

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 200/2008**

Reserved on : 15.12.2010
Date of Decision : 20.12.2010

ABDUL KADER & ORS Appellant
Through Mr. R.K.Nain, Advocate

VERSUS

UNION OF INDIA Respondent
Through Mr. Ashwani Bhardwaj, Advocate

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **MOOL CHAND GARG,J**

1. This appeal arises out of an order dated 26.03.2008 passed by the Ld. Railways Claim Tribunal whereby the Ld. Tribunal dismissed both the claim application and the condonation of delay application filed by the appellant under Railway Claim Tribunal Act, 1987. The appellant being aggrieved has impugned the order before us. Hence the present appeal.

2. Briefly stated the facts of the case are that the appellants reside in a remote village Chandigachi, Distt-Maida, West Bengal while their son, Alam (the deceased) who was the main earning member in the family worked in Delhi/Gurgaon. On 02.10.2003, Alam met with an untoward rail accident after falling down from the running train between Shahdra and Delhi Railway stations near Kanti Nagar and died on spot.

3. That appellants being in state of shock and also as were illiterate and not very conversant with Hindi Language could not take any legal advice regarding filing of any application before a proper Court to seek compensation, however sometime in September 2004 on being advised by one of the well known person of the society appellant No 1 along with his

relatives came to Tis Hazari Court in Delhi to engage a counsel for filing a claim application in November 2004.

4. It is stated that they engaged one Sh. Mukesh Rathee to prefer a claim application before a proper court and had also put his thumb impression on a format as was required in order to file an application before a court. The counsel at that time had informed appellant no 1 that his appearance would be required at the time of the evidence and also that the case might take 2 years to settle.

5. The appellant No 1 thereafter did not hear anything from the counsel Sh. Mukesh Rathee. Meanwhile the daughter of appellant No 1 & 2 fell ill and appellant No 1 had to run from one place to another for her treatment and finally got her examined at Malda Medical Centre in the month of April, 2007 where she is still undergoing treatment.

6. The appellant No 1 came to Delhi in August 2007 and met the counsel Sh. Mukesh Rathee and enquired about his case but he was informed by the counsel that no case had been filed as appellant no 1 had not contacted him then, finding himself in a fix appellant No 1 went back to his village but again on an advice came to Delhi in October, 2007 and with a help of a person engaged the present counsel who drafted and filed the application on 29.10.2007. The appellants have also filed an affidavit given by Sh. Mukesh Rathee wherein Sh. Mukesh Rathee has admitted that he was engaged in 2004 then but has blamed the appellants for not filing the claim application and for not prosecuting the matter after their initial engagement.

7. The Ld. Tribunal however, while hearing the claim application as well as the delay application has dismissed the applications on the ground that delay has not been sufficiently explained. Further the Tribunal has nowhere discussed about the grounds taken by the appellant for condoning the delay and analyzing them to consider as to whether they or not give sufficient reasons to condone the delay. The Ld. Tribunal has nowhere discussed the affidavit given by the Counsel Sh. Mukesh Rathee which goes to show that appellants had taken steps to file the claim application but owing to illiteracy and other circumstantial problems was not able to follow up. The relevant extract of the impugned order is produced here as under:-

“Taking into consideration all the facts and circumstances of the case, I find that the present application has been filed

after an inordinate delay of three years and twenty eight days and no 'sufficient cause' for condonation of delay has been explained by the applicants. The legal position of law is very much clear in the authorities palced on record by the applicants because sufficient cause was well explained in these authorities, but in the present application, no sufficient cause for condonation of delay has been explained by the applicants. So, I do not find any momentum of force in the submission of the learned counsel for the applicants. In the present case, the maxim " Vigilantibus, et non-dormientibus, jura sub veniunt" is very much applicable, which means that the laws give help to those who are vigilant or watchful not to those who go to sleep over their rights. I am therefore, not inclined to condone the delay in presenting the claim application. Hence, the application for condonation of delay fails and is accordingly dismissed. As a result, the claim application filed by the applicant also stands dismissed."

8. I have heard the parties and would like to observe that it has been held in number of judgments of Apex Court and High Court that delay should be condoned with a view to do substantial justice and the courts while condoning delay in such cases should always make a liberal approach. In this regard would like to quote the crux of the judgment of the Apex Court wherein while considering the delay the guidelines to deal with it has been stated. In the case of *N.Balakrishnan Vs M. Krishnamurthy* (1998) 7 SCC 123 , it has been held that:-

"words 'sufficient cause' should be construed liberally- Acceptability of explanation for the delay is the sole criterion, length of delay not relevant- In absence of anything showing malafide or deliberate delay as dilatory tactic, Court should normally condone the delay."

9. Thus what could be gathered from the above quoted judgment is that the delay should not be deliberate or the explanation should not smack of mala fides being part of a dilatory strategy rather it should be a genuine lapse on the part of the litigant concerned. In the instant case, the appellants are illiterate and hail from a remote village of West Bengal with no education background and being quite ignorant about the system of law had tried their level best to file their claim within time, the evidence of which is in the form of the affidavit given by the counsel who was earlier engaged by the appellants but due to lack of awareness, poverty and illiteracy they were not able to keep a follow up, however they came back after 3 years and twenty eight days and finally filed a claim petition. The Ld. Railways Tribunal should have dealt with these aspects keeping into

consideration the above judgment of the Supreme Court, however, he has not done so.

10. In these circumstances, the appeal is allowed and the delay in filing of the claim application is condoned in the facts of this case. The case is remanded back to the Railway Claims Tribunal to decide the claim in accordance with law of course subject to satisfaction of the Tribunal that the appellants are genuine persons, that is to say, after being satisfied with the identity of the appellant as the dependents of the deceased. Parties to appear before the Tribunal on 06.01.2011. TCR, if any, be sent back forthwith along with a copy of this order.

MOOL CHAND GARG, J

DECEMBER 20, 2010

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