

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

CIVIL APPLICATION (CAF) NO.1558 OF 2021
IN
FIRST APPEAL STAMP NO.9531 OF 2021

Bajaj Allianz General Insurance Co. Ltd., through its Manger (Legal)

Vs.

Smt. Radhika wd/o Kishanji Dunedar and others

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

Court's or Judge's orders

Ms. Anjali Agrawal, Advocate h/f Ms. Ashwini Athalye, Advocate for appellant.
Mr. C. B. Dharmadhikari, Advocate for respondent Nos.2 to 5.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/04/2023

1. The respondent No.1 is reported to be dead and the appeal is abated against the respondent No.1. In fact, the legal heirs of respondent No.1 are already on record. It is submitted by the learned Advocate Mr. C. B. Dharmadhikari for respondent Nos.2 to 5 that no other legal heirs besides the respondent Nos.2 to 5.

2. The appellant to delete the name of the respondent No.1, abatement order is set aside.

3. Present application is filed for condonation of delay of 600 days which is caused in preferring the appeal on the ground that, the appellant is a statutory body who has to obtain the necessary approvals before preferring the appeal. The necessary approvals are not

received in time and, therefore, 600 days delay is caused.

4. Learned Advocate Mr. C. B. Dharmadhikari for respondent Nos.2 to 5 raised strong objection that delay is not properly explained. There is no satisfactory and reasonable cause for condonation of delay, hence the application deserves to be rejected.

5. Heard both the sides. Perused the application.

6. It is apparent that appellant is Bajaj Allianz General Insurance Company who has to obtain the necessary approvals from higher officials before preferring the appeal. It is apparent that as the approval was not received within time and, therefore, delay is caused. It is well settled that while considering the delay application, liberal approach is to be taken to do the substantial justice. In view of that, civil application is allowed, delay of 600 days is condoned.

7. Civil application is disposed of.

8. Appeal be registered.

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1. Heard.

2. **Admit.**

3. Learned Advocate Mr. C. B. Dharmadhikari, waives notice for respondent Nos. 2 to 5.
4. Call for record and proceedings.
5. Appellant to file paper book within eight weeks, after receipt of the record and proceedings.
6. Appeal be placed after filing of the paper book, its verification, as per its own turn.
7. Appellant to delete the name of respondent No.1 by carrying out necessary amendment.

Civil Application (CAF) No.811/2023

1. Present application is seeking permission for withdrawal of the amount by the respondent Nos.2 to 5.
2. As per contention of respondents who are the original claimants that, though award of compensation was passed in their favour, they have not received the compensation amount. Due to the death of bread earner in the family, they are starving and now there is no source of income for them. Hence, they may be permitted for withdrawal of the amount which is deposited by the appellant.
3. Learned Advocate Ms. Agrawal holding for learned Advocate Ms. Athalye for the appellant

submitted that the claim petition was bad in law for non-joinder of necessary party as driver was not made party. Moreover, the issue regarding the valid driving licence of the offending vehicle is also raised.

4. In view of the reasons mentioned in the application and considering the objection raised at this stage, it will be appropriate to permit the respondent Nos.2 to 5 to withdraw 75% of the amount along with accrued interest on usual undertaking.

5. Civil Application is disposed of.

6. The amount be disbursed on due identification and verification.

(URMILA JOSHI-PHALKE, J.)

Sarkate