

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

+ **FAO 214/2009**

Reserved on: 02.11.2010

Decided on: 09.11.2010

PANVESHWARI & ORS. Appellants
Through Mr. N.K. Gupta, Adv.

Versus

UOI Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

: **MOOL CHAND GARG,J**

CM No.9555/2009 (for condonation of dealy)

1. This application has been filed by the appellants for condoning the delay of 187 days in filing the appeal against the judgment and order passed by the Railway Claims Tribunal dated 22.08.2008 whereby the claim petition filed by the appellants as dependents of the deceased was dismissed by holding that the the deceased de-boarded a running train.
2. To seek condonation of delay, it has been pleaded that the appeal could not be filed in time because the appellants were under great sorrow and disappointment after the untimely death of the deceased, who was the father of the appellants No.2 to 5 and the husband of appellant No.1 and was the only bread-earner. Further, the appellants had no source of income and did not have sufficient money to pay the fees of their counsel for filing the present appeal. It has been pleaded that somehow they arranged some money and the same was paid to their counsel and thereafter the counsel prepared the present appeal and in this process the delay of 187 days

occurred. No other ground has been pressed in service, despite having filed a claim petition just within three months of the death of the deceased which they lost on merits.

3. The respondent has opposed the application by filing a reply. It has been submitted that soon after the death of the deceased, the appellants filed a claim petition registered as OA No. 126/2007 before Railway Claims Tribunal on 30.08.2007 i.e. just within three months of the death of the deceased. It is stated that the very fact that they filed a claim which they lost on merits and thereafter stating that they could not file the appeal within limitation and delayed the filing of the appeal for 187 days being in a state of shock cannot be accepted. It is further submitted that if the appellants were unable to arrange fees for their counsel they could have approached the District Court or High Court for seeking legal aid and assistance in the matter. It has been submitted that the delay had to be explained on day-to-day basis and therefore, the application is without any consequence.

4. During the arguments the learned counsel for the appellant could not justify the delay. He was only trying to harp on the merits of the case knowing full well that on the basis of their basic pleadings pleadings they have lost the claim on merits. They wanted to amend their claim by pleading a new version of the incident. This attempt only shows that the appellants want to raise new issues which they have not raised when the original claim was filed. Death of the deceased was not caused because of any untoward incident, but was a result of his own negligence.

6. Having examined the record of the case and the claim petition which they lost on merits and finding no justification for causing delay of 187 days in approaching this Court, I find no reason to condone the delay. Accordingly the application is dismissed.

FAO No.214/2009

In view of the orders passed in CM No.9555/2009, the appeal stands dismissed.

MOOL CHAND GARG,J

NOVEMBER 09, 2010
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