



23.caf 3765.2023 in fast.23502.2023.odt

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

**CIVIL APPLICATION (CAF) NO. 3765 OF 2023**

**IN**

**FIRST APPEAL (ST) NO. 23502 OF 2023**

(The Oriental Insurance Co. Ltd., through Divisional Manager, Amravati, through Regional Office, Nagpur  
V/s Rajani Wd/o Vinodrao Kalamkar and ors.)

Office Notes, Office Memoranda of Coram,  
Appearances, court's orders or directions and  
Registrar's orders

Court's or Judge's orders

Mrs. M. S. Naik, Advocate for Applicant/  
Appellant.

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**CORAM** : ANIL L. PANSARE, J.

**DATE** : APRIL 10, 2024.

Heard.

2. By present application, the applicant – insurance company is seeking to condone delay of 178 days in filing appeal against judgment and award dated 04-02-2023 passed by the Motor Accident Claims Tribunal, Achalpur in M.A.C.P No. 37/2015.

3. The applicant - company has assigned following reasons in support.

*“2. It is submitted that, the Learned Member MACT Achalpur has passed its Judgment and award on 04/02/2023 in above mentioned Claim Petition No. 37/2015. Thereafter the counsel for the Insurance Company came to know about the judgment. He immediately applied for the certified copy of Judgment on 09/02/2023. The certified Copy was received on*

*09/03/2023. The appellant has to file the appeal within limitation but due to official procedure and preparations time the delay of 178 days is caused in filing present appeal. The delay is explained as under.*

- 3. After receipt of certified copy of Judgment on 04/02/2023, the dealing counsel for Insurance Company submitted his legal opinion and the certified copies of Judgment to the Branch Office at Amravati. The advocate has gone through the judgment and found that the Member MACT Achalpur has not considered the defenses of the insurance company. Hence recommended the Appeal. The file was referred to TP Hub Nagpur. The TP Hub Nagpur has gone through the case file and found that excessive compensation has been granted without considering the defenses of insurance company. Hence forwarded the file to the regional office Nagpur to take the decision in the matter.*
- 4. The RO then has obtained the opinion of the senior counsel for filing the appeal in High court. The counsel has gone through the file and submitted his opinion and recommended the appeal.*
- 5. Thereafter the RO has called its panel counsel and handed over the file to file an appeal in HC. The RO has provided for necessary court fees and statutory deposit and thereafter the Counsel has filed the appeal. By that time the period of limitation was already over.*
- 6. Thus the delay has been caused due to technicalities and formalities of the Insurance Company for filing appeal. It is not an intentional delay. It was beyond the control of the present appellant. Thus there is sufficient ground to condone the delay. The delay is 178 of days. Thus it is necessary to condone the delay.”*

4. As could be seen, the certified copy was received on 9-3-2023. The dealing counsel for insurance company has then submitted his legal opinion. When was that done is not disclosed. Thereafter file was referred to T.P. Hub Office. When was it referred is not disclosed. The T.P. Hub Office has then forwarded the file to Regional Office, Nagpur to take the decision in the matter. Again, when was file forwarded is not disclosed. The Regional Office has then obtained the opinion of senior counsel for filing appeal. Again, when was the opinion sought and how much time was taken to give opinion is not mentioned. Thereafter the file was handed over to the panel counsel. When was file handed over is again not disclosed. The Regional Office has then provided necessary court fee and statutory deposit and thereafter, the counsel has filed appeal. Again, the time required for this process is not disclosed and justified. The insurance company then summarised the delay to be on the count of technicalities and formalities of the insurance company.

5. To my mind, the reasons put-forth by the insurance company will only show the casual and negligent manner, in which the sensitive case, which deals with the impact of accident on citizen's life, is being dealt with by the officers of the insurance company. Vague statements as regards time being spent in seeking opinion of the Counsels and in transferring case papers from one office to another are made. This cannot be said to be sufficient cause to condone the delay.

6. The Hon'ble Supreme Court in the case of ***State of Madhya Pradesh And Others V/s Bherulal, (2020) 10 SCC 654*** has held that law of limitation binds everybody including the Government and deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies.

7. In the case of ***Basawraj and Anr. V/s The Spl. Land Acquisition Officer, AIR 2014 SC 746***, the Hon'ble Supreme Court has held in paragraph No.15 as under :

*“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”*

8. Thus, the Supreme Court has held that if the party is found to be negligent or found to have remained

inactive, there cannot be a justified ground to condone the delay. The Court further held that in case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, imposing any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. Thus, delay cannot be condoned by imposing any condition, *viz* – by directing insurance company to deposit entire amount of compensation.

9. The Supreme Court in the case of ***Ramlal V/s Rewa Coalfields Ltd. AIR 1962 SC 361*** has, in a way, explained the effect of delay. The Court, while interpreting Section 5 of the Limitation Act held thus :

*“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed.....”*

10. Thus, in absence of sufficient cause, legal right which has accrued in favour of the decree-holder by lapse of time should not be lightheartedly disturbed.

11. Another reason quoted by the Applicant – Company is, requirement of court-fees. As such, the time spent in procuring court-fees is not being disclosed. However, the applicant ought to have made necessary arrangement well within time, and in any case, could have filed the present application taking recourse to Section 149 of the Code of Civil Procedure, 1908, which provides for filing appeal deficiency in Court-fees and make good subsequently.

