

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1607 OF 2024
IN
FIRST APPEAL [STAMP] NO.22756 OF 2022

Shanta Tanaji Lokhande

... Applicant

Versus

Dadaso Bhavurao Dhavale and others

... Respondents

Mr. Avesh Ghadge a/w Mr. Aditya Ghadge and Mr. Akshay Kulkarni, for Applicants.

Ms. S. S. Dwivedi for Respondent No. 2 - Insurance Company (through V.C.)

Mr. Mohan Chavan (through V.C.) a/w Mr. Shubham S. Dhoble, for Respondent Nos.1 and 3.

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CORAM : M. M. SATHAYE, J.

DATE : 9th March, 2026.

P. C. :

1. Heard learned counsel for the parties. Perused the record.
2. This is an application by Claimant seeking delay condonation of 9 years and 31 days in filing First Appeal challenging the impugned Judgment and Award dated 16.05.2013 passed by Motor Accident Claim Tribunal at Kolhapur in M.A.C.P No.129 of 2007. The Applicant had filed the said Claim Petition for compensation towards injuries in a vehicular accident. The claim

has been partly granted, but only against the owner and driver of the offending vehicle. The Insurance Company is exonerated.

3. The Applicant has stated in the Application as follows;

“7. Applicant states that she used to earn Rs 4,500/- per month by doing labour work. Since she was earning meager amount and her husband was paralyzed on account of which he was required treatment and medication, she had no savings. After the accident her income was ceased and she was required to stay at home as she lost her job. The Claim Petition was pending since 2009 to 2013 and during the said period she was required to take hand loans since her husband was suffering from various ailments. However, in the year 2012, husband of the Applicant died. Hereto annexed and marked as **Exhibit-A** is the copy of death certificate of husband of the Applicant. The Applicant was required to take shelter at her relative's place. Thereafter the impugned judgment and award came to be passed and the entire awarded amount was required to be spent in repayment of the hand loans taken from the friends and relatives and therefore she had no funds in her hands to litigate further. She could barely satisfy her basic needs and it really became difficult for her even to survive.

8. In January 2018 one relative of the Applicant suggested the applicant to approach her advocate and to challenge the judgment and award of Ld. MACT. Thereafter she approached her local advocate and asked what can be done to challenge the impugned award. The local advocate informed the Applicant about the period of limitation and filing of appeal before this Hon'ble

Court. Until it was informed by the Advocate the Applicant was completely unaware of the same. However, the Applicant did not have funds to pay court fees, advocate fees etc. and again on account of financial crunch the Applicant could not approach this Hon'ble Court. The Applicant thereafter gradually saved some amount by March 2020, However, in March 2020 the central government imposed lockdown in the backdrop of covid-19 pandemic. The life of the Applicant became more miserable during the lockdown period. The Applicant thereafter in May 2022 approached the Advocate on record with necessary papers and some arrangement of funds borrowed from relatives of the Applicant and requested Advocate on record to file an appeal against the order impugned. Thereafter some time was required in preparing, sending, affirming and resending of the memo as well as this application. Thus, delay has occurred in filing the present appeal which is required to be condoned in the interest of justice.

9. The impugned Judgment and Award was passed on 16.05.2013. The Applicants applied for the certified copy on 02.01.2018 and the same was ready on 07.03.2018. As such there is delay in filing the Appeal.

10. The applicant is a totally destitute lady, she has to depend upon her relatives and near ones for her daily bread and butter. She cannot afford to even travel any source. For the last decade or so she is depending upon others for her basic necessities of life at times she has to starve for her hunger and has to live on by drinking water. As due to the accidental injuries left had is amputated. Therefore she has to slip on right side only otherwise if

there is weight on the left side of the body, due to amputation of hand the whole body aches and restless”.

4. Respondent Nos.1 and 3 who are owner and Driver of the offending vehicle, have filed reply and contested the Application.

5. Learned counsel for the Applicant submits that in view of the averments in the Application, lenient view be taken and though delay is large, considering the condition in which the Applicant suffered and for the reason that the Applicant was barely in a position to satisfy her basic needs, the delay needs to be condoned in the interest of justice. He further submitted that under the impugned judgment and award, it is the only owner and driver who are held liable to pay the compensation and the Tribunal has exonerated Respondent No.2 – Insurance Company. He submitted that the present case was clearly a case of ‘pay and recover order’ and exoneration of the Insurance Company is not justified. He submitted that the Applicant has excellent case on merits even for enhancement of the amount. He relied on the judgment of the Hon’ble Supreme Court in **Thakor Tinuji @ Tinaji Kamshiji versus Nanalal M. Thakker & Anr - Civil Appeal No.3871 of 2025 order dated 24.02.2025 (SLP(C) No. 7473 of 2025)**.

