

(2016) 05 BOM CK 0030

In the Bombay High Court

Case No : First Appeal No. 1342 of 2014 with CAF/1407/2014

The New India Assurance Co. Ltd.

APPELLANT

Vs

Ms. Bharati Adhik Patil and Ors.

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 167
Workmens Compensation Act, 1923 — Section 10, 3

Citation : (2016) 3 ACC 821 : (2017) ACJ 618 : (2017) 1 AnWR 129 : (2016) 2 AnWR 250 : (2016) 4 BCR 73 : (2016) 3 CLR 65 : (2016) 151 FLR 870 : (2017) LabLR 224 : (2016) 4 LLJ 232 : (2016) 4 TAC 633 : (2016) 2 TNMAC 260

Hon'ble Judges : Mrs. Mridula Bhatkar, J.

Bench : Single Bench

Advocate : Mr. D.S. Joshi, Advocate, for the Appellant; Mr. A.M. Kulkarni, Advocate, A.P. Shinde, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Mridula Bhatkar, J.—Rule. By consent of the parties, rule made returnable forthwith and heard finally.

2. In this appeal, the judgment and award dated 31.7.2013 passed by the learned Commissioner for Workmen's Compensation, Kolhapur, in Application (WCA) No.25/B-5 of 2009 is challenged by the insurance company.

BACKGROUND:

3. The deceased Adhik Patil, aged 31 years old, was working as a driver on a tractor bearing No.MH-13J 8502 when the accident took place i.e., on 24.1.2004. The tractor belonged to one Vishwas Sadashiv Yadav, Respondent No.5, with whom the deceased was working as a driver. The deceased was proceeding in the tractor from Nigdi towards village Tawade, Taluka Shahuwadi, loaded with sugarcane. While taking U-turn, one unknown truck coming from the opposite side gave dash to the tractor. The tractor was upturned and the driver i.e., the

deceased, died due to the injuries SO his dependents i.e., his widow, his minor daughter and parents filed claim under the Workmen's Compensation Act, 1923, as the deceased was in the employment of respondent No.5 and he was getting a salary of Rs.3,000/- per months plus Rs.1,500/- towards bhatta. In the said matter, the employer did not file written statement. However, the opponent No.1, i.e., the present appellant, filed written statement challenging the maintainability of the claim under the Workmen's Compensation Act (for short, "WC Act") in addition to other challenges like employer-employee relationship, income of the deceased at the time of death, etc. The claimants stepped the box and gave evidence. So also, the insurance company tendered evidence. After considering the oral as well as documentary evidence of both the parties, the learned Commissioner allowed the application partly and thereby directed opponent No.2, the insurance company, with whom the tractor was insured to pay the amount of compensation of Rs.4,11,900/- with interest @ 12% p.a. and also 50% penalty.

4. The applicants earlier had filed the claim for Rs.10,10,000/- before Motor Accident Claims Tribunal. Subsequently that claim was considered under section 163-A of the Motor Vehicles Act. However, the learned Member of the Motor Accident Claims Tribunal, Kolhapur by its order dated 6.9.2007, who entertained it under section 163-A of the Motor Vehicles Act held that the deceased was getting income of more than Rs.40,000/- per annum which is a pre-requisite condition for the claim under section 163A of the Motor Vehicles Act. Therefore, the Member, MACT, Kolhapur, also held that the evidence on record revealed that the accident took place due to the rash and negligent driving of the deceased only and the earning is more than Rs.40,000/- per year and so, compensation cannot be granted and hence, dismissed the claim application.

5. Thereafter, the dependents filed claim application (WCA) No.25/C-8 of 2009 for Rs.4,58,662/- plus 50% penalty plus interest before the learned Commissioner for Workmen's Compensation, Kolhapur. In the said matter, the opponent No.1, the owner i.e., the employer and the opponent No.2 / insurance company appeared. The insurance company raised the point of maintainability that once a claim is preferred under the Motor Vehicles Act for compensation, then, another subsequent claim cannot be filed by the claimants under the Workmen's Compensation Act, as it is barred under section 167. The said objection was turned down by the learned Commissioner on the ground that the dependents or the claimants did not receive any compensation from the Motor Accident Claims Tribunal and therefore, his application under Workmen's Compensation Act for compensation is maintainable as he is not receiving compensation from two separate fora, so, the Commissioner partly allowed the claim.

