



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

Civil Application (CAF) No. 3333 of 2023

in

First Appeal St. No. 16942 of 2023

[The Branch Manager, The Cholamandalam MS General Insu. Co. Ltd., Shankar Nagar, Nagpur **..vs..**
Sindhu wd/o Babarao Kumbhare and ors.]

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

Court's or Judge's orders

Mr. A. M. Kukday, Advocate for the applicant
Ms. R. S. Mankar, Advocate h/f Mr. K. P. Mirache, Advocate for respondent
nos. 1, 2 4 and 5
Mr. A. B. Mirza, Advocate for respondent no. 6

CORAM : ANIL L. PANSARE J.

DATED : 17-04-2024

By present application, the insurance company is seeking to condone delay of 105 days in filing appeal against the judgment and award dated 21-1-2023 passed by the Motor Accident Claims Tribunal, Nagpur in Motor Accident Claim Petition No. 861/2017.

2. The reasons assigned for delay read as under.

"2. The certified copy of the impugned judgment dated 21.01.2023 was applied on 13.02.2023 and was ready for delivery on 02.03.2023.

3. It is submitted that thereafter the copy was received by the Counsel and was sent to Nagpur Branch Office. That the Branch Office at Nagpur sent the said order to the Head Office at Chennai for further necessary instructions i.e. whether appeal is to be preferred or not.

4. Thereafter the Chennai office as per procedure directed the Branch Office of Nagpur to prefer the appeal. It is submitted that thereafter the Branch Office forwarded the case papers to the counsel for the purposes for court fee and statutory deposit.

The counsel informed the court fee and the statutory deposit immediately to the Branch Office who in turn forwarded the same to the head office. That the counsel for the appellant has received the cheque of statutory amount and court fee and thereafter the appeal is being filed.”

3. As could be seen, the applicant states that the judgment was passed on 21-1-2023. The applicant had applied for certified copy on 13-2-2023. When was certified copy obtained is not disclosed. When was judgment sent to Nagpur Branch is not disclosed. When was it forwarded to the Chennai office is not disclosed. When did competent authority take a decision to prefer appeal is not disclosed. When were papers forwarded to counsel at Nagpur to draft the appeal memo is also not disclosed. Thus, there is absolutely no justification given by the applicant to condone the delay.

4. Learned counsel for the applicant submits that this is a procedural delay and, therefore, liberal approach be taken.

5. For taking liberal approach, the applicant ought to show that despite diligent efforts, the appeal could not be filed because of certain procedural formalities which were beyond its control. In the present case, the diligence is completely missing. The applicant has not shown any cause, much less, sufficient cause to condone delay. There is thus no merit in the application. The application is accordingly rejected.

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6. By present application, the applicants/claimants are seeking to withdraw the decretal amount deposited by the insurance company. Since the application seeking condonation of delay has been rejected, the question of entertaining appeal does not arise. There is, thus, no reason why should the applicants/claimants be not permitted to withdraw the amount deposited by the insurance company. Hence, the application is allowed.

7. The Registry shall disburse the amount strictly in accordance with the award passed by the Motor Accident Claims Tribunal.

(Anil L. Pansare, J.)