

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.799 OF 2007

(United India Insurance Co. Ltd. Vs. Shardaprasad R. Tiwari (dead) thr. L.R's and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Orders

Shri B. Lahiri, Advocate for the applicant.
Shri S.C. Mehadiya, Advocate for respondent No.2.
Shri M. Deo, Advocate for the cross-objectors.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 27, 2023.

Heard.

2. It is submitted by the learned Counsel for the appellant that initially the appellant has filed the Pursis contending that the appellant do not want to prosecute the matter.

3. There is no cross-appeal or objections but now cross-objection is filed.

4. In view of that the appellant is permitted to withdraw the Pursis.

CIVIL APPLICATION NO.2148/2019

By this application, cross-objectors-original claimants are seeking condonation of delay of 1991 days in filing the cross-objection.

2. As per the contention of the cross-objector that being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Yavatmal, the Insurance Company has preferred an appeal. The appeal was posted for final hearing however, the cross-objectors

did not filed the cross-objection. In view of the law laid down by the Hon'ble Apex Court that the claimants can get enhancement of compensation even in the appeal filed by the other side, if claimant had made out a case for enhancement. Due to said reason there is a delay in filing the present cross-objection.

3. It is further submitted that the Motor Vehicles Act, 1988 is beneficial legislation and claimants are before this Court for the just compensation however, delay is caused in filing the cross-objection. The claimants cannot be deprived from getting the enhanced compensation on the technical ground of delay and they be permitted to mitigate the cause of merits. It is further submitted that the delay is not intentional one and there is a reasonable and justifiable reason for condonation of delay hence delay be condoned.

4. Said application is strongly opposed by the Insurance Company.

5. Learned Counsel for the Insurance Company strongly objected the application on the ground that there is inadequate delay which is not explained properly. The grounds mentioned in the application are not reasonable one and hence delay application deserves to be rejected.

6. Learned Counsel appearing for the Maharashtra State Road Transport Corporation has also objected the application and endorsed the same contention.

7. Heard Shri Madhur Deo, learned Counsel for the cross-objectors. He vehemently submitted that under the impression that the claimants are having right to claim the enhancement of the compensation even in the appeal filed by the Insurance Company, and therefore, the claimants have not filed the cross-objection and hence delay is caused.

8. He further submitted that it is well settled by the catena of decisions that while considering the delay application, liberal approach is to be taken and the parties to be permitted to litigate the cause on merits. On the other hand, learned Counsel for the Insurance Company and learned Counsel for the M.S.R.T.C. submitted that the delay is to be explained properly which is not explained in the present case and hence delay application deserves to be rejected.

9. Heard both the sides and perused the application.

10. The grounds mentioned by the original claimants is that as the appeal was filed by the Insurance Company, and therefore, they were under the impression that they can claim the enhancement of the compensation in the appeal filed by the other side however, Insurance company filed the Pursis to withdraw the appeal, and therefore, the claimants have filed this cross-objection along with delay condonation application.

11. Considering the reasons mentioned in the application, it is not disputed that the learned Counsel for the appellant has filed pursis for withdrawal of the appeal, and thereafter the cross-objection is filed. This Court has by passing order dated 20/12/2022, directed the cross-objectors to file affidavit contending that they are ready to waive the interest. It is also well settled that while considering the delay condonation application especially when the claimants are claiming benefits under the beneficial legislation, liberal and pragmatic approach is to be taken and not pedantic approach.

12. The reasons mentioned in the application appears to be justifiable and reasonable one and the parties to be permitted to litigate the dispute on merits.

13. In view of that the application deserves to be allowed, and hence the following order :

(i) The application is allowed on the waiver of interest for the delayed period.

(ii) Cross-objection be numbered and taken on record.

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Place the matter for final hearing on
10/02/2023 at 2.30 pm.

(URMILA JOSHI-PHALKE, J.)