6. Mr. Joshi, the learned Counsel for the appellant, has submitted that the order passed by the learned Commissioner for Workmen's Compensation is not maintainable in law when the applicants have already filed application for compensation being Application (WCA) No.988 of 2014 before the Motor Accident

Claims Tribunal, Kolhapur. Mr. Joshi, challenged the order of the learned Commissioner on two points. One on the point of maintainability in view of section 167 of the Motor Vehicles Act and secondly on the ground of limitation. The accident took place on 24.1.2004, however, dependents filed the application under the Workmen's Compensation Act in the year 2009. He submitted that section 167 is to be strictly interpreted. Section 167 states that when one claim is instituted before either the Tribunal or the learned Commissioner, then, he cannot file second claim petition before other forum. The section gives option to the claimants to claim compensation either under the Motor Vehicles Act or the Workmen's Compensation Act, 1923 but definitely not under both the enactments. While elaborating his submissions, he relied on section 3(5) of the Workmen's Compensation Act, 1923:

7. The learned Counsel argued that section 3(5) of the Workmen's Compensation Act is a corresponding provision to section 167 of the Motor Vehicles Act. He submitted that these sections impose restriction on the claimants to elect the remedy amongst the two provided under the respective statutes. The option given is about "filing" or "claiming" the application for compensation, out of which only one can be chosen and once it is filed, the second door is automatically closed. Right to file before the other forum extinguishes due to the earlier proceedings. In support of his submission, the learned Counsel relied on *National Insurance Company v. Mastan & anr.*, 2006 (2) SCC 641. He relied on *Oriental Insurance Co. Ltd. v. Dyamavva*, 2013 (9) SCC 406 and submitted that if the claimant has already exercised the option under the Workmen's Compensation Act, then he could not be granted compensation under the Motor Vehicles Act. The learned Counsel also relied on the judgment of the Allahabad High Court in the case of *New India Assurance Co. Ltd. v. MACT, Sitapur*, Civil Revision No.1 of 2006 decided on 13.1.2014. He submitted that in this case, the law laid down by the Supreme Court in *National Insurance Company v. Mastan & anr.* (supra) and *Oriental Insurance Co. Ltd. v. Dyamavva* (supra) is discussed and it is held that if the claim is rejected under one enactment, no claim shall be maintainable under the other enactment.

8. The learned Counsel submitted that in another case decided by the Himachal Pradesh High Court in *New India Assurance Co. Ltd. v. Phulma & Ors.* (2006 ACJ 2537), the same principle has been laid down. He further relied on the judgments in *N.M. Kashyap v. Ratti Ram*, 1986 ACJ 484 of the learned Single judge in the case of High Court of Delhi; *Shantabai Parshuram Mule v. Sharda Prasadsingh*, 1991 (2) Mh.L.J. 1542 of the Division Bench of the Bombay High Court; *Jasuben Devchandbhai Parmar v. G.E. Board*, 2001 ACJ 253 of Gujarat High Court; and in *Oriental Insurance Co. Ltd. v. Gouribai*, 1999 ACJ 1056 of Madras High Court.

9. On the point of limitation, the learned Counsel submitted that whether the claim application of the claimants under the Workmen's Compensation Act was barred by limitation as it is filed two years after the date of the accident or

whether the protection under section 14 of the Limitation Act can be applied. Under section 10 of the Workmen's Compensation Act, two years is the limitation to file application from the date of the accident. The accident took place on 24.1.2004 and the claim was filed on 1.4.2009. under section 14, if at all a litigant is diligently prosecuting another proceeding, then, that benefit can be given. Under section 14, if at all a party is proceeding in the Court which has no jurisdiction, then that period is excluded but in the present case, the MACT has jurisdiction to entertain such claim and therefore, relaxation or exclusive of that period under section 14 is not to be given. In support of this submission, he relied on the judgment of the Supreme Court in the case of Deena v. Bharat Singh, 2002 (6) SCC 336.