12. The Supreme Court in the case of ***Ajay Dabra Vs. Pyare Ram and Ors., 2023 SCC Online SC 92***, while dealing with ground of being short of funds to pay the court-fee to condone the delay, has referred to Section 149 of the Civil Procedure Code, 1908, which refers to power to make up deficiency of court fee and held thus:

*“6. It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870. In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to the incorporation of Section 149 in CPC would explain this aspect.*

7. ....

8. ....

9. *In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several*

*decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima wherein it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured.....*

10. ....

11. *We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done."*

(emphasis now)

13. Thus, the Supreme Court has held that the appellants could have filed the appeal deficient in court fee and made good subsequently. Nothing prevented the

applicant herein from adopting such a mode. The applicant is equipped with panel of Advocates who ought to be aware of the scope of Section 149 of the Code. Thus, justification for delay on account of court-fees is not acceptable.

14. The Tribunal has held the owner and Insurance Company of offending vehicle jointly and severally liable to pay compensation along with interest at the rate of 7% per annum. Thus, the amount of compensation will carry interest at the rate of 7% per annum. The delay will naturally increase the component of interest. Thus, the negligence of officials of the Insurance Company will not only cause harassment to the claimants, but will also increase the component of interest. The officials do not bother because it doesn't affect their pocket. This mindset will change only when the additional component of interest, which is accrued because of negligence or inaction of official, is recovered from their pocket.

15. In the case of ***State of U. P. & Ors. V/s Ashwani Kumar Mishra in Special Leave Petition (Civil) Diary No.(s). 19834/2020*** the plea put-forth for condonation of delay before the Supreme Court was, getting departmental approval. The Supreme Court held that such kind of excuses are no more admissible in view of the judgment in the case of ***Post Master General & Ors. V/s Living Media India Ltd. & Anr. (2012) 3 SCC 563***. The Supreme Court, while dismissing the Special Leave Petition, gave liberty to the State of U. P. to

recover the loss from the Officers responsible for the delay in filing the Special Leave Petition, if they are so advised.

16. Similar such order has been passed by the Supreme Court in the case of ***Deputy Conservator of Forests V/s Timblo Irmaos Ltd. & Ors. in Special Leave Petition (Civil) Diary No(s). 19059/2020***. Before passing such order to recover costs from the erring officer, the three Judges Bench of the Court has observed as under :

*“We have dealt with the issue of Government authorities in approaching Courts belatedly as if the Statute of Limitation does not exist for them. While referring to some reasons given for insufficiencies, we observed that the parties cannot keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government, (Collector, Land Acquisition, Anantnag & Anr. (supra). This situation no more prevail and this position had been elucidated by the judgment of this Court in office of the Chief Post Master General & Ors. V/s Living Media India Ltd. & Anr. (2012) 3 SCC 563.”*

17. Thus the Supreme Court has, time and again, deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies. There is, however, no improvement. Rather the plea of liberal exercise of powers and for giving certain leeway to the State authorities is put-forth.

18. The officials must understand that for accepting the plea of liberal approach, they ought to show that despite diligent efforts, the appeal could not be filed because of certain administrative exigencies, which were not in their control. Such is not the case here. The file has been handled in a most casual manner. The details of movement of files are not mentioned. What efforts were made to get timely opinion is absent. The time required for approval of amount to be deposited and for procurement of court-fees is not justified.

19. Most importantly, the casual and negligent approach is found only with the officials of public sector Insurers and not private sector Insurers. The Law of Limitation cannot be applied with different parameters to the private and Public Sector Insurers.

20. Put altogether, the applicant has miserably failed to show any cause, much less sufficient cause, to condone the delay. The civil application is accordingly rejected.

21. The Applicant shall deposit with the concerned Tribunal the decretal amount within eight weeks from today under intimation to the Claimants.

22. The copy of order be served upon the Chairman-Cum-Managing Director of the Oriental Insurance Company Ltd., Corporate Office, Block – 4, Plate-A, NBCC Office Complex, Kidwai Nagar East, New Delhi- 110 023 for taking appropriate action against erring official, and if so advised, may proceed to recover the amount of additional cost of

interest from them. The Authority may also take action in terms of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005. The order shall be complied by 30-06-2024. Reporting compliance of the instant order will be appreciated.

23. The application is accordingly disposed of.

**CIVIL APPLICATION (CAF) NO. 1113 OF 2024**

24. On 14-12-2023, this Court was pleased to grant stay to the impugned judgment and award subject to depositing amount of compensation within eight weeks. The amount, however, has been not deposited within stipulated time. The applicant/appellant has filed the present application to permit it to deposit the amount of compensation with further prayer to continue the interim relief granted by this Court.

25. Thus, the casual and negligent approach continues even in compliance of order passed by the Court. It is time for the Public Sector Insurers to revamp the handling of the files, else the sufferance of the victims of motor accident will continue and will add further miseries to their lives.

26. Be that as it may, since the application seeking condonation of delay has been rejected and since the insurance company has been directed to deposit the amount of compensation with the Tribunal within eight weeks from

today, nothing survives in the present application. The same is accordingly dismissed as does not survive.

(ANIL L. PANSARE, J.)

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