

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 489 OF 2016

1. Manoranjan Pradhan s/o Haripada Pradhan,
Age 51 years, Occu: Labourer,
2. Sabitri Pradhan w/o Manoranjan Pradhan,
Age 45 years, Occu.:Housewife,

Both r/o. Rakshas Khali, P.S.Pathar Pratima,
Sub Division, Kakdwip, District South 24,
Pargana (W.B.).

**...APPELLANTS
(Original Applicants)**

VERSUS

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

**...RESPONDENT
(Orig. Respondent)**

...
Advocate for Appellants : Mr.Vishnu B. Madan
Mr.Navandar Manish N., Advocate for Respondent / sole.

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CORAM : P.R. BORA, J.

Dated: September 14, 2016

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ORAL JUDGMENT :-

1. The appellants have filed present appeal against
the judgment and order passed by the Railway Claims

Tribunal on 10.6.2015 in Claim Application No. MA / NGP / 2014/ 0031.

2. The Claim Petition has been dismissed on the ground of delay. Separate application seeking condonation of delay was filed and the Tribunal has 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, submits that the deceased was a bona fide passenger and in the personal search immediately carried out after occurrence of the accident, a ticket was found with him. Learned counsel further submitted that the present appellants being not aware of the provisions of law and for lack of appropriate advice, could not file the petition within the stipulated time. It was further contended by the appellants that one of their relatives advised them to contact one lawyer and accordingly papers were handed over to the said lawyer, however, the

said lawyer did not prepare the petition and also did not file the same before the Tribunal. It was further contended that after having noticed that the said Advocate has not filed the petition, the papers were taken back from the said lawyer and another lawyer was entrusted with the matter who got the documents translated for being placed on the record of the Tribunal and the claim petition was preferred and therefore, delay of four years had occurred in presenting the application.

4. Learned Counsel submits that the appellants have sufficiently explained the delay and considering the fact that they are coming from poor strata of the society, not having sufficient knowledge about legal provisions, the Tribunal ought to have condoned the delay. Learned counsel has relied upon the unreported judgment of the Delhi High Court in the case of **Nirmal Jeet Kaur vs. Union of India and another** decided on 14th of January, 2011, and has placed his reliance more particularly on the observations made by the Honourable Delhi High Court in paragraph no. 5 of the said judgment. Learned Counsel submitted that the Tribunal has adopted a technical

approach in rejecting the application for condonation of delay and he, therefore, prayed for setting aside the impugned judgment and order and sought further direction to the Tribunal to decide the claim petition on its own merits.

5. Shri Nawandar, learned Counsel appearing for the respondent, has opposed the submissions made on behalf of the appellants. Learned Counsel submitted that the Tribunal has considered each and every ground raised in the application for condonation of delay and has passed a well reasoned order dealing with each of the said point. Learned counsel submitted that the Tribunal has also observed that false statements are made in the application for condonation of delay which are not supported by any necessary particulars. Learned Counsel placed his reliance on the unreported judgment of the Delhi High Court in the case of **Brijesh Devi vs. Union of India**, decided on 4th November, 2009 and submitted that no interference is required in the impugned judgment and order.

6. After having considered the submissions advanced by the learned Counsel appearing for the respective parties and on perusal of the impugned judgment, I am inclined to allow the appeal for the following reasons.

7. It is not in dispute that the delay which has been caused in filing the appeal by the appellants is of a longer period of about four and half years. The question is, whether the delay so caused is sufficiently explained by the appellants and whether the grounds assigned by the appellants for occurrence of such delay can be accepted to be just and sufficient. There cannot be a dispute about the proposition which has been upheld by the Honourable Apex Court in several judgments that a huge delay also can be condoned if justifiable reasons are assigned for occurrence of such delay and, at the same time, if no proper reasons are assigned, the delay of even few days cannot be condoned.

8. In the instant case, as has been observed by the learned Tribunal, the claimants had prayed for

condonation of delay putting forth the grounds of illiteracy, poverty and lack of communication between them and their Advocate. It is also the case of the claimants that they did face lot of difficulties in collecting necessary Police papers and getting them translated for the purpose of filing the petition before the Tribunal. All of such grounds are rejected by the Tribunal.

9. On perusal of the impugned judgment, it is noticed that the Tribunal has adopted a hyper technical approach and has failed in appreciating and realizing the plight of the claimants who have faced all such difficulties as are mentioned in the application for condonation of delay. Merely because the claimants did not provide the particulars as to which Police Station they had visited for getting the documents, that who was the Advocate who kept pending file with him for two years, that who was the relative who suggested the name of the said Advocate and that, who was the friend of the claimants who ultimately properly guided the claimants for filing the petition before the appropriate Court, no such inference can be drawn that the claimants have come out with a false justification

and that whatever reasons are assigned by the claimants, are false or bogus. The claimants were not going to be benefitted because of delay in filing the claim petition. It is, thus, evident that the delay caused was not deliberate, or intentional or for mala fide reasons. This aspect seems to have been completely lost sight of by the learned Tribunal.

10. It is true that illiteracy, poverty, want of funds, ignorance of law cannot be, as of right, held to be sufficient cause for condonation of delay, however, as has been time and again ruled by the Honourable Apex Court, it is imperative for the Courts or the Tribunals that in the proceedings 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 applications 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 should be a normal course in such matters unless there is some contrary evidence imputing the intention or the bona fides of the claimants making delay in approaching the Court.

11. The material on record shows that the deceased was a bona fide passenger and valid Railway ticket was found in his pocket at the time of inquest panchnama prepared by the Police machinery. Prima facie material is also there on record showing that the deceased suffered death in an untoward incident. When there is a prima facie merit in the application or appeal, the Courts or the Tribunals shall not shut the doors of justice only on the technical ground of limitation. Delay in respect of such cases has to be liberally condoned where there is a prima facie merit in the case brought out before the Court or the Tribunal. Substantial justice must be the criteria in disposing of the application under Section 5 of the Limitation Act and liberal view has to be taken so

as to advance substantial justice.

In view of the above, the impugned judgment and order deserves to be quashed and set aside and it is accordingly set aside.

For the reasons stated in the application for condonation of delay and more particularly having considered the material on record evidencing that the deceased was a bona fide passenger and that there is reason to believe that he suffered death in an untoward incident, the delay caused in filing the application deserves to be condoned and is accordingly condoned.

12. In the result, the following order:

ORDER

1. The impugned judgment and order is quashed and set aside.
2. The delay caused in filing the Claim Application is condoned.

3. The Tribunal is directed to consider the Claim Application on its own merits.

The Appeal is allowed in aforesaid terms.

**(P.R. BORA)
JUDGE**

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