10. Mr. Kulkarni, appearing for the respondent Nos.1 to 4, in reply, submitted that the case of the respondents / original claimants, cannot be discarded on the ground of maintainability. His claim was not entertained because it was not a valid claim under section 166 of the Motor Vehicles Act. He submitted that the words mentioned in section 167 and also the manner in which the section 166 of the Motor Vehicles Act are enacted as also the object of the Act are to be taken into account and kept in mind. Mr. Kulkarni has submitted that section 167 merely provides that claimants should take disadvantage of the beneficial legislation by making separate claims under both the acts from the same cause of action. The claimants cannot be left without remedy in law when there is a provision of compensation. Due to misunderstanding or inadvertence on the part of the claimants, they may choose proceedings, however, overall legal understanding of the class of persons from where the applicants have come, is required to be taken into account. Mere filing of claim under the Motor Vehicles Act cannot be considered as exercising an option. The applicants have not received any compensation under the Motor Vehicles Act and, therefore, entitled to receive compensation under the Workmen's Compensation Act. He further submitted that there is no delay and the benefit of section 14 of the Limitation Act is to be given since the claimants were prosecuting the claim with due diligence, however, it was not maintainable and, therefore, the claim is not time barred.

11. The learned Counsel relied on Smt. Neelabai M. Salunkhe & Ors. v. Shamrao T. Pawar & Ors., AIR 1995 Bom. 55. The learned Counsel submitted that the old section 110-AA placed bar to make claim under the two acts. A learned Single Judge of the Bombay High Court has discussed the section and held that the section is applicable only where the death and bodily injury caused to the person gives rise to a valid claim for compensation under the Motor Vehicles Act. The learned Counsel then relied on the judgment of the Division Bench of the Karnataka High Court in the case of D. Jayamma & Ors. v. S. Govindaswamy & Ors., ILR 1982 KAR 550.

12. He further relied on the judgment of the Andhra Pradesh High Court in the case of United India Insurance Company Ltd. v. Kore Lakshmi & Ors. reported in

2003 SCJ 203 and in the case of *S. Lalitha v. Zakir Hussain & Ors.*, 2005 ACJ 1567. He also relied on the judgment of the Punjab and Haryana High Court in the case of *Smt. Tajender Kaur v. Surjeet Singh & ors.*, FAO No.1499 of 2002 decided on 30.7.2014 and of Madhya Pradesh High Court in *Raja v. Ajay*, 2008 ACJ 670.

13. The points of determination in this appeal arises as under:

(a) Whether in view of the bar under section 167 of the Motor Vehicles Act and u/s 3(5) of the Workmen's Compensation Act, a subsequent claim before either of the fora i.e., the Motor Accident Claims Tribunal or the Commissioner for Workmen's Compensation, is maintainable when the earlier claim is rejected by the other forum?

(b) Whether the claim is barred by limitation under section 10 of the Workmen's Compensation Act?

14. It is useful to reproduce section 167 of the Motor Vehicles Act and section 3(3) of the Workmen's Compensation Act thus:

"167. Option regarding claims for compensation in certain cases.? Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

(emphasis added)"

"3(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act."

15. In the case of *Shantabai Parshuram Mule v. Sharda Prasadsingh* (supra), the application for compensation under Motor Vehicles Act was preferred. However, the applicants had received compensation from the employer who had moved before the Commissioner for Workmen's Compensation and he suo motu paid some amount of compensation to the applicants/accused. Objection was raised that as they have received the amount under Workmen's Compensation Act, a second application under Motor Vehicles Act is not maintainable under the old

section 110A of the Motor Vehicles Act. The Division Bench while dealing with the issue held that the applicants never filed any claim before the Commissioner for Workmen's Compensation so, though they have received the amount which is offered by the employer, this is not pursuant to the institution of the claim before the Commissioner for Workmen's Compensation and, therefore, the Division Bench of the Bombay High Court held that the second claim or application for compensation before the Motor Accident Claims Tribunal is maintainable.

16. In the case of *National Insurance Company v. Mastan & anr.* (supra), the claimants did not file application under the Workmen's Compensation Act but under the Motor Vehicles Act and they had received the compensation from the employer who has voluntarily deposited the amount. The claim was filed before the learned Commissioner for Workmen's Compensation Act. Some amount was awarded. However, being dissatisfied, the appeal for enhancement preferred before the High Court was dismissed and then the said order was taken up to the Supreme Court by way of Special Leave Petition where the issue was whether an insured while defending the action initiated under Workmen's Compensation Act is precluded from raising any defence available under section 149(2) of the Motor Vehicles Act. While deciding this issue, the Supreme Court held in para 22 and 23 thus:

"22. Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non-obstante clause providing for such an option notwithstanding anything contained in the 1923 Act.

