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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.357 OF 2015
IN
MISCELLANEOUS APPLICATION NO. MA/MCC/2012/0312**

Saddam s/o Idrish Ansari	...Appellant
vs	
Union of India	...Respondent.

None for the Appellant
None for the Respondent

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***CORAM : G.S.KULKARNI, J.
09 DECEMBER, 2016***

P.C. :

None for the Appellant as well as the Respondent. This appeal is directed against the order dated 20 June, 2014 passed by the Railway Claims Tribunal (for short "Tribunal") Mumbai in M.A./MCC /No.2012/0312. As the issue arise in the appeal is a narrow issue, it is appropriate that the appeal itself is decided at the stage of admission even when none appears on behalf of the parties.

2 By the impugned order dated 20 June, 2014, the Tribunal had rejected the application filed on behalf of the Appellant for condonation of delay in filing the claim application.

3 The facts are that on 28 May, 2003, the deceased was travelling from Lucknow to Chhatrapati Shivaji Terminus, Mumbai in Train No.1080 after purchasing a valid reservation/ railway ticket. When the train reached at Lasalgaon railway station on the next day i.e. 29 May, 2003, due a sudden jerk of the moving train and due to heavy rush in the train, the deceased fell down and received serious injuries on his body and died on the spot. The deceased has left behind him widow, who was suffering from cancer at the time of incident and three minor children. As the widow was suffering from cancer, she could not promptly approach the Tribunal to file a claim petition. The wife of the deceased also succumbed to the disease and died on 17 June, 2006. The applicants were minor at that point of time, and therefore, they could not have taken any steps to approach the Tribunal. Thereafter, the applicants applied for relevant papers pertaining to the accident to the concerned authorities including police authorities. On 7.12.2012 they approached the Tribunal by filing the claim application which was admittedly with a delay of about eight years and the application for condonation of delay was also filed.

4 The Tribunal listed the delay condonation application for the first time on 25 February, 2014 and the same was adjourned for filing reply of the Respondent and it was placed for hearing on 20 June, 2014. By the impugned order, the Tribunal rejected the Delay Condonation Application. It will be appropriate to reproduce the impugned order, which reads thus;

“20 June 2014

Roopal Nayak Respondent Advocate. Delay is more than 8 years. None for applicant. Delay not condoned. Rejected.”

5 A perusal of the impugned order, clearly indicates that the Tribunal ought not to have dismissed the delay condonation application in such a summary manner and more particularly when the application filed before it was concerning grant of compensation. The provision under which compensation was claimed, is in the nature of social welfare legislation with a solemn object to mitigate the hardship to family would suffer due to loss of life in the family by way of monetary compensation. It is not a case that the Tribunal was reconsidering to condone delay in view of specific provision under Section 17(2) of the Railway Claims Tribunal, Act 1987. The impugned order clearly shows that the learned Tribunal has not applied its mind to the facts of the case, which were placed on record on behalf of the Appellant. It also indicates that the application was not opposed on behalf of the Respondent as no reply, on the same was filed. There were several documents which were filed along with the Delay Condonation Application, as also the main Application, which also ought to have been taken into consideration in the facts and circumstances of the case. It clearly appears that the delay was bona-fide and prevented the Applicants from approaching the Tribunal within the prescribed limitation. Thus, this is a fit case where the Tribunal in exercise of the powers conferred on the Tribunal, ought to have condoned the delay without summarily rejecting the application. In the circumstances, the appeal needs to succeed. The impugned order dated 20 June, 2014 is quashed and set aside. The delay

codonation application is allowed. The Tribunal shall consider the Claim Application of the Appellants on merits and endeavor to decide the same within a period of ten weeks from today. Appeal is allowed in the above terms. No costs.

6 The office is directed to forward a copy of this order to the office of the Registrar, Railway Claims Tribunal.

(*G.S.KULKARNI, J.*)