

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

First Appeal No. 03334 of 2016

District : Aurangabad

1. Smt. Lalita Manoj Pawar,
Age : 36 years,
Occupation : Household.
2. Ku. Shrddha @ Anjali Manoj Pawar,
Age : 12 years,
Occupation : Education.
3. Ku. Sejal Manoj Pawar,
Age : 10 years,
Occupation : Education.
4. Ku. Priti Manoj Pawar,
Age : 8 years,
Occupation : Education.
5. Ku. Kalyani Manoj Pawar,
Age : 4 years,
Occupation : Education

(Applicant No.1 is mother and
natural guardian of applicants
no.2 to 5)

All are R/o. village Sakora,
Taluka Nandgaon,
Dist. Nasik.

6. Shri Dinkarnath Ramchandranath
Pawar,
Age : 64 years,
Occupation : Nil.
7. Sau. Nanda Dinkarnath Pawar,
Age : 55 years,
Occupation : Household.

Both are R/o. Babra,
Taluka Phulambri, Dist. Aurangabad.

.. Appellants
(Original
claimants)

versus

The Union of India,
Through the General Manager,
Central Railway, C.S.T., Mumbai.

.. Respondent
(Original
respondent)

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Mr. M.M. Bhokarikar, Advocate, for the appellants.

Mr. M.N. Navandar, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving the
judgment : 27th August 2019**

**Date of pronouncing the
judgment : 22nd October 2019**

JUDGMENT :

01. Present appeal has been filed by the original claimants challenging the order passed by the Railway Claims Tribunal, Mumbai, in Case No. MA/MCC/2013/0084, which came to be dismissed in default on 05-05-2014.

02. The present appellants are the original applicants who had filed the said application before the learned Railway Claims Tribunal for getting delay of 11 days condoned in filing application for compensation. It was contended that as per the tradition, the applicants could not go outside for six months after death of the deceased, who was the

husband of claimant no.01 and father of claimants no.02 to 05 as well as son of claimants no.06 and 07. Said Manoj Pawar expired on 23-04-2012 when he was travelling from an unknown train, in an untoward incident. It was the contention of the present claimants, that due to the sudden demise of Manoj, the entire responsibility fell on his widow and old parents. They are very poor and had no legal access; therefore, could not file the claim petition earlier. There is delay of 11 days and therefore, they had prayed in the said application to condone the delay.

03. The application was objected by filing say by the respondents. It was mainly stated that the delay has not been properly explained. However, on the date of hearing of the application, the applicant was absent and it appears that even after giving chance on two subsequent occasions, the applicants could not appear and therefore, the said application came to be dismissed in default.

04. The appellants submit that the Railway Claims Tribunal has not considered the reasons given for explaining the delay. Liberal approach ought to have been taken by the Tribunal while condoning the delay of 11 days only. The widow had filed affidavit in support of her application and therefore, it was on the part of the respondents to prove whatever allegations have been made in the written statement.

The rejection of condonation of delay amounted to rejection of grant of petition. Therefore, approach of the Railway Claims Tribunal was incorrect.

05. Learned Advocate for the appellants has relied on the decision of Kerala High Court in *K.K. Pushpakaran Vs. Union of India* (AIR 2008 Kerala 107), wherein it has been held that "*Railway Claims Tribunal (Procedure) Rules prescribe the time of 30 days in filing an application for setting aside order dismissing application for default. But there is no exclusion of prohibition in the section for extending the time. Hence, considering the mandate of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act is applicable. In the absence of specific exclusion or prohibition, if prescribed in a special law for filing an application, by virtue of Section 5 read with Section 29(2) of the Limitation Act, the Tribunal which as all the trappings of Court can condone delay on sufficient reasons.*" Further reliance has been placed on the decision by Madras High Court in *Tmt. Adhilakshmi, w/o. Late Nagaraj & others Vs. Union of India* [2018 ACJ 2154] wherein it has been held that "*Even if the delay appear to be an inordinate delay, but not in the life of an illiterate woman, whose relatives and neighbours were no better in education and who has had to take such a long time to take stock of a great tragedy, great loss made her weak mentally, financially and socially. Under normal circumstances, once the order is set aside, it would be remanded back to the concerned authorities for deciding the application on merits. But in this case, already much time has been wasted. Therefore,*

considering the entire facts and circumstances, this Court feels it appropriate to condone the delay in filing the application for compensation. "

06. Per contra, learned Advocate appearing for the respondent submitted that no reasonable ground has been shown for the absence of the applicants before Railway Claims Tribunal. When the applicants did not attend the Tribunal, not only once but on three occasions, the Tribunal was justified in saying that the applicants are not interested. Therefore, when reasonable ground for absence is not given, the question of considering the delay condonation application does not arise.

07. Perusal of the record would show that not only the application but the affidavit filed by widow of Manoj was on record. It is not in dispute, that the accident had taken place but whether it amounted as '*untoward incident*' as contemplated under the Railways Act, was required to be considered by the Tribunal. The claim petition was filed along with the delay condonation application wherein it was specifically stated that there is delay of 11 days only. Under such circumstance, on the basis of the contents of the claim petition and the affidavit in support of the same ought to have been considered by the learned Tribunal before dismissing the application itself. It ought to have been considered

that due to the sudden death of Manoj, claimant no.01 being his widow and claimants no.06 and 07 being the parents of deceased, one of whom was senior citizen, it will have to be held that there was a justified and reasonable ground with the claimants for not approaching the Tribunal within limitation.

08. The learned Tribunal ought to have considered the circumstances in which the application for condonation of delay was filed. The children of deceased Manoj were admittedly minor at that time. Therefore, on behalf of claimants no.01, 06 and 07, the widow has filed the affidavit in support of the petition. Instead of going into the contents of the said affidavit, it appears that merely because the applicants were absent on three occasions, the application appears to have been dismissed in default which was wrong on the part of Railway Claims Tribunal. Hence, there is reason to allow the present appeal taking into consideration the fact that the said order was not on merits but an opportunity could have been given to the present appellants to bring entire evidence on record.

09. In the result, the appeal is allowed.

(a) The order passed by the learned Member (Technical), Railway Claims Tribunal, Mumbai, in Case No. MA/MCC/2013/0084, dismissing the petition in

default on 05-05-2014, is hereby set aside. The claim petition filed by the present appellants - original claimants for compensation under Section 16 of the Railway Claims Tribunal Act, 1987, is restored on the file of the said Tribunal. The Tribunal shall decide the said application on its own merits. Parties to appear before the Tribunal on 13th November 2019.

(b) There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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