23. The "doctrine of election" is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case."

17. In *Oriental Insurance Co. Ltd. v. Dyamavva* (supra), though the claim was not allowed under the two acts, however, the claim was not filed under the Workmen's Compensation Act but the employer has suo motu deposited the compensation under section 8 of the Workmen's Compensation Act, 1923 and, therefore, the application under the Motor Vehicles Act was considered as maintainable. However, it is also held in that case that if the award is received under the Workmen's Compensation Act then the claimant is precluded from raising the claim for compensation under the Motor Vehicles Act, 1988. In *New India Assurance Co. Ltd. v. MACT, Sitapur* (supra), the claim filed before the learned Commissioner for Workmen's Compensation was dismissed and

thereafter on the same cause of action, the application was made under the Motor Vehicles Act and it is held as not maintainable.

18. In *New India Assurance Co. Ltd. v. Phulma & Ors.*, a learned Single Judge of the High Court of Himachal Pradesh has held that the claimant is required to exercise his option and is not allowed to file claim petitions under both the Acts.

19. In *Oriental Insurance Co. Ltd. v. Gouribai* (supra), while interpreting the section 3(5A) of the Workmen's Compensation Act, the words "may claim such compensation" have been used in both the statutes. The words clearly show that the person entitled to compensation must take a conscious decision and opt for compensation under one statute. It is further held that any provision which purports to take away or abridge the right to claim compensation under statute must receive strict interpretation.

20. In *Deena v. Bharat Singh*, (supra), to bring a case under section 14, certain conditions are to be satisfied such as both the proceedings prior and the latter, are to be prosecuted by the same party; prior proceedings are to be prosecuted with due diligence and good faith; that there was a defect of jurisdiction where the prior proceedings are filed and the defect in the jurisdiction is of such a character that it is impossible for the Court to entertain the suit or the application and it was expressly said that section 14 will have no application in case where a suit is dismissed after adjudication on its merits and not because the Court was unable to entertain.

21. In *Smt. Neelabai M. Salunkhe & Ors. v. Shamrao T. Pawar & Ors.* (supra), the learned Single Judge of this Court relied on the judgment of the High Court of Karnataka in *B. Prabhakar v. Smt. Bachima* AIR 1984 KANT 225. In *Neelabai* (supra) earlier, the Tribunal dismissed the said application under the Motor Vehicles Act and so the claim was made under the Workmen's Compensation Act. However, the learned Commissioner for Workmen's Compensation dismissed the said application as not maintainable in law by invoking section 110AA of the Motor Vehicles Act. Thus, the applicants 1 AIR 1984 KANT 225 first chose to file application before the Tribunal under the Motor Vehicles Act and after getting dismissal, approached the learned Commissioner. The facts in *Neelabai* (supra) and the case in hand are identical. However, in the present case, the learned Commissioner for Workmen's Compensation has allowed the claim and in *Neelabai*, it was rejected and therefore, the High Court interpreted section 110AA and held that when there was a question of negligence involved and it can hardly be said that the death of the deceased gave rise to a valid claim for compensation and therefore, there was no valid cause of action, the same was not maintainable under the Motor Vehicles Act and therefore, the order of the learned Commissioner was set aside with direction to try it again on merit.

22. In the case of *D. Jayamma & Ors. v. S. Govindaswamy & Ors.*, the Division Bench held that when the accident is entirely due to the rash and negligent driving of the lorry by the deceased himself, then, compensation under section

110A of the Motor Vehicles Act cannot be claimed and so section 110AA of the Motor Vehicles Act cannot be attracted. In *Prabhakar v. Bachima* (supra) of the Karnataka High Court, same view is taken as above.

