

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION NO. 819 OF 2017
IN
STAMP NUMBER MAIN NO. 3114 OF 2016

P. Rajeshwari & 2 Ors.,	...	Applicants
Versus		
Managing Director, Kadamba Transport Corporation, Panaji & Anr.,	...	Respondents

Shri Ryan Menezes, Advocate under Legal Aid Scheme for the Applicants.

Ms. Rajas Kantak, Advocate for the Respondent Nos. 1 and 2.

CORAM:- C.V. BHADANG, J.

DATE:- 28th MARCH 2018

ORAL ORDER:

This is an application for condonation of delay in filing an appeal, challenging the award passed by the Motor Accident Claims Tribunal at Margao (Tribunal, for short).

2. The brief facts are that, the husband of the applicant no. 1 and the father of the applicant nos. 2 and 3, died in a motor vehicle accident, which led the applicants to file Claim Petition No. 74/2013, seeking compensation against the respondents. The Tribunal by a judgment and award dated 08.04.2015, dismissed the petition on the ground that the applicants have failed to establish that they are the legal representatives of the deceased, before the Tribunal.

3. The applicants were represented by Advocate Ms. A. Gaonkar. The applicants applied for the certified copy of the award on 09.04.2015 and the certified copy was collected on 17.04.2015. Thus, the time for filing the appeal (after excluding the period spent for obtaining the certified copy), expired on 07.07.2015. The appeal along with the application for condonation of delay came to be filed on 28.09.2017 and as such, there is a delay of 442 days, which is sought to be condoned.

4. According to the applicants, the deceased Venkata Ramaya was working as a Loader/Operator at Daniel Engineering Works and Ship Repairs. He was the sole earning member in the family. After his death, the applicants were without any support and sustenance. It is stated that the applicant no. 1, eventually, secured employment as a domestic help and was earning Rs.5,000/- per month. It is stated that on account of her personal and financial difficulty, she could not meet her Advocate for filing the appeal. The applicant no. 1 met her Advocate sometime in June, 2017 and sought advice. The applicant no. 1 tried to raise money to file the First Appeal, however, could not do so. It was only in or about March 2017 that the applicant no. 1 was advised to approach the Legal

Services Committee for legal aid. The Committee, eventually, by letter dated 25.04.2017, appointed an Advocate to represent the applicants. She accordingly met the Advocate somewhere in May 2017 along with the certified copy of the impugned judgment. Thereafter, some time was taken by the Advocate to go through the papers and eventually, the appeal could only be filed on 23.09.2017. It is submitted that there is no deliberate inaction on the part of the applicants in not filing the appeal within time. The applicants have thus prayed for condonation of delay.

5. I have heard Shri Menezes, the learned Counsel for the applicants and Ms. Kantak, the learned Counsel for the respondent nos. 1 and 2.

6. There is a substantial delay of 442 days in filing the appeal and normally, this Court would not have exercised discretion in condoning the delay, but, for the peculiar circumstances obtaining in this case that the applicant no. 1, who claims to be the widow of the deceased and the mother of the two minor children was left without any support, both financially or otherwise, upon the unfortunate demise of the deceased Venkata Ramaya. At times, financial difficulty can be

of a compelling nature, particularly, when a party is unaware of the legal remedy available and the procedure for availing such remedy. The applicants, eventually, sought legal aid and a Counsel on State expense was appointed to represent the applicants on 25.04.2017. The period from the end of April 2017 to September 2017 was spent for the reason that the Advocate so appointed took time to go through the papers and to file the appeal. Considering the fact that the applicants claim to have suffered on account of the unfortunate accident and looking to their financial condition and the fact that the applicants did not stand to gain by approaching the Court late, I find that the delay deserves to be condoned.

7. In this case, there is one more reason as to why I am inclined to condone the delay. It transpired during the course of the hearing that the claim petition was dismissed, as the applicant had essentially failed to establish that they are the legal representatives of the deceased Venkata Ramaya. Shri Menezes, the learned Counsel for the applicants submitted that in the event, the delay is condoned, the appeal itself may be heard for admission forthwith. Ms. Kantak, the learned Counsel for the respondents submitted that in the event, this Court is inclined to condone the delay, the appeal be taken up

for admission forthwith.

8. Considering the fact that the petition filed by the applicants has been dismissed on the ground that they have failed to establish that they are the legal representatives of the deceased Venkata Ramaya, I find it appropriate to hear the appeal for admission forthwith, as urged on behalf of the parties. I am conscious of the fact that the merits of the appeal cannot be adverted to or gone into, while considering the question of condonation of delay. However, in view of the submission made at the bar, for hearing the first appeal for admission, I find that the delay can be condoned.

9. In the result, the Civil Application is allowed. The delay in filing the appeal is hereby condoned. Let the appeal be registered.

C.V. BHADANG, J.

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