petition was filed before the concerned MACT. By an Order dated 29 July, 1999, the Claim Petition was partly allowed. Against the said Claim Petition the Insurance Company has filed a First Appeal in the year 2004. The Applicants are the Original Claimants have thereafter, now filed Cross-Objection alongwith the Delay Condonation Application.

5. Advocate for the Claimants have referred to the Judgment of this Court in the case of ***State of Maharashtra V/s. Kalu Ladku Mhatre***¹.

6. In the case of ***Kalu Mhatre (supra)***, Paragraph Nos.5, 6 and 7 reads as under :-

“5. I have given careful consideration to the submissions. The first issue is regarding the condonation of delay in filing the Cross Objection. A Reference will have to be made to sub-rule (1) of Rule 22 of Order XLI of the said Code which reads thus:

“Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.”

6. Thus, under sub-rule (1) of Rule 22 of Order XLI of the said, Code, a power has been conferred upon the Appellate Court to extend the time to file Cross Objection. The Appellate Court can grant such further time as it may see fit to allow. The sub-rule (1) of Rule 22 does not lay down that sufficient cause is required to be shown by the respondent. As the said Code vests the power to extend the time to file Cross-Objection in the Appellate Court, it is not at all necessary for the respondent in Appeal to invoke section 5 of the Limitation Act, 1963. Section 5 of the Limitation Act reads thus:

“Extension of prescribed period of certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfied the Court that he had sufficient cause for not

¹ 2011(4) Mh.L.J. 741

preferring the appeal or making the application within such period.”

7. *The last part of sub-rule (1) of Rule 22 of Order XLI deals with the grant of extension of time for filing of Cross Objection and section 5 of the Limitation Act deals with the extension of time to prefer an Appeal. Section 5 of the Limitation Act incorporates a condition precedent of the appellant satisfying the Appellate Court that he had sufficient cause for not preferring the Appeal within the prescribed period of limitation. Sub-rule (1) of Rule 22 of Order XLI does not incorporate the stringent requirement of establishing a sufficient cause. Thus, a wide power to extend the time to file Cross-Objection has been vested in the Appellate Court. Though there is no requirement of establishing sufficient cause within the meaning of section 5 of the Limitation Act, in the application for seeking extension of time to file Cross-Objection, brief reasons for delay will have to be set out. A wider discretion has been conferred on the Appellate Court under the sub-rule (1) of Rule 22 than what is conferred by section 5 of the Limitation Act. The power to extend time under sub-rule (1) of Rule 22 of Order XLI of the Code has to be liberally exercised in case where a Cross-Objection is sought to be filed before the Appeal is heard for final hearing.”*

7. I am satisfied after going through the contents of the Interim Application and on the basis of the law laid down by the Single Judge of this Court in ***Kalu Mhatre (supra)*** case is made out to allow this application.

8. Interim Application deserves to be allowed. Interim Application is allowed in terms of prayer clause (a).

9. Interim Application is accordingly disposed off.

INTERIM APPLICATION NO.16151 OF 2023

1. This Interim Application is filed for withdrawal of the amount deposited by the Insurance Company before the concerned MACT.
2. This Interim Application is filed by Applicants, out of whom Applicant No.4 was just two years at the date of the accident and Applicant No.3 was merely four years old. So also, Applicant No.2 was nine years old at the time of accident.
3. It is a case of the Applicants that the deceased who was father of Applicant Nos.2, 3 and 4 and husband of Applicant No.1 had met with an unfortunate accident when a truck gave a dash to S.T. Bus, as a result of which about 25 passengers were injured. The driver of the S.T. Bus lost his life. The driver of the S.T. Bus who was husband of Applicant No.1 and father of the Applicant Nos.2, 3 and 4, lost his life. A Claim Petition was filed before the concerned MACT. By an Order dated 29 July, 1999, the Claim Petition was partly allowed. Against the said Claim Petition the Insurance Company has filed a First Appeal in the year 2004.
4. It is a case of the Applicants that this application is filed because paucity of funds as a deceased was the only earning

member of the family. The Applicants have stated that their house has partially collapse due to heavy rains. The Applicant states that they have taken a loan from Gram Vikas Society, Shendurjane, Tal. Wai, District Satara. So also, the Applicant No.1 is suffering from various elements. The Applicant has stated that they have no doubt, partially withdraw certain amount, however, they are in dire need of funds.

5. I have heard both the sides and I have gone through the contents of the Interim Application. According to me, in the interest of justice, it would be appropriate if the Applicant Nos.2, 3 and 4 are permitted to withdraw Rs.1,50,000/- each of the 'Award' amount deposited by the Insurance Company.

6. The Applicant Nos.2, 3 and 4 allowed to be withdraw Rs.1,50,000/- each upon furnishing an undertaking before the concerned MACT to the effect that if they fail in this First Appeal, they will return the amount with interest, at such rate as may be directed by this Court at the time of disposal of the First Appeal.

7. Balance amount shall be invested in the fixed deposit of a nationalized bank initially, for a period of one year and thereafter for like period depending the pendency of this Court.

8. All the parties to act on an authenticated copy of this order.
9. Interim Application is accordingly disposed off.

(RAJESH S. PATIL, J.)