



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

CIVIL APPLICATION (CAF) NO. 3727 OF 2024

IN

FIRST APPEAL STAMP NO. 20318 OF 2024

Lilavati Wd/o Ratilal Thakkar through P.O.A. Chetna Kirankumar Mehta

Vs.

Lekha Wd/o Jayesh Thakkar and others

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

Court's or Judge's orders

Shri V.V. Jagtap, Advocate for appellant
Shri K.P. Mirache, Advocate for respondent Nos. 1 and 2
Shri P.P. Kothari, Advocate for respondent No.3
Shri B.P. Bhatt, Advocate for respondent No.4

CORAM : ABHAY J. MANTRI, J.

DATED : 18.08.2025.

The applicant has filed this application to condone the delay of 381 days in filing the appeal.

2. Respondent No. 3 filed reply to the said application and resisted it. Learned Advocate for respondent Nos. 1 and 2 adopted the reply filed by the respondent No. 3. Similarly, respondent No. 4 is also adopting the reply filed by the respondent No. 3. Both the learned Advocates have submitted that they do not want to file a separate reply, but they are relying on the objections raised in the reply filed by the respondent No.3

3. Heard learned Advocate for the applicant and respondent Nos. 1 to 4. Perused the application, record,

as well as a copy of the order dated 10/02/2023 (certified), passed by learned Motor Accident claim Tribunal, Surendranagar, (for short 'The Tribunal, Surendranagar') in MACP No. 4/2014, which was tendered by the learned Advocate for the applicant on record across the bar, the same is taken on record and marked as 'X' for identification purpose.

4. Learned Advocate for the applicant, at the outset, contended that the applicant is an old lady and has health problems, as well as not being supported by any family members. Similarly, she is not aware of the legal proceedings. He further canvassed that the applicant got the information about the passing of the judgment and award in the month of May-June, 2024, from respondent No.1, Lekha Jayesh Thakkar, and thereafter, she applied for a certified copy and obtained the same and filed the application. Lastly, he propounded that the applicant has a good case for enhancement of the compensation. The delay in filing the appeal is neither intentional nor inordinate and therefore, urges to allow the application as prayed.

5. As against this, learned Advocate Shri Kothari for the respondent No. 3, vehemently resisted the application on the ground that no specific grounds have been stated in the application to condone the delay. He has drawn my attention to paragraph No. 4 of the application and submitted that the said reasons cannot be termed as a ground to condone the delay. He further submitted that the applicant was very well aware of the

legal proceedings as she had filed MACT No. 4/2014 before the Tribunal, Surendranagar, and in view of the order dated 10/02/2023, she was very well aware of the pendency of the application before the Tribunal at Nagpur. Despite the said facts, she did not appear in the matter, and therefore, it cannot be said that she was not aware of the pendency of the proceedings. Lastly, he submitted that the applicant is silent when she knows the pendency of the proceedings. No proper explanation is given in the application to condone the delay, and therefore, for want of sufficient cause, the application is liable to be dismissed.

6. Learned Advocates Shri Mirache and Shri Bhatt, for respondent Nos. 1 and 2, and 4 respectively, have argued that no sufficient cause was given in the application to explain the day-to-day delay, and therefore, they all submitted that for want of sufficient cause and proper explanation of the delay, the application is liable to be rejected.

7. It is pertinent to note that during the argument, all the learned Advocates for the parties submitted that, except the applicant, none of the parties has challenged the impugned judgment and award till this date. It is to be noted that respondent Nos. 1 and 2 are the original claimants, and they have not preferred any appeal against the impugned judgment and award.

8. I would like to mention material facts of the case are as under :

Deceased Jayesh was met with an accident and died in a motor vehicle accident; therefore, his widow, respondent No.1, and daughter, respondent No.2, have filed the claim application bearing MACP No. 1103/2013 before the Tribunal, Nagpur. Similarly, the applicant herein has filed a claim of petition before the Tribunal Surendranagar, on 04/01/2014, bearing MACT No. 4/2014. The said fact itself indicates that the applicant was aware of the legal proceedings, and therefore, she had filed the claim petition before the Tribunal at Surendranagar.

