

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2617 OF 2016

1. Ujwala w/o Sudhakar Bhalerao,
Age Major, Occu. Household,
R/o. At Sawangi, Harsul,
Taluka and District Aurangabad.
2. Rohit s/o Sudhakar Bhalerao,
Age 14 years, Occu. Student,
R/o as above.
3. Neha d/o Sudhakar Bhalerao,
Age 12 years, Occu. Student,
R/o As above.
4. Diksha d/o Sudhakar Bhalerao,
Age 8 years, Occu. Student,
R/o. As above.
5. Baburao s/o Kaduba Bhalerao,
Age 68 years, Occu. Labour,
R/o As above.
6. Tarabai w/o Baburao Bhalerao,
Age 66 years, Occu. Household,
R/o As above.

**...APPELLANTS
(Orig.Claimant)**

VERSUS

The Union of India
Through the General Manager,
Western Railway, Mumbai.

...RESPONDENT

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Advocate for Appellants : Mr.Deshmukh Mohit R.
Mr.Navandar Manish N., Adv., for respondent / sole.

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CORAM : P.R. BORA, J.
Dated: July 19, 2016

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ORAL JUDGMENT :-

1. Heard. Admit. With the consent of learned Counsel for the parties, heard finally.

2. The present appeal is filed against the orders passed by the Railway Claims Tribunal, Mumbai, in Claim Application No.OA (IIU)/MCC/2012/1317 dated 6/2/2015 and in Restoration Application No.27/2015 dated 8/6/2015. Both the aforesaid orders are questioned in the present appeal.

3. The Railway Claims Tribunal has dismissed the accident claim petition for the reason that despite due opportunities given to the claimants they did not proceed with the matter. The appellants, thereafter, filed Restoration Petition No.27/2015, however, the same has

also been dismissed for want of prosecution.

4. Shri Deshmukh, learned Counsel appearing for the appellants, submits that since the claimants are residents of this region, they have engaged the Counsel from this region to represent them before the Railway Claims Tribunal at Mumbai, however, unfortunately, on the dates fixed for hearing, neither learned Counsel could appear before the Tribunal nor the appellants did appear before the Tribunal. Learned Counsel submitted that the appellants were under bona fide impression that unless they receive some instructions from their lawyer, they need not appear before the Tribunal and that was the reason that they also did not appear before the Tribunal. Learned Counsel submits that the appellants now undertake to proceed with the claim petition expeditiously and without seeking any adjournment for conducting the matter before the Tribunal. Learned Counsel submits that if the present appeal is not allowed, the appellants will suffer irreparable loss and they would not have any opportunity to contest their matter on merits.

5. Mr.Navandar, learned Counsel appearing for the respondent, has strongly opposed for granting the prayer of the appellants stating that due opportunities were already granted by the Tribunal and only after taking into consideration the consistent absence of the appellants that the order was ultimately passed thereby dismissing the claim petition in default. Learned Counsel further submitted that the appellants were having opportunity to amend themselves while conducting the restoration application, however, since the same conduct was displayed while conducting the restoration application, the Tribunal was left with no option than to dismiss the restoration application and, therefore, no more leniency needs to be shown having regard to the conduct of the appellants.

6. After having considered the submissions advanced by the learned Counsel appearing for the respective parties, though it apparently appears that the appellants were not diligent in prosecuting their claim and

despite repeated opportunities, they did not proceed with the petition; ultimately, it appears to me that the appellants need to be given an opportunity to contest their petition on merits. In view of the fact that now the appellants have undertaken to proceed with the claim petition expeditiously without seeking adjournments, it appears to me that the request needs to be accepted. Learned Counsel for the respondent thereupon submitted that, in such circumstances, the appellants may be disentitled from claiming any interest of the intervening period which has been spent only because of negligence on the part of the appellants in case the claim petition is allowed. Learned Counsel appearing for the appellants has accepted the said proposal and he also submits that the claimants may not insist for interest for the intervening period from 6.2.2015 till this date. In view of the submission so made, following order is passed:

ORDER

- 1) The appeal is allowed.
- 2) The impugned orders are set aside.

Consequently, Restoration Application stands allowed. The Claim Petition stands restored to original file.

3) The parties are directed to appear before the Railway Claims Tribunal on 12th of August, 2016, and proceed with the hearing of the petition.

4) In the circumstances of the case, no order as to costs.

(P.R. BORA, J.)

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