

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

65 CIVIL APPLICATION NO. 9777 OF 2016
IN FAST/3862/2016

ANITA SHAMKANT WAGH AND OTHERS
VERSUS
SURESH GULABRAO PATIL AND OTHERS

...
Advocate for Applicants : Garud N.c.
AGP for Respondents: Gatne Atul B
...

CORAM : P.R. BORA, J.
DATE : 21-11-2016.

P.C. :

1. Heard. The applicants/appellants had filed the Motor Accident Claim Petition No. 845 of 2009 before the Motor Accident Claims Tribunal at Dhule. The aforesaid petition was finally decided by the tribunal vide judgment and award passed on 14.03.2013. The tribunal held the appellants/applicants entitled for the total compensation of Rs. 25,06,940/- jointly and severally from the owner and insurer of the vehicle involved in the accident, with interest thereon @ 9% per annum from the date of amendment i.e. 13.07.2012. After passing of the aforesaid award, the appellants/applicants filed the execution proceedings bearing darkhast no. 44 of 2013. In the darkhast so filed, the insurance company deposited the entire amount under the award along with the interest and the appellants/applicants, therefore, filed Pursis on 04.12.2014 stating therein that, the award passed is fully satisfied and the darkast proceeding, therefore, may be closed.

2. The present appeal is filed by the appellants/applicants impugning the judgment and award passed in M.A.C.P. No. 845 of 2009 on the ground that the tribunal has erred in not awarding interest on the amount of compensation from the date of filing of the application and granted it only from the date of amendment made by the appellants/applicants in the claim petition. In filing the appeal, the delay of 967 days has occurred. The reasons for occurrence of delay are stated by the appellants/applicants in para nos. 6 and 7 of the application which are reproduced herein-below:

6) The applicants state that the above said judgment and award is dated 14.03.2013 and since the applicants have received the money as per the Award in December, 2014, hence by way of filing Pursis below Exh.5/B in Darkhast No.44/2013 they have stated that since the Insurance Co. has deposited the said amount in the Darkhast Proceedings, hence they don't want to proceed with the Darkast Proceeding hence accordingly the applicants have filed Pursis on 04.12.2014 and the learned Trial Court/Executing Court by order dtd.4.12.2014 has seen the said Pursis and filed it.

7) The applicants state that in view of the above position accordingly, they have filed an application for certified copies on 23.02.2015 and it has been received on 13.04.2015 but since the other documents are like copy of Darkhast and claim petition is required to consider the factual aspect, hence again the applicants have filed certified copy application on 30.06.2015 and it has been received on the same day, hence after collecting all the documents the applicant no.1 has approached to the Trial

Court Advocate at Aurangabad and after advice given by him and collecting all the necessary papers alongwith Court Fees, and expenses money as well as legal fees, she has approached to the Advocate of the High Court in the 1st week of February, 2016 hence the above said delay is circumstantial one and it is not intentional and being the mother the applicant no.1 is having responsibility of applicant nos. 2 & 3, hence she is facing for financial crisis and as the applicant Nos. 2 & 3 are taking the education and are dependant on applicant no.1, hence during this process some delay has been caused which is not intentional because by delaying the matter the applicant is not gaining anything. On the contrary, by filing this First Appeal she is challenging the interest amount as stated above. Hence, delay which has been caused be condoned in the interest of justice being the beneficial legislation as well as social legislation and being the widow of deceased Shamkant and applicant nos.2 and 3 are the minor children of the deceased Shamkant, hence considering their larger interest the delay for filing the above said First Appeal be condoned at the most by awarding some reasonable costs as against the applicants, considering the facts that majority amount has been fixed by the Tribunal at Dhule. Not only this but also if delay will be condoned no prejudice will be caused as against the contesting Respondents but if delay will not be condoned then very irreparable loss will be caused as against the present applicants and which will not be compensated in terms of money.

3. None of the reasons as are assigned by the applicants can be said to be just and sufficient to condone the huge delay of

967 days. Though, it was well within the knowledge of the applicants from day one of passing of the impugned award that, the tribunal has awarded the interest on the amount of compensation from the date of amendment they did not take any step for the period of about two years to challenge the said part of the order. On the contrary without raising any such grievance the applicants filed the execution proceeding and got executed the award. Averments in the application further reveal that legal advice on the issue whether to file any appeal too was sought by the applicants after more than two years of passing of the award. Even, thereafter, applicants did not take the prompt steps. Considering the fact that, the award of more than Rupees Twenty Five Lakhs was satisfied before 04.12.2014, the ground of financial crunch also cannot be accepted. Law is well settled that unless sufficient cause is shown, delay of even a small period cannot be condoned. In the present matter, the applicants have failed to show any just and sufficient cause for the inordinate delay of 967 days committed in filing the present appeal. I am, therefore, not inclined to allow the present application. Hence the following order:

ORDER

- i) The application is rejected.
- ii) Consequently, the appeal on stamp number also stands rejected.