

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.386 OF 2016

- 1) GITANJALI WD/O SANTOSH MAJHI
Age: 35 Yrs., occu. Household.
- 2) Avinash s/o Santosh Majhi,
Age: 16 Yers., occj. Education.
- 3) Biplobo s/o Santosh Maji
Age: 11 Yrs., occ. Nil.
- 4) Shushlaya D/o Santosh Majhi,
Ag: 7 Yrs., occu. Nil.
(Appellant Nos. 2 to 4 are
minors and under Guardian
of their mother, i.e.
applicant No.1.)
- 5) Saebani Wd/o Sudarshan Majhi,
Age: 69 Yrs., occu. Househol,

All R/o Bhatigaon, Tq.Kalampur,
District Kalhandi (Orissa)

= APPELLANTS
(Orig.Applicants)

VERSUS

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

= RESPONDENT
(Orig. Respondent)

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Mr. Vishnu B. Madan, Advocate for Appellants:

Mr. Navandar Manish N., Advocate For Respondent.

CORAM : P.R.BORA, J.

DATE : 25th August, 2016.

ORAL JUDGMENT:

1) Heard learned Counsel appearing for the respective parties. Admit. By consent, taken up for final disposal.

. The appellants have filed the present appeal, challenging the judgment and order dated 17th December, 2015 passed by the Railway Claims Tribunal, Nagpur bench (for short, the Tribunal) in Claim Application No.MA/NGP/2015/0020. The Tribunal has rejected the application seeking condonation of delay caused in filing the claim petition before the Tribunal and has consequently, dismissed the claim petition also being barred by limitation.

2) Learned Counsel appearing for the appellants/original applicants, inviting my attention to the observations made by the Tribunal in the impugned of its judgment, submitted that the Tribunal has adopted too

technical approach and has ignored the aspect that the legal heirs of deceased Santosh will be loosing all remedies if the delay, which is not inordinate is not condoned.

. The learned Counsel submitted that as has been observed by the tribunal, the counsel appearing for the applicant, who was supposed to take certain steps, did not take the said steps promptly and that was the reason that the claim petition could not be filed within stipulated period of limitation.

. The learned Counsel submitted that initially the petition was filed before the Railway Claims Tribunal at Bombay and the same was filed well within period of limitation. However, the said claim petition came to be dismissed by the Tribunal at Mumbai on the ground of jurisdiction. The learned Counsel further submitted that the learned Counsel, who was representing the applicnats at the relevant time, should have promptly filed the claim petition before the Nagpur Bench of the Tribunal, however,

the same could not be filed and the delay of 560 days occurred in filing the said petition.

3) The Tribunal has declined to condone the said delay by referring to various judicial pronouncements on the point of limitation. On perusal of the said judgments, it appears to me that the ratio laid down in the said judgments could not have been applied by the Tribunal to the facts of the present case. The Tribunal has adopted a pedantic approach in deciding the application for condonation of delay and ignoring the peculiar facts involved in the case before it has rejected the said application.

4) There cannot be a dispute that if the delay is inordinate and no justifiable reasons are assigned for occurrence of such delay, the same cannot be condoned. The Hon'ble Apex court in catena of judgments has however ruled that the expression "sufficient cause" must receive liberal interpretation. In the matter of

condonation of delay, the Courts are supposed to adopt a justice-oriented approach. Pragmatic view needs to be taken in considering sufficient cause for delay so that the just cause is not defeated.

5) In the instant case, admittedly, the claim petition before the Railway Claims Tribunal at Mumbai was filed well within period of limitation. However, as mentioned earlier, the same was dismissed by Mumbai Tribunal on the ground of jurisdiction. The order was passed by the Tribunal at Mumbai on 19th January, 2015; the certified copy of which was received to the Counsel for the appellants on 7th April, 2015 and the petition before the Nagpur Bench of the Tribunal was filed on 1st June, 2015. Considering the facts, as above, in no case, it can be said that the appellants were negligent in prosecuting their claim or to say that inordinate delay has occurred in filing the claim petition by the appellants even if the delay is computed from the

date of occurrence of the alleged accident. From the record it is quite clear that the appellants were bonafide prosecuting their claim before the Tribunal at Mumbai believing that the said Court has jurisdiction. The Tribunal at Nagpur has lost sight of the fact that the appellants were under the advice of the counsel, who filed the petition at Mumbai and no blame can be attributed on their part for the simple reason that a layman can not be expected to have knowledge as to which Court will have jurisdiction to entertain and try his claim petition.

6) Having considered the entire material on record and more particularly, the fact that the claim petition was filed well within the period of limitation before Mumbai Tribunal and after the same was dismissed by the Tribunal on the point of jurisdiction, after receiving the certified copy of the said judgment within the period of less than two months, the claim petition was filed before the Nagpur Tribunal,

the finding recorded by the Tribunal that there was no just and sufficient cause for condoning the delay, cannot be sustained and deserves to be set aside. I hold that the appellants had sufficiently explained the delay which had occurred in filing the claim petition by them before the Nagpur Bench of the Tribunal and the same deserves to be condoned. In the result, the following order, -

ORDER

I) Judgment and order dated 17th December, 2015 passed by the Railway Claims Tribunal, Nagpur Bench in Claim Application No.MA/NGP/2015/0020, is quashed and set aside;

ii) The delay caused in filing the claim petition by the appellants before the Tribunal is condoned. Consequently, the Claim Petition be registered in accordance with law;

iii) The Tribunal is directed to decide the claim petition in accordance with law on its own merits by giving due opportunity to the parties to the claim

petition;

iv) The Appeal stands allowed in the aforesaid terms. Pending Civil Application, if any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/