

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.30621 OF 2022
IN
FIRST APPEAL (ST) NO.15719 OF 2022

Mamta Rajesh Chordiya & Ors. ...Applicants

Versus

The New India Assurance Co. Ltd. & Anr. ...Respondents

Mr.Yogesh Pande, for the Appellant.

Ms.Karishma Jhaveri i/b Navdeep Vora & Associates, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23 MARCH 2023

P.C:-

. Heard learned counsel for the Applicant and learned counsel for the Respondent.

2. The learned counsel for the Applicant submits that the Respondent had filed an Appeal against the order of the Motor Accident Claims Tribunal, Pune which was pending before this Court. During the pendency of the Appeal, the learned counsel for the Applicant pointed out to this Court (Coram : Bharati Dangre, J.) that the Tribunal has not awarded future prospects which the Claimants are entitled. The Court opined that it will be considered at the time of the final hearing of the matter.

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Meanwhile when the learned counsel for the Respondent come to know that this Court would considered all aspects including awarding future prospects then behind back of learned counsel for the Applicant, the Appeal was withdrawn. The Applicant was thinking that Appeal is pending and they would argue before this Court about the future prospects, on that ground only no Appeal for enhancement was filed before this Court. But Appeal was withdrawn behind the back of the Appellants and after coming to know this fact the Applicants filed present Appeal for awarding future prospects. Hence, there is delay of 6 years 293 days for filing the Appeal it be condoned.

3. The learned counsel for the Respondent-Insurance Company vehemently submits that more than six years delay is inordinate delay, it is without any proper explanation. Pendency of the Appeal filed by Respondent cannot be a ground to condone the delay or withdrawal of the Appeal cannot be a ground to condone delay. Applicants were not prevented from filing the Appeal for enhancement during the pendency of the Appeal of Respondents. The grounds taken by the Applicant for condonation of delay are after thought, hence, requested to dismiss the Application.

4. I have heard both learned counsel.

5. Admittedly, the Respondent had challenged the order passed by the Tribunal. The Respondents withdrew their Appeal. It is contention of the learned counsel for the Appellant that the Tribunal has not awarded future prospects for which they are entitled and this Court had opined that it would be considered at the time of the final hearing of the Appeal. In my view, whether the Applicants are entitled for future prospects or not would be the matter of merit. Admittedly, the Appeal filed by the Respondent was pending before this Court, due to which the Applicants did not preferred Appeal for enhancement of compensation and this is sufficient ground to condone the inordinate delay. If the Applicants waive interest for delayed period would meets ends of justice and I pass following order.

ORDER

- (i) The Application is allowed.
- (ii) The Applicant shall waive the interest for the period of six years and 293 days, if the Applicant succeeds in the Appeal. Applicant shall file undertaking in that regard.
- (iii) The Appeal be registered.

(SHIVKUMAR DIGE, J.)