23. In the case of *United India Insurance Company Ltd. v. Kore Lakshmi & Ors.* (supra), a learned Single Judge of the Andhra Pradesh Court had an opportunity to interpret section 167 of the Motor Vehicles Act. The learned Judge referred to all the earlier rulings and held that for laying a claim under the Motor Vehicles Act, it is necessary to plead and prove that the accident was the result of some actionable negligence of third party. Unless such actionable negligence is proved on the part of the respondent, it is not maintainable. Under the Motor Vehicles Act, unless the owner is legally liable, the insurer who is an indemnifier is not liable to pay compensation. The compensation payable under the Motor Vehicles Act is on the basis of the negligence and the liability is on the basis of tort and whereas under the Workmen's Compensation Act, the compensation payable is on the basis of strict liability, which is imposed by the statute. It is held in para 28 and 30 thus:

"28. The provisions contained in Chapters X, XI and XII of the MV Act and the provisions of the WC Act, are pieces of social welfare legislations. Upon perusal of the provisions of the MV Act and the WC Act, it is clear that under the MV Act, the compensation payable is on the basis of negligence and the liability is on the basis of tort, with an exception to Section 140 of the MV Act, and whereas under the WC Act, the compensation payable is on the basis of strict liability, which is imposed by the statute itself.

30. In the facts and circumstances of the present case, I am of the opinion that the claimants have mistakenly moved the Claims Tribunal under the MV Act. It does not mean that the claimants have elected a forum. In the facts and circumstances of the case, even though the claimants/respondents filed claim petition before the Claims Tribunal under the MV Act, it does not bare them from making a claim before the Commissioner under the WC Act. The claimants are at liberty to file claim petition before the Commissioner for Workmen's Compensation once again to seek redressal of their claim."

24. In *S. Lalitha v. Zakir Hussain & Ors.* (supra), the similar view has been taken.

25. In *Raja v. Ajay* (supra), it was held that when the application under the Motor Vehicles Act is dismissed as not maintainable and thus, the proceedings which were filed were without jurisdiction, ab initio, the dismissal was on a technical ground and therefore the second application under the Motor Vehicles Act was allowed.

26. Considering the ratio laid down in *Dyavamma* (supra) so also in *Mastan* (supra), as discussed above, the facts from the present case are different. In the present case, the applicants have filed claimed compensation of Rs.10,10,000/- before the Motor Accident Claims Tribunal, Kolhapur under section 166 of the Motor Vehicles Act. However, the claim was taken as a claim under section 163A

of the Motor Vehicles Act and the Tribunal dismissed the claim on two grounds, i.e., the deceased was driving in a rash and negligent manner and, therefore, as he was rash and negligent, the claim cannot be granted under 163A and also he was having a salary of more than Rs.40,000/- and so the compensation cannot be given. As the claim was dismissed on this ground, the other option was chosen to approach the Commissioner for Workmen's Compensation under the Workmen's Compensation Act by the claimants i.e., his widow, minor daughter and the parents of the deceased. In fact, the finding given by the learned Member, Tribunal, Kolhapur, is erroneous and illegal. Under section 163A, defence of negligence is not available to the insurer. So also, the Tribunal should have restricted the claim up to Rs.40,000/- as annual income of the deceased and accordingly, fixed the compensation under section 163A itself. However, the said order is not challenged in appeal. Instead, the other option of Workmen's Compensation Act is preferred. I am in agreement with the view taken by the learned Single Judge of the Andhra Pradesh High Court in case of Kore Laxmi (supra), wherein the nature of the liability is correctly distinguished. The liability under the Motor Vehicles Act is out of torts, however, under the Workmen's Compensation Act, it is a strict statutory liability. The sum and substance of these two provisions i.e., section 167 of the Motor Vehicles Act and section 3(5) of the Workmen's Compensation Act is that the person should not get benefit of the compensation twice out of the same cause.

27. Therefore, if the claim application is rejected on certain technicalities before one forum, then, denying other forum will lead to depriving dependents of the compensation for which they are otherwise entitled to. Both the Workmen's Compensation Act and Motor Vehicles Act are social legislations. The sections cannot be interpreted in such a manner so that the object of the legislation will be frustrated. Though the claim is filed before one forum and is rejected and later on, the claim is filed before the other forum, then, giving compensation under the said Act is not a deviation from the ratio laid down in either Mastan (supra) or in Dyavamma (supra) as the person is not receiving double benefit.

