

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1 CIVIL APPLICATION NO. 1398 OF 2014
IN FAST NO. 845 OF 2014

NAMDEO S/O SUBHASHRAO DAIGUDE
VERSUS
VAISHALI HANMANT VATKAR@GOLIWALE

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Advocate for Appellants : Mr. R.P. Bhumkar
Adv. for Respondents: Mr. S.K. Soheb

CORAM : K.K. SONAWANE, J.

DATE : 23rd August, 2017.

PER COURT:

1] Heard learned counsel for the appellant/applicant and learned counsel for respondent.

2] Perused the application as well as the relevant documents produced on record. Learned counsel for the applicant submits that the applicants are the parents and grandmother of deceased Prashant, who met with an accident while discharging the duty as an employee of the respondent. The applicant preferred the application bearing WCA No. 29 of 2006, for compensation before the Commissioner for Workmen's Compensation and Civil Judge Senior Division, Osmanabad. The Commissioner, after appreciating circumstances on record, dismissed the application seeking compensation in lieu of death of victim Prashant.

3] Being dissatisfied with the impugned order, the present applicants preferred Writ Petition No. 6253 of 2013 to redress their grievances, but it was advised to file first appeal as per the provisions of law, instead of filing writ petition before this Court. Accordingly, the

applicants withdrew the writ petition and preferred the present first appeal. But, there is a delay of 425 days in filing the First Appeal. According to the learned counsel, the applicants are poor and rustic villagers, having no knowledge of the legal procedure. They are residing in the remote area far away from Aurangabad. The applicants/appellants have every hope of success in the appeal. The delay caused was not intentional and deliberate but due to unavoidable circumstances. Hence, learned counsel prayed to condone the delay.

4] The learned counsel for the respondent raised objection and submits that the applicants have withdrawn the writ petition in the month of September, 2013 and after efflux of more than 3 months of withdrawal of writ petition, the applicants preferred the present appeal. The applicants did not explain the delay caused for filing the present appeal after withdrawal of the writ petition. There is no sufficient ground to condone the delay. Hence, he prayed to dismiss the application.

5] Perused the application. Admittedly, the matter pertains to compensation under the Workmen's Compensation Act. The applicants are parents and grandmother of the deceased Prashant, who was employed as Labour on the vehicle Tipper owned by the respondent. The vehicle was being used for carrying sand, stones etc. On 6.9.2004, the vehicle met with an accident resulting into the death of victim Prashant. The learned Commissioner, after appreciation of the facts and circumstances on record held that the applicants are not entitled to claim compensation under Section 3 and 2 of the said Act. Therefore, the application for compensation came to be dismissed.

6] The applicants initially filed a writ petition before this Court to redress their grievance, but, it was revealed that instead of writ petition, proper remedy would be to file First Appeal in accordance with the scheme of the Workmen's Compensation Act. Therefore, the circumstances

constrained the appellants to withdraw the writ petition and prefer the present first appeal. It is true that there are no circumstances on record to explain the delay caused to prefer the present first appeal after efflux of 3 months on withdrawal of writ petition vide order dated 16.9.2013. But, it is crystal clear that the applicants since year 2006, are pursuing the matter for getting compensation towards the death of their son victim Prashant in an vehicular accident. The efforts of the applicants did not evoke result in the Court of learned Commissioner of Workmen's compensation. Therefore, they approached to this court and preferred a writ petition to ventilate their grievances. However, they were advised to prefer a first appeal for redressal of their grievances. Hence, they have filed the present appeal alongwith application for condonation of delay. It is to be noted that the applicants are illiterate, rustic persons residing in the remote place of Osmanabad District, far away from the Aurangabad Headquarters.

7] In such circumstances, I find it justifiable to extend latitude in favour of applicants for condonation of delay. There is a delay of 425 days. In case delay is not condoned, it will cause injustice and prejudice to the applicants. Therefore, for the reasons mentioned in the application, I do not find any impediment to condone the delay. Accordingly, application stands allowed in terms of prayer clause (B). Registry to take requisite steps for registration of appeal and list the matter for further process.

8] On registering the appeal, the same is admitted. Issue notice to respondents. The learned counsel waives notice for sole respondent. List the matter for further process on 09th September, 2017. The Civil Application for condonation of delay stands disposed of in aforesaid terms.

[K.K. SONAWANE]
JUDGE.

grt/-