

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**First Appeal No.1442 of 2019**  
**(Shaikh Salim s/o Shaikh Yusuf and ors. .vs. Union of India, through the**  
**General Manager, Central Railway, Mumbai CST )**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions                      Court's or Judge's orders.  
and Registrar's orders

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Ms. Gayatri Diwe, Advocate for Appellants.  
Mr. N.P. Lambat, Advocate for Respondent.

**CORAM : Manish Pitale, J.**  
**DATED : August 28, 2019.**

By this appeal, the appellants (original claimants) have challenged judgment and order dated 03.08.2015 passed by the Railway Claims Tribunal, Nagpur Bench, whereby an application filed by them seeking compensation under the provisions of the Railways Act, 1989, has been rejected as a consequence of rejection of an application for condonation of delay filed on behalf of the appellants.

2. The incident in question in the present case, took place on 24.02.2010 wherein the victim Shaikh Rais died. It is not in dispute that the claim petition was moved on behalf of the appellants after 3 years and 11 days (1106) delay. The delay was sought to be explained by the appellants by contending that they were disturbed by the death of the victim in the incident in question and that they took some time in recovering from the shock of the said incident. It was stated that after they could gather their senses and they could

arrange for a counsel to be engaged for filing the application, they had approached the Tribunal. It was also contended that they were only seeking determination of their claim on merits and that no prejudice would be suffered by the respondent if their claim was entertained on merits by condoning the delay in approaching the Tribunal.

3. The respondent opposed the aforesaid application for condonation of delay and the Tribunal passed the impugned judgment and order dismissing the application for condonation of delay and consequently the claim petition itself. Copious references have been made to judgments of various Courts while holding against the appellants.

4. Even in approaching this Court by way of the present appeal, the appellants were found to have approached this Court after a delay of about 805 days, which was sought to be explained on the basis of financial difficulty faced by the appellants. This Court accepted the explanation and condoned the delay, as a result of which notice was issued in this appeal for final disposal.

5. Ms. Gayatri Dive, learned counsel appearing for the appellants, submitted that the Tribunal ought to have condoned the delay in view of the facts brought on record before the Tribunal to the effect that the appellants were indeed in a state of shock and they suffered from want of funds and illiteracy making it

difficult for them to approach the Tribunal immediately or within time for raising claim under the provisions of the said Act. It was submitted that the Tribunal ought to have considered the application sympathetically so that the claim petition was considered on merits as the aforesaid Act was a beneficial piece of legislation. Reliance was placed on judgment of this Court in the case of **Saraswati Giri w/o Suresh Giri .vs. Union of India** (First Appeal No. 712 of 2018 decided on 11.06.2019).

6. On the other hand, Mr. N.P. Lambat, learned counsel appearing for the respondent, submitted that other than the bare statement made on behalf of the appellants, there was no material to support the contentions raised on their behalf. It was further contended that such a huge amount of delay was not satisfactorily explained by the appellants and that in any case it was too late in the day for the respondents to carry out a statutory enquiry concerning the incident in question. It was, therefore, submitted that no purpose would be served in asking the Tribunal to consider the claim petition of the appellants on merits.

7. Heard learned counsel for the rival parties and perused the material on record.

8. In the judgment on which reliance is placed by the learned counsel appearing for the appellants in paragraphs 9, 10 and 11, it was observed as follows:-

*“9. It may be mentioned that in*  
***Manoranjan Pradhan v. Union of***

**India 2017 (1) MhLJ 163**, this Court has held as under:-

*“10. It is true that illiteracy, poverty, want of funds, ignorance of law cannot be, as of right, held to be sufficient cause for condonation of delay, however, as has been time and again ruled by the Honourable Apex Court, it is imperative for the Courts or the Tribunals that in the proceedings where rights of illiterate, poor, downtrodden are involved, a more humane approach has to be adopted and it should not be the endeavour of the Courts or the Tribunals, or the authorities to dismiss applications or petitions merely on technicalities without looking to the merits of the case. The Railways Act is a beneficial legislation meant for providing compensation to the victims or the legal representatives of the victims of the Railway Accidents. As such, in such matters, the Tribunal is not supposed to take a pedantic or hyper technical view but is expected to adopt a humane and lenient approach. Its approach should be justice oriented. Acceptance of explanation furnished should be a normal course in such matters unless there is some contrary evidence imputing the intention of the bona fides of the claimants making delay in approaching the Courts.”*

10. In **State of Bihar and ors. v. Kameshwar Prasad Singh and anr. [2001 (1) SC SLJ 76]**, the Apex Court has held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable to do substantial justice to parties by disposing the cases on merits. The Apex Court reiterated the principles laid down in **Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 111 SC 500** wherein it is held that the expression 'sufficient cause' is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of the Courts.

11. Similarly in **Nand Kishore v. State of Punjab (1995) 6 SCC 614**, the Apex Court has observed that if the explanation given does not smack malafides or is not shown to have been put forth as a part of dilatory strategy, the Court must show utmost consideration to the sutor."

9. By relying upon the judgments of the Hon'ble Supreme Court and this Court, it has been held in the said judgment that delay could be condoned and that all questions including the question of interest payable on the amount of compensation, could be kept open for decision of the Tribunal.

10. The said position of law indicates that in cases like the present one, a humane and lenient approach is advisable and that unless it is shown that the explanation put forth by the claimants smacks of mala

*fides*, the same ought to be accepted. The said position applies with full force to the facts of the present case. The appellants had nothing to gain by approaching the Tribunal after a delay of three years and eleven days. The only aspect on which the respondent could harp was that the appellants should not benefit by approaching the Tribunal after such a long delay and, therefore, they ought not to be granted interest on the amount of compensation payable, if at all their claim petition is granted.

11. Considering the said position of law and applying it to the facts of the present case, it becomes evident that the Tribunal adopted a pedantic and hyper technical approach, which should have been avoided and the delay should have been condoned so that an opportunity was granted to the appellants to prove their case on merits.

12. In view of the above, the instant appeal is allowed and the impugned order passed by the Tribunal is quashed and set aside. Consequently, the application for condonation of delay filed by the appellants before the Tribunal is allowed and the Tribunal is directed to consider the claim petition filed by the appellants on merits. It is made clear that this court has not expressed any opinion on the merits of the claim raised by the appellants and that all questions are kept open, including the question as to whether the appellants would be entitled to grant of interest on amount of compensation payable to them, even for the period of

delay in approaching the Tribunal, if at all their claim is allowed on merits by the Tribunal.

**JUDGE**

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