28. It will be absolutely unjust to close the other option which is available to the dependents of the deceased. The deceased has left behind a widow and a minor daughter and parents. The employee employer relationship is proved and the fact that the accident has taken place in the course of his employment is also established. Therefore, only because application was filed earlier and was rejected, hence, applying the doctrine of election, the claimant cannot be estopped from filing this application. The claimants need money to survive. The minor dependents need money for their education and future. Ignorance of law is not a defence, however, the Court cannot shut eyes to the realities and practical difficulties faced by the litigants. The proceedings are filed by legal experts who are the lawyers and due to some wrong notions, the litigants cannot be deprived of their right to get justice and fair compensation. The words "filing claim" is to be read with implication of "receiving compensation". Thus, considering the core of the ratio of the judgments of the Supreme Court and the High courts referred

above, the claimant is prohibited to enjoy double benefit and therefore, the relevant provisions are made in the Workmen's Compensation Act and also Motor Vehicles Act.

29. The second point is made on the ground of limitation under section 10 of the Workmen's Compensation Act. The relevant provisions from section 10 of Workmen's Compensation Act reads thus:

"10 Notice and claim. (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:..... ? ? . ? . Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause. ?..... ?....."

(emphasis added)

30. Thus, if the claimant has to file application under the Workmen's Compensation Act, within the period of two years after the date of the accident. In the present case, the accident has taken place on 24.1.2004 and the application under the Workmen's Compensation Act was filed on 1.4.2009 bearing application (WCA) No.25 / B ? 5 of 2009. Thus, there is a delay of more than 3 years. However, the MACP claim was filed in the same year i.e., MACP No.388 of 2004 and it was dismissed on 6.9.2007 by Member, Motor Accident Claims Tribunal, Kolhapur. Thus, the claim was filed after one year and six months after dismissal of the claim application by MACT. The learned Commissioner has given the benefit of section 14 of the Limitation Act, 1963 to the claimants by holding that as the claimants had filed claim before the Tribunal, they were diligent in prosecuting the said claim. The main contention of the learned Counsel for the insurance company was that the Tribunal cannot be considered a forum without jurisdiction. Section 14 of the Limitation Act is about exclusion of time of proceeding bona fide in court without jurisdiction.

31. It is true that Motor Accident Claims Tribunal is a forum of proper jurisdiction for relief of compensation in accident claims and, therefore, as argued by Mr. Joshi, the learned Counsel, the benefit of section 14 of Limitation Act cannot be given to the applicants in the case. However, the section is applicable to the cases where the proceedings are pursued before the Court without jurisdiction. In order to invoke the proviso of section 10 of the Workmen's Compensation Act it is not necessary for the claimants to make a separate application for condonation of delay if the applicants have mentioned the cause of delay, then, and if it is found true, then, in the absence of application, the delay can be condoned. I support of these observations, I rely on the finding given by the

learned Single Judge of this Court in the case of Department of Telecommunication, Nanded v. Deelip s/o. Hari Mogle, 2007(6) Mh.L.J. 596 thus:

"5. ? This proviso appended to sub-clause (1) of section 10 gives discretionary power to the Commissioner in an appropriate case to consider the application irrespective of delay. The provision enumerated under section 10 does not require any separate application to be filed for condonation of the delay. In the present case, the Commissioner has duly considered the reasons and has exercised his discretion in the matter of entertaining the application beyond of 2 years. ?."

The case of the present applicants is covered not under section 14 but under the proviso of section 10 of the Workmen's Compensation Act. The applicants have shown a satisfactory cause to condone delay as the matter was pending before the Motor Accident Claims Tribunal. Hence, the application is within limitation.

32. In the circumstances of the case, the appeal is dismissed.

33. At this stage, Mr. Joshi submitted that he wants to challenge the order before the honourable Supreme Court and prayed for stay of the order for 12 weeks due to summer vacation. Accordingly, the operation of the order is stayed till 30th July, 2016.

34. The learned counsel for the respondent/original claimant submitted that original claimants be allowed to withdraw 25% of the amount. Mr. Joshi opposed this prayer. However, the original claimants are allowed to withdraw 25% of the amount accumulated as on today upon furnishing usual undertaking.