



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

**19 CIVIL APPLICATION NO. 340 OF 2025
IN FAST/32964/2024**

KASHMIRA DINESH SHAH

VERSUS

SHAHAJI BALBHIM GATE AND ANR

WITH

CIVIL APPLICATION NO. 341 OF 2025.

WITH

CIVIL APPLICATION NO. 9810 OF 2025

....

Mr. Sharikh Khan, Advocate for the Applicant

Mr. S. N. Patne, Advocate for Respondent No.1

Mr. S. R. Bodade, Advocate for Respondent No.2

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CORAM : Y. G. KHOBRAGADE, J.

DATE : February 02, 2026

PER COURT :-

1. Heard the learned counsel for the applicant and the learned counsel for the non-applicants, at length.

2. By the present application under Section 5 of the Limitation Act, the applicant prays for condonation of 11 years 9 months and 7 days i.e. 4243 days caused while lodging the first appeal against the judgment and award dated 18.02.2013, passed in W.C.A. No.11 of 2011, by the learned Commissioner under the Employee's Compensation and the Civil Judge, Senior Division,

Osmanabad, thereby directed the present applicant to pay compensation of Rs.4,38,500/- to the non-applicant with interest at the rate 7.5% p.a. with effect from 09.03.2011 till the same is deposited in the Court. It further directed the present applicant to pay penalty of Rs.2,19,250/- under Section 4A(1)(3) of the Employee's Compensation Act, 1923.

3. The learned counsel for the applicant canvassed that on 18.02.2013, the learned Commissioner under the Employee's Compensation Act, 1923, passed the judgment and award. However, the applicant has applied for grant of certified copies on 22.10.2024 and certified copies of the same were supplied to the applicant on 24.10.2024. Therefore, the appeal was to be presented within a period of 60 days. However, the learned Commissioner under the Employee's Compensation Act, passed the impugned judgment and award dated 18.02.2013, ex parte and after the service in the recovery proceeding, the applicant came to know about passing of impugned judgment and award. The applicant is more than 70 years old aged person, without support of money powers, due to complete loss in transport business. The applicant is having good case on merit and to success in the appeal on the point of negligence on the part of the

MSEDCL department and no ownership of the truck is with the applicant. There was no employee employer relations between the deceased and the applicant. Further, no complaint / F.I.R. was registered against the applicant. The vehicle in question was shown to Appa Devkar prior to the date of the incident. Therefore, the delay caused while lodging the first appeal, is *bona fide* and no any prejudice would be caused to the adverse party if the delay is condoned. However, if the delay is not condoned, in that event, irreparable financial loss would be caused to the applicant.

4. The non-applicant No.1 / claimant has filed affidavit-in-reply and strongly opposed the application for condonation of delay. The learned counsel for non-applicant No.1 / original claimant had filed W.C.A. No.11 of 2011 on the ground that the present non-applicant No.1 was the owner of the truck bearing No.MH-14/B-5832 on the day of accident. The deceased Sagar, the father of the present non-applicant No.1 was under the employment of present applicant No.1 as a Cleaner on truck No.MH-14/B-5832, which was insured with the present non-applicant No.2 with effect from 05.10.2009 and the accident took place on 06.09.2010 when the goods were being loaded in the premises of Western Company, Hadapsar. The said

accident was took place when the deceased was trying to put the rope on the top of the truck and while doing so, the deceased unfortunately came into contact with overhead high tension line of MSEDCL and died on the spot due to electrocution.

5. The deceased Sagar was shifted to Global Hospital, Hadapsar. He was declared died. Therefore, the non-applicant No.1 being a legal heir of deceased Sagar, filed complaint under the Employee's Compensation Act, and prayed for compensation. Though the present applicant / truck owner served with the notice, but he failed to appear in the matter. So also, the notice of the present applicant was served by substitution of service by paper publication in the area where the present applicant is residing. However, the present applicant / original non-applicant No.1 failed to appear in the matter. Therefore, the said application was proceeded exparte. The present non-applicant No.1 has obtained the decree and filed the present application seeking condonation of delay of 11 years 9 months and 7 days i.e. 4243 days without giving any proper explanation and no delay has been explained properly. Hence, prayed for rejection of the application.

6. It is well settled principle of law that the delay should not be condoned merely as an act of generosity and in mechanical manner. In the case of ***Thirunagalingam Vs. Lingeswaran and another, 2025 Supreme (SC) 814***, the Hon'ble Supreme Court held in paragraph Nos. 31, 32 and 33, as under:-

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.

33. Therefore, in the case at hand, once it has been established that the reasons provided for condoning the delay in the application filed are not sufficient, we are not inclined to go into the merits of the contentions raised by the learned counsel of Respondents regarding Section 14 of the Limitation Act, 1963.”

7. In the case in hand, the non-applicant No.1 alleged that the present applicant was the registered owner of truck No. MH-14/B-5832 and his father deceased Sagar was under the

employment of present applicant as a Cleaner on the said truck. The said truck was insured with non-applicant No.2 with effect from 05.10.2009 an on 06.09.2010, when the truck was parked with loaded goods in the premises of Western Company, Hadapsar and was putting rope on the top of the said truck, at that time, his father unfortunately came into contact with overhead high tension line of MSEDCL and died.

8. On perusal of the judgment dated 18.02.2013, passed by the learned Commissioner under the Employee's Compensation Act, it appears that the said application was proceeded exparte against the present applicant / truck owner. The non-applicant No.1 / claimant came with the case that he had published the notice of the present applicant / original non-applicant No.1 in the newspaper in the area in which the present applicant was residing, but the present applicant failed to appear even after publication of notice in the newspaper.

9. Needless to say that, though the applicant canvassed that on 18.02.2013, the learned Commissioner under the Employee's Compensation Act, passed the judgment and award in question, however, the applicant himself stated that he applied for certified copies after more than ten years and obtained the same on

24.10.2024 i.e. after lapse of one year. The applicant has filed the first appeal on 30.11.2024 as per the entry made on the presentation form. However, the applicant has not given any explanation as to why he could not file the present appeal within limitation. So also, the delay of 11 years 9 months and 7 days, has not been explained properly and *bona fide*. The applicant appears that he was not diligent while prosecuting the complaint W.C.A. No.11 of 2011. Therefore, I am of the view that the applicant failed to give *bona fides* of explanation to condone such huge delay of more than 11 years.

10. In view of above discussion, the present application needs to be rejected. Accordingly, I proceed to pass the following order:-

ORDER

- (i) Civil Application No.340 of 2025 is hereby rejected. Consequently, the First Appeal Stamp No.32964 of 2024, is hereby dismissed.
- (ii) Pending Civil Application Nos.341 of 2025 and 9810 of 2025, are disposed off.

[Y. G. KHOBRADE, J.]