6. Learned counsel for Respondent No.2-Insurance Company opposed the delay condonation Application on the ground that this is not a case of dismissal of claim. It is submitted that Claim was partly allowed and if the Applicant was in such a financial difficulty as pleaded, she ought to have put the impugned award to execution. She submitted that however, there is nothing on record to show that the Applicant ever put the impugned Award to execution. She submitted that if the Applicant wants to argue that this is a

case of pay and recover then the Appeal should have been filed immediately within limitation and the Applicant could not have waited for such a long time. She further submitted that a valuable right is accrued in favour of the Insurance Company exonerating it and the same should not be jeopardized by reopening the matter on merits after a long delay.

7. Learned counsel for Respondent Nos.1 and 3 (owner and driver) contended that the only reason stated in the Application is that the Applicant was suggested by one of her relatives about challenging the impugned decree. He submitted that ignorance of law cannot be a ground for such a long delay. He further submitted that even going by the Applicant's own contention, certified copies were ready in March, 2018, however Application is filed in September, 2022 and, therefore, delay is not sufficiently explained.

8. I have considered rival submissions and perused the record. It is trite law that while considering delay condonation application, it is not the 'extent of delay' but 'the reason and explanation offered for the delay' which needs to be considered. By the very nature of delay condonation application, it depends on facts and circumstances of each case.

9. The private parties – owner and driver have not even contested the claim, in as much as, claim-petition proceeded without written statement of Respondent No. 1 and ex-parte against Respondent No. 3.

10. Perusal of the impugned judgment indicates that the Applicant was working with Shri Mahila Griha Udhog Lijjat Papad, Warna Udhog Samuha and was getting Rs.150/- per day. In the accident, admittedly, the Applicant lost her left hand and she has suffered amputation of left elbow.

Since she could not prepare papads any more, with amputated left hand, she was removed from the job. It appears that the Tribunal found that the Applicant is still working with Shri Mahila Griha Udhog Lijjat Papad, Warna Udhog Samuha, however, it is not clear in what capacity.

11. The reason for going into this factual aspect is because the Court needs to peep into the life of Applicant which she must have suffered after amputation of the left hand as a result of the tragic accident.

12. The Applicant has stated in the Application that her husband was paralyzed on account of which she was required to spend on treatment and medication and had no savings. It is stated that after accident, her income ceased and she lost her job. Claim Petition was pending from 2009 to 2013 and during said period, she was required to take hand loans. It is stated that in the year 2012, she lost her husband and was required to take shelter at relative's place. In the circumstances, it is stated that she was in such situation that she can barely satisfy her basic needs. It is also stated that she could not afford to travel.

13. It is true that Applicant has stated that she was unaware of the period of limitation, which amounts to ignorance of law. However, that is not the only the ground on which delay condonation is prayed. Substantive ground prayed is on the basis of precarious living conditions that the Applicant faced. It is stated that the Applicant had saved money by March, 2020 after certified copies were obtained in March, 2018. However, thereafter COVID Pandemic struck and it is only after May, 2022 that the Applicant could approach and engage the Advocate.

14. While considering the case of this nature, the Court cannot shut its eyes to the harsh reality of life that litigant requires money to litigate, even to realize the amount of monetary compensation awarded by the Court. People with all-limbs-in-place, seldom understand the pain and suffering of those who have lost limbs. The disability and challenge that the Applicant must have faced, requires no more pleading. If a working woman with paralytic husband, earning her paltry livelihood of Rs. 150/- per day by making *papads*, is struck by a calamity snatching one of her hand/limb, in my view, showing leniency is the least that the Court can do.

15. Contention of the Insurance Company that there is nothing on record to indicate that the Applicant did not execute the main award for such a long time and still claimed precarious financial condition, in my view, would not make any difference. It is especially so, when the main award is passed only against private parties who are owner and driver of the vehicle. It needs no reiteration that execution of the money-decree against private parties take a long time in this country. In that view of the matter, assuming that the Applicant did not file execution, no fault can be found if she thought that decree against private party is merely a paper-decree.

16. Considering the extent of delay, a query was put to learned counsel for the Applicant as to whether the Applicant is ready to forgo/not claim interest for the delay period. Learned counsel for the Applicant, on instructions, stated that Applicant is willing to forgo/not claim the interest for the period of 9 years and 31 days. Statement is recorded and accepted as an undertaking to the Court. Considering that interest is not being claimed for the delay period, prejudice to that extent to all the parties (owner, driver and the Insurance Company) is already taken care of.

17. If the delay is condoned and Appeal is heard, it will only be an adjudication on merits in accordance with law.

18. In the aforesaid facts and circumstances, in my considered view, sufficient cause is made out and delay needs to be condoned.

19. The Application is allowed. Delay is condoned. Appeal be numbered.

20. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]