

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

+ **FAO 450/2010**

Reserved on : 10.12.2010
Date of Decision : 20.12.2010

MAYA DEVI & ORS

..... Appellant
Through Mr. N.K.Gupta, Adv

VERSUS

UNION OF INDIA

..... Respondent
Through Mr. Neeraj Attree, Ashish Gopal
Garg Adv.

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**

CM No.22094/2010

Allowed subject to just exceptions.

Application stands disposed of.

C.M.No. 22093/2010 in FAO No.450/2010

1. This order shall dispose of the application filed by the appellant for condonation of delay of 85 days in filing of this appeal.
2. Briefly stating the facts are; that the deceased, namely, Brijesh aged 22 years of age was travelling in the train GT express U.P bearing No. 2615 on 10.06.2006 from Jhansi Railway Station to Hazrat Nizamuddin Railway Station. When the train arrived in Faridabad, the deceased fell down from the moving train due to a sudden jerk and being pushed by the heavy crowd of passengers and sustained serious injuries which ultimately resulted in his death.
3. The appellants are the parents of the deceased who filed a claim petition along with an application for condonation of delay of 981

days in filing the claim petition. The application M.A. No. 10/2010 was heard by the Ld. Tribunal and was dismissed vide order dated 11.05.2010. The appeal before this Court was filed on 03.12.2010, which was returned under objection on 04.12.2010 and was again filed on 07.12.2010.

4. In the application seeking condonation of delay, it was pleaded by the appellants that one Shri Vijender Kumar Yadav was engaged by them as the counsel, however he left Delhi and moved to Bhagalpur in Bihar without informing the appellants and it was only in the end of January 2010 that the appellants could locate their counsel and finally on 31.1.2010 the appellants received the file from a person sent by Shri Vijender Kumar Yadav.
5. After hearing both the parties, the Ld. Tribunal dismissed the delay application by observing that:-

“I have considered the submissions made by the learned counsel for the parties, and, gone through the record. The applicants have alleged that they are parents of the deceased, Brijesh, who was 22 years of age at the time of the accident. In the application for condonation of delay, it has been stated that Sh.Virender Kumar Yadav, Advocate, was engaged as counsel for filing the claim petition, and, the documents were also handed over to him but no claim petition was filed by him as the counsel shifted to his native place in Bihar at Bhagalpur. In the application, it has also been stated in Jan 2010, the applicant visited Bhagalpur to know the whereabouts of his counsel, and, thereafter, the file was received by the applicants only on 31.1.2010. The explanation given in the application for condonation of delay are not satisfactory, as nowhere it has been mentioned that on which date Sh.Virender Kumar Yadav, Advocate, was engaged as counsel. A concocted story has been set up in the application for condonation of delay, as from the averment made in the application, it appears that the file was not handed over to either of the applicants at Bhagalpur by the counsel Sh. Virender Kumar Yadav. The applicants have also not disclosed the name of the person from whom they received the file on 31.1.2010. At Form-I of the original Claim Petition, and, at page 5 of the claim petition, two dates are mentioned, of 11.12.2009, and, another of 16.02.2010. The perusal of the record of original claim petition reveals that the claim petition was ready on 11.12.2009 itself but the same was filed before this Tribunal on 17.2.2010. The averments made in para 04, and, para 05 of the application for condonation of delay are contrary to

the dates mentioned in the original claim petition, which is on record. The story set up by the applicants that the file was received on 31.1.2010 from the earlier counsel, and, thereafter the petition was prepared through another counsel is contrary to the dates mentioned in the original claim petition. The delay in filing the claim petition is 981 days. Since the applicants have not approached the Court with clean hands, they are not entitled for any discretionary relief of the Court. The application of condonation of delay deserves to be dismissed. It is accordingly dismissed.”

