

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3175 OF 2016

1. Sukhdeo S/o Balaji Kadape,
Age: 72 years, Occ: Labour,
R/o Kinhi (Tathe), Post Athode Dev,
Tq. Jafrabad, District Jalgaon (MS)
2. Sharda S/o Bhagwan Nagare,
Age: 52 years, Occ: Household,
R/o Kinhi (Tathe), Post Athode Dev,
Tq. Jafrabad, District Jalgaon (MS)
3. Rameshwar S/o Balaji Kadape,
Age: 37 years, Occ: Labour,
R/o Nitin Motilal Dhobi,
Opp. Gram Panchayat,
Vishnu Chowk, Nashirabad,
Tq. and Dist. Jalgaon (MS)
4. Nandabai W/o Dilip Wagh,
Age: 33 years, Occ: Household,
R/o Nitin Motilal Dhobi,
Opp. Gram Panchayat,
Vishnu Chowk, Nashirabad,
Tq. and Dist. Jalgaon (MS)
5. Badrinath S/o Sukhdeo Kadape,
Age: 33 years, Occ: Labour,
R/o Kinhi (Tathe), Post Athode Dev,
Tq. Jafrabad, District Jalgaon (MS) ... Appellants

Vs.

Union of India,
Through General Manager,
Central Railway, Chatrapati Shivaji
Terminus, Mumbai. ... Respondent

Mr. Vishnu B. Madan, Advocate for the appellants.
Mr. Navandar Manish N, Advocate for the respondent.

CORAM : P.R. BORA, J.
DATE : 18-10-2016.

ORAL JUDGMENT :

1. The appellants have filed the present appeal against the order passed by the Railway Claims Tribunal, Mumbai on 25.07.2014 in Claim Application No. MA/2013/0132.

2. The claim petition has been dismissed on the ground of delay. Separate application seeking condonation of delay of was filed and the tribunal rejected the said application observing that, the delay has not been properly explained. The Tribunal, has consequently refused to consider the claim petition on merits and has, thus, dismissed the claim petition also.

3. Shri Madan, learned Counsel appearing for the appellants submitted that, after the death of Lilabai, the appellants being in grief could not collect the necessary papers for filing the claim petition. Learned counsel further submitted that, with lot of difficulties, the appellants could collect police papers and, thereafter, seeking necessary legal advice filed the petition. The learned counsel submitted that, ignorance of law and the poor condition of the appellants were also the reasons for not filing the petition by the appellants within the stipulated period of limitation. The learned counsel submitted that, the learned tribunal has failed in considering all these aspects and has rejected the application for condonation of delay and consequently dismissed the claim petition.

Learned counsel, therefore, prayed for setting aside the impugned order and sought further direction to the tribunal to decide the claim petition on its own merits.

4. Shri Navandar, learned counsel appearing for the respondent, opposed the submissions made on behalf of the appellants. The learned counsel submitted that, the appellants were too negligent even in prosecuting their claim before the tribunal. The learned counsel submitted that, none appeared for the appellants before the claims tribunal on the dates fixed for hearing on the application for condonation of delay. Learned counsel submitted that, in the circumstances, the tribunal has rightly dismissed the application for condonation of delay, observing that huge delay of two years and seven months has not been properly explained by the claimants. The learned counsel submitted that, no interference is warranted in the impugned award. He, therefore, prayed for dismissal of the appeal.

5. After having considered the submissions advanced by the learned counsel appearing for the respective parties and on perusal of the impugned order I am inclined to allow the present appeal for the following reasons.

6. It is not disputed that, the delay which has been caused is of two years and seven months. It is further not in dispute that when the matter was fixed for arguments before the tribunal

nobody appeared on behalf of the appellants. It is further true that, ignorance of law, illiteracy, poverty, want of funds cannot be as of right held to be sufficient cause for condonation of delay, however, as has been time and again ruled by the Hon'ble Apex Court, it is imperative for the courts or the tribunals that in the proceeding where rights of illiterate, poor, down-trodden are involved, a more humane approach has to be adopted and it should not be the endeavour of the courts or the tribunals or the authorities to dismiss the application or petitions merely on technicalities without looking to the merits of the case. The Railways Act is a beneficial legislation meant for providing compensation to the victims or the legal representatives of the victims of the railway accidents. As such, in such matters, the tribunal is not supposed to take a pedantic or hyper technical view but is expected to adopt a humane and lenient approach. Its approach should be justice oriented. Acceptance of explanation furnished by the claimants in justification of the delay caused by them in approaching the tribunal should be a normal course in such matters unless there is some contrary evidence imputing the intention or the bonafides of the claimants making delay in approaching the court.

7. It does not appear to me that, the delay caused by the appellants is deliberate or intentional or for malafide reasons. I further do not see any reason to doubt the bonafides of the

appellants in approaching the tribunal. In the instant matter, it is true that, the delay is of two years and seven months, however, the reasons which are assigned for occurrence of the said delay cannot be outrightly rejected. I reiterate that, having regard to the beneficial legislation the appellants/applicants must be given an opportunity to agitate their petition on merits. I am therefore, inclined to allow the present appeal. Hence the following order;

ORDER

- i. The impugned order is quashed and set aside.
- ii. The delay caused in filing the Claim Application is condoned.
- iii. The tribunal is directed to consider the claim application on its own merits.
- iv. The Appeal is allowed in aforesaid terms.

(P.R. BORA)
JUDGE