



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**924 CIVIL APPLICATION NO. 7457 OF 2022
IN RAST/26724/2019**

**WITH
REVIEW APPLICATION STAMP NO.26724 OF 2019**

...
**ANITA BAPU VEER AND ORS
VERSUS
RAGHUNATH A AVHAD AND ORS**

.....
Advocate for the Applicants : Mr.Shubham Jaybhar h/f.
Mr.Jayabhar Dattatraya R.
Advocate for Respondent No.2 : Mr. M.K.Goyanka

...
**CORAM : SHAILESH P. BRAHME, J.
DATE : 6th MAY 2025**

PER COURT :

. Applicants are seeking condonation of delay of 1997 days in preferring application for review to the order dated 03.02.2014 passed in First Appeal No.1958 of 2012. By my last order dated 16.04.2025 it was indicated that application for delay as well as review would be considered together. Hence, I have heard both sides.

2. Applicants are the original claimants who had preferred M.A.C.P No. 57 of 2002 alongwith Yamunabai Maruti Veer who happened to be mother of the deceased. It was specifically for amount of Rs.50000/- under Section 140 of the Motor Vehicles Act,1988. (hereinafter referred to as 'M.V.Act')

3. The claim to the limited extent was allowed by order dated

06.07.2004. Thereafter present applicants preferred M.A.C.P No. 132 of 2008. It was dismissed on merits vide judgment and order dated 11.04.2012. Being aggrieved appeal was preferred. It was pointed out that earlier M.A.C.P No. 57 of 2002 filed for same relief was disposed of and hence learned counsel for the appellants sought permission to withdraw appeal and accordingly order was passed on 03.02.2014.

4. Learned counsel Mr.Jaybhar appearing for the appellants submits that M.A.C.P No. 57 of 2002 was for the claim under section 140 of the M.V.Act and not under section 166. Whereas M.A.C.P No. 132 of 2008 was filed under Section 166 by the applicants. It was misconception of facts for the applicants and counsels in proposing to withdraw the appeal. Decision of M.A.C.P No. 57 of 2002 would have no bearing over the merits of M.A.C.P No.132 of 2008. It's a mistake apparent on the face of the record. It is also canvassed by learned counsel that even the representation of the insurance company that earlier claim petition was filed by mother of the deceased was misleading and half-truth. It is submitted by learned counsel that delay is not intentional. For the grounds stated in paragraph Nos. 5 to 8, delay needs to be condoned. Applicants are ready to forego the interest.

5. *Per contra*, learned counsel Mr.Goyanka appearing for the contesting respondents would vehemently oppose the application for delay as well as review. My attention is adverted to affidavit-in-reply.

It is contended that delay is inordinate and has not been explained. It is submitted that it was a hit and run case. Claimants should have filed petition under Section 166 first and in that they should have filed application under section 140 of the Act. Due procedure was not followed and therefore complications are created by the applicants. He would further submit that no liability can be imposed on the insurance company.

6. I have considered rival submissions of the parties. I have gone through memo of M.A.C.P No.57 of 2002 filed by applicants. I have also gone through order dated 06.07.2004 which was directed to be placed on record. Claim of the parties to the extent of Rs.50000/- towards no fault liability under Section 140 was allowed. It was not substantive claim petition under Section 166 of the Act. Normally petition under Section 166 is filed and claim for no fault liability is decided and determined in substantive petition. However, this can not be said to be a rule of thumb. Procedure adopted by the parties can not be said to be prohibitory.

7. Applicants filed M.A.C.P No.132 of 2008 under Section 166 for compensation of Rs.3,00,000/- On merits it was dismissed vide judgment and order dated 11.04.2012 which was assailed in the first appeal. By order dated 03.02.2014 which is sought to be recalled, neither of the parties disclosed true facts before the Court. I am of the view that both the parties are responsible for that. Had the fact that M.A.C.P No.57 of 2002 was under Section 140 of the Act was

disclosed, this Court would not have dismissed the appeal. I am of the considered view that it's a mistake apparent on the face of the record which needs to be rectified.

8. Applicants are entitled to succeed in the review application. Their claim for compensation under section 166 has not been dealt with in earlier M.A.C.P No.57 of 2002. The order which is sought to be reviewed is against principles of natural justice also.

9. I have already recorded that there is merit in the review application. Applicants have explained delay in paragraph Nos.5 to 8 of application. Though delay is inordinate, it is condonable by protecting the interest of the respondent. I, therefore, pass following order :

ORDER

a) Delay of 1997 days in preferring review application stands condoned on condition that applicants shall not be entitled to the interest for delayed period in case they succeed in First Appeal No.1958 of 2012.

b) Review Application is allowed.

c) Order dated 03.02.2014 stands recalled and First Appeal No. 1958 of 2012 is restored to its original position.

[SHAILESH P BRAHME, J.]

vsj..