

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 902 of 2017**

1. Meena Bai W/o late Mahesh Sharma, aged about 24 years, R/o Village Khaira (Setganga) Thana and Tahsil Mungeli, District Bilaspur, Chhattisgarh
2. Chandra Prakash S/o late Mahesh Sharma, aged about 6 years, Minor Through Legal Guardian Mother Meena Bai, R/o Village Khaira (Setganga) Thana and Tahsil Mungeli, District Bilaspur, Chhattisgarh
3. Ku. Madhuri D/o late Mahesh Sharma, aged about 3 years, Minor Through Legal Guardian Mother Meena Bai, R/o Village Khaira (Setganga) Thana and Tahsil Mungeli, District Bilaspur, Chhattisgarh
4. Ku. Salni D/o late Mahesh Sharma, aged about 3 years, Minor Through Legal Guardian Mother Meena Bai, R/o Village Khaira (Setganga) Thana and Tahsil Mungeli, District Bilaspur, Chhattisgarh
5. Nanhu Sharma S/o late Sadaram Sharma, aged about 70 years, R/o Village Khaira (Setganga) Thana and Tahsil Mungeli, District Bilaspur, Chhattisgarh
6. Urmila Bai W/o Nanhu Sharma, aged about 65 years, R/o Village Khaira (Setganga) Thana and Tahsil Mungeli, District Bilaspur, Chhattisgarh(Claimants)

---- Appellants**Versus**

1. Om Prakash Sharma S/o Gowardhan Sharma, aged about 50 years, R/o Solapuri Mata Mandir Ward No.3 Thana Khadapur City District Midnapur (P.B.) Hall Mukam Kumar Road Wage, B. Sharma Complex Bhanpuri, District Raipur, Chhattisgarh(Driver of the Offending Vehicle Haiwa Truck No. C.G.04 Z.B. 2255)
2. Sanjay Kumar Singh S/o Parasnath Singh, aged about 52 years, R/o Kumar Road Wage, B. Shankar Complex Bhanpuri, Thana Khamtarai District Raipur, Chhattisgarh(Owner of the Offending Vehicle Haiwa Truck No. C.G.04 Z.B. 2255)
3. Branch Manager, the Oriental Insurance Company Limited, through Branch Office, in Front of Rajeev Plaza, Old Bus Stand Rama Center Bilaspur,

District Bilaspur, Chhattisgarh(Insurer of the Offending Vehicle Haiwa Truck No. C.G.04 Z.B. 2255)

4. Firoj Ali S/o Aajmi Yakub Ali, aged about 40 years, R/o Village Kunda Tahsil Pandariya District Kabirdham, Chhattisgarh(Driver of the Offending Vehicle Metador No. C.G.10 Z.B. 0136)
5. Ghanshyam Prasad S/o Arjun Prasad Upadhyay, aged about 60 years, R/o Village Boda Post Fastakpur Kunda & Tahsil Mungeli, District Bilaspur, Chhattisgarh(Owner of the Offending Vehicle Metador No. C.G.10 Z.B. 0136)
6. The New India Insurance Company Limited, through Branch Office, in Front of Rajeev Plaza, Old Bus Stand Rama Center Bilaspur, District Bilaspur, Chhattisgarh(Insurer of the Offending Vehicle Metador No. C.G.10 Z.B. 0136)

---- Respondents

For Appellants : Shri A L. Singroul, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order On Board

13/07/2017

Heard on I.A. No.01, for condonation of delay in filing the appeal.

2. The present appeal under Section 173 of the Motor Vehicles Act has been preferred by the claimants with a delay of 1818 days i.e. almost five years. The appeal has been enclosed along with I.A. No.01 which is an application for condonation of delay. The only ground raised by the appellants seeking condonation of delay is the fact that the appellants are poor, rustic and illiterate persons having no knowledge of the legal procedure. The other ground raised by the appellants is that the delay has been caused on account of obtaining necessary documents and arranging funds for filing the appeal.
3. This Court fails to understand as to how the claimants had initially contested before the Tribunal for a period of three years time from 2009 to

2011 i.e. the period during which the appellants were also represented through a lawyer before the Tribunal who must have given advice to file an appeal if they were not satisfactory with the quantum of compensation awarded by the Tribunal. This fact or explanation does not find place in the application seeking condonation of delay.

4. Merely because the appeal has been preferred by the claimants would not by itself as a matter of right would entitle them for condoning the delay caused. There has to be some plausible and cogent justification on the part of the appellants to show as to what prevented them in filing the appeal. There is no justification and reason assigned for the delay of five years time caused in filing the appeal. It is not a case where the appeal has been delayed by a few days or few months or a year rather there is a huge unexplained inordinate delay of five years and there is no proper explanation whatsoever. Thus, this Court is not convinced or ready to accept the grounds raised in the application for condonation of delay.

5. The judgment which has been cited by the appellants i.e. **(2014) 14 SCC 133 (Imrat Lal and others Vs. Land Acquisition Collector and others)** is in respect of the persons who had preferred the application under the provisions of the Land Acquisition Act where the fact which had borne in the mind of the Court was the claimants therein became landless on account of their land being acquired. Likewise, the judgment which has been cited by the appellants in the case of **Sandhya Rani Debbarma and others Vs. National Insurance Company Ltd. and others** reported in **(2016) 9 J.T. 212 (SC)**, the facts of the said case are also entirely different where the award granting of compensation was under challenge by the respondents where the condonation was being sought in filing the appeal before the Supreme Court. Moreover, in the said case there was a justification for the delay caused in as much as of

seeking a remedy before a different forum. Thus, these two judgments relied upon by the counsel for the appellants are distinguishable on its facts itself.

6. For the aforesaid reasons, this Court is of the opinion that by condoning the inordinate delay of about five years with no explanation or reasons assigned would be extending of misplaced sympathy to the appellants in this case. It is a case where the appellants' claim case before the Tribunal was allowed granting them the award of Rs.4,68,500/- of which there was a finding of contributory negligence of 50% which brings the compensation to Rs.2,34,250/-. The amount has been deposited and the same has also been accepted by the claimants. Therefore, there was no occasion of taking the ground of non availability of fund in preferring the appeal. Thus, the said contention stands disproved.

7. In the given facts and circumstances of the case, this Court is not inclined to allow the application for condonation of delay. Accordingly, I.A. No.01 is rejected. As a consequence, the instant appeal also stands dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**