6. A perusal of the grounds given in the application for condonation of delay filed before the trial court i.e. MA. No.10/2010 and the grounds of appeal in FAO No. 450 of 2010 shows that the facts given in both vary to a great degree. In the application namely M.A. No. 10/2010 the only ground taken for seeking condonation is that the first counsel engaged by them had shifted to Bihar and hence the delay whereas in the grounds of appeal given in the FAO it is mentioned by the appellants that the new counsel engaged by them namely Mr. Upender Singh has not mentioned all the facts which were narrated by the appellants and due to their inability to read and write they could not read the application and put their signatures on it. Another new ground taken by the appellant is that since the last inquest report of the Faridabad police was given on 15.12.2008 whereas the accident took place on 10.06.2006 hence the delay was not on the part of the appellant, nor a deliberate one.
7. Counsel for the appellant has also relied upon various judgments to contend that very liberal view should be taken when the issue of condonation of delay is raised particularly in the cases like present one where the compensation is sought for by the dependents of a deceased person. Reference has been made to the following judgments:
 - (a) Gargia & Ors. Vs. UOI I (2010) ACC 111
 - (b) Chekka Shantha Kumari Vs. UOI I (2006) ACC 514
 - (c) Ram Nath Sao Vs. Goverdhan Sao (2002) 3 SCC 195
 - (d) M.K. Parsad Vs. P. Arumugam (2001) 6 SCC 176
 - (e) Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji and Ors. AIR 1987 SC 1353
 - (f) N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123
 - (g) Ram Ravalu Gavade Vs. Sataba Gavadu Gavade (dead) through LRs. 1997 (2) RCR (Civil)

8. I have heard the parties and have gone through the order of the Ld. Tribunal and in my opinion the appellants took a very callous approach towards the entire case. They have not been diligent and did not pursue the issue with total honesty which can be seen from the new grounds which have cropped up in the FAO but are not given in the claim petition. The crux of the judgments cited by the appellant is that, on the issue of condonation of delay a liberal approach should be adopted by the Court.
9. Moreover, the appellants have also not stated as to when they entrusted the brief to Shri Virender Kumar Yadav, Advocate; when Shri Virender Kumar left Delhi for Bhagalpur; when did they entrusted the case to the new counsel and when the case was ready. There is again no explanation as to why the petition was not filed immediately. There is also no explanation about the delay of 85 days in re-filing the matter. Another fact which is of importance to note is that explanations are sought to be given by Shri Upender Singh in his affidavit which is filed with the written arguments wherein he has stated that the previous claim petition was containing the date as 11.12.2009 which was prepared by the previous counsel namely Shri Virender Kumar Yadav. This statement per se goes against the case of the appellant when he says that Virender Kumar Yadav left Delhi for Bhagalpur without telling as to what is the date of his leaving Delhi.
10. Without amending the pleadings, an affidavit has been annexed by the counsel along with written submissions, wherein it has been stated that he has sent his junior to file the said petition when the date of filing was given as 16.02.2010 along with the previous endorsement as 11.12.2009. This entire story is only an attempt to somehow fill-in the lacuna and is not even mentioned in the application for condonation of delay. In any event, the said affidavit has its own defects inasmuch as the counsel says that the file was received by him on or after 05.02.2010. He also states that he prepared the petition and the date given was 11.12.2009. He again says, he gave the file to his junior for filing who gave the endorsement of 16.02.2010. He says that the previous counsel was engaged by the appellant on 20.12.2008 which is not the date mentioned in the application. He also states that his junior counsel

Meena Gupta argued the matter before the Tribunal. However, no affidavit of Meena Gupta has been filed on record. In any case, there is no explanation as to why even after preparing the case and file was ready for filing on 11.12.2009, why the claim petition has been re-filed in May 2010.

11. What appears to be is that all cock and bull story is being cooked up on the part of the counsel for the appellant and there is no bona fide in so far as explaining the delay is concerned on the part of the appellants.
12. The law does not permit mis-placed sympathies. Despite being conscious of the fact that the law laid down by the various courts, including the Apex Court, is to take a very liberal view on the issue of condonation of delay, in the facts and circumstances of this case, the appellant is not entitled to seek any indulgence of this Court for the simple reason that the explanation furnished by the appellant for seeking condonation of delay of 85 days in filing of this appeal does not inspire any confidence as well as the reasons given by the Tribunal for not condoning the delay of 981 days does not call for any interference by this Court. Consequently, the application for condonation of delay is dismissed.

FAO No.450/2010

In view of the orders passed in CM No. 22093/2010, the appeal stands dismissed. No Costs.

MOOL CHAND GARG, J

DECEMBER 20, 2010

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