

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3578 OF 2016
[FOR DELAY CONDONATION]

WITH
CIVIL APPLICATION NO.3579 OF 2016
[FOR STAY]

IN
FIRST APPEAL (ST) NO.14731 OF 2016

National Insurance Company Limited ...Applicant

In the matter between:-

National Insurance Company Limited ...Appellant

V/s.

Smt.Sunita Anilkumar Yadav and Ors. ...Respondents

Mr.Amol Gatne:-	Advocate for Applicant–Appellant Insurance Company.
Mr.T.J.Mendon:-	Advocate for Respondent Nos.1 to 4.

CORAM : S. M. MODAK, J.

DATE : 17th OCTOBER 2024

P. C. :-

CIVIL APPLICATION NO.3578 OF 2016

1. Heard learned Advocate Shri.Gatne for the Appellant Insurance Company and learned Advocate Shri.Mendon for the Respondent Nos.1 to 4.

2. There is a delay in preferring the Appeal. The delay condonation Application stand dismissed against the Respondent Nos.1 to 4 – Claimants for not taking steps. Notice is issued on that address. However, it was returned as they are not staying there. Whereas, notice is pasted on Respondent No.5. Further notice through Post could not be issued.

3. Today, learned Advocate Shri.Mendon has appeared for Respondent Nos.1 to 4 and filed withdrawal Application. It is true that Interim Application is required for Restoration against Respondent Nos.1 to 4. In view of that they have appeared on their own, I am restoring the delay condonation Application and Appeal against them.

4. There is a delay. It is opposed. For the reasons stated in the Application, the **delay is condoned**. Application is allowed in terms of prayer clause (b). **It is disposed of.**

FIRST APPEAL (ST) NO.14731 OF 2016

5. Issue notice to Respondents. Learned Advocate Shri.Mendon waives notice for Respondent Nos.1 to 4. Let, the Appeal memo be served on Mr.Mendon. Issue fresh notice to Respondent No.5.

6. **Call Record and Proceeding.**

7. **Compilation be filed.**

8. Matter be kept on 5th December 2024.

=====

WITH
INTERIM APPLICATION NO.12549 OF 2024
[FOR WITHDRAWAL]
IN
FIRST APPEAL (ST) NO.14731 OF 2016

Smt.Sunita Anilkumar Yadav and Ors. ...Applicants

In the matter between:-

National Insurance Company Limited ...Appellant

V/s.

Smt.Sunita Anilkumar Yadav and Ors. ...Respondents

=====

9. There is an opposition for withdrawal for the reason that the offending vehicle was stolen and the accident took place when it was driven by a person other than insured. There is finding to Issue No.4. (Page No.13). It was turned down by the Claims Tribunal – Mumbai. Even, Mr.Mendon relied upon the observations in case of ***Pepsu Road Transport Corporation v/s. National Insurance Company***¹ and more specifically, Para No.18. The Hon'ble Supreme Court has overruled the objections by the Insurance Company that the vehicle was stolen.

10. The Claimants are the wife, one minor son and the parents of the

¹ 2013 ACJ 2440

deceased. Considering the facts, I am allowing 70% withdrawal. Hence,
order:-

ORDER

- (i) The Respondent Nos.1, 3 and 4 are permitted to withdraw 70% along with accrued interest from their share on furnishing an undertaking.
- (ii) An apportionment be made by the Claims Tribunal – Mumbai as per the Award.
- (iii) On attaining the majority by Respondent No.2, 70% withdrawal be granted to him along with accrued interest on furnishing an undertaking.

11. In view of above, this **Application is also disposed of.**

[S. M. MODAK, J.]