9. It further appears from the certified copy of the order dated 10/02/2023, passed below Exh.1, in MACP No. 4/2014, before the MACT, Surendranagar, that the respondent No.4 – Insurance Company has brought to the notice of the Tribunal at Surendranagar, that respondent Nos. 1 and 2 have filed MACP No. 1103/2013, before the Tribunal at Nagpur, and after considering their submissions by an order dated 10/02/2023, the learned Tribunal disposed of the claim petition bearing No. 4/2014, observing that “*The applicant and respondents Nos. 5 and 6 have been joined as a parties in MACP No. 1103/2013, as respondents Nos. 3 to 5, and therefore, the claim petition has become infructuous, hence disposed of.*” The said order itself indicates that the applicant was aware of the passing of the said order as well as the pendency of the petition before the Tribunal at Nagpur.

10. Perused the impugned judgment; the same was delivered on 28/06/2023. It appears that in paragraph No. 7 of the judgment, the learned Tribunal has observed that the respondent Nos. 3 to 5, though duly served, failed to appear in the petition, and therefore, the petition was proceeded *ex parte* against them vide orders dated 24/12/2015 and 23/08/2022.

11. In view of the factual position above, it is apparent that the applicant was aware of the legal procedure as well as the pendency of the petitions at Surendranagar, Gujarat, as well as the Tribunal at Nagpur. Despite the said fact, she did not appear in the proceedings before the Tribunal at Nagpur nor file her written statement or reply to the petition.

12. Perused the application. I would like to reproduce paragraphs Nos. 2 and 4 :

“2. The Appellant recently learnt of the Judgment and Award having been passed in the MACP through her daughter-in-law when she was informed of the amounts of the Award being deposited. The Appellant was asked to make the necessary arrangements for the withdrawal of the said amount.

4. The Appellant is an old lady and has various health problems. The Appellant was assured of proper procedure and that, due to her health issues and her residence at Ahmadabad, she was not able to attend the Tribunal. The Appellant was never informed of the proceeding. It is only the time of disbursement she learnt of the Award having been passed.”

13. It is pertinent to note that, except for the above paragraphs, no reasons or sufficient cause were stated in the application, nor a proper explanation was given for the non-filing of the appeal in time. A bare perusal of those paragraphs reveal that the applicant has not specifically stated when she got the information about the passing of the judgment and award by the Tribunal. But vaguely stated that she got information from respondent No. 1. Similarly, in paragraph No. 4, she only contended that she was never informed of the proceedings, and only at the time of disbursement of the amount, she learnt about the award.

14. It is a settled position of law that the applicant has to explain each day's delay caused in filing the appeal; she also has to state the sufficient cause for non-filing of the appeal in time. But on perusal of the entire application, it is apparent that the application is vague; the applicant has not specifically stated the reason or sufficient cause for non-filing of the appeal in time. No proper explanation has been given by her to condone the inordinate delay. On the other hand, it is evident that the applicant was aware of the legal procedures and pendency of the proceedings, and therefore, she has filed the claim petition before the Tribunal in Gujarat. Similarly, she was aware of the filing of the claim petition by respondent Nos. 1 and 2, before the Tribunal at Nagpur, as the order dated 10/02/2023, passed in MACT No. 4/2024, which clearly indicates that the applicant, i.e., Lilavati, was aware of the pendency of the claim petition before the Tribunal, Nagpur. Despite the said

facts, she failed to appear in the petition and chose not to appear and contest the proceedings.

15. Even assuming for the sake of argument that the applicant should not be deprived of her rights to contest an appeal on merit, and therefore the appeal ought not to be thrown out, on the grounds of delay. However, on perusal of the application, I do not find substance in the contention of the applicant that she was not aware of the pendency of the proceedings before the Tribunal at Nagpur, or due to her health issues, she could not attend the Tribunal as no any medical certificate or document has been produced on record in support of her contention. Therefore, I do not find substance in the application as well as the contention of the learned Advocate for the applicant that the applicant has explained the delay in not filing the appeal in time or stated sufficient cause for not filing the appeal in time. On the contrary, it seems that the reasons stated in the applications are vague and insufficient, inadequate, and unpalatable and far away from the requirements of law under Section 5 of the Limitation Act. Thus, in the absence of sufficient cause and reasonable explanation for inordinate delay in filing the appeal, the Court has no power to extend the period of limitation on equitable grounds. Similarly, the Court is not empowered to condone the delay arbitrarily in the name of advancing substantial justice to defeat the law of limitation. In consequence of the above, it seems that the applicant is negligent in not preferring the appeal in time. So, I do not find any sufficient cause or reasonable explanation in

the application to condone the delay. As such, the application, being devoid of merit, stands dismissed. No order as to costs.

(ABHAY J. MANTRI, J.)

Jayashree....