

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAF) NO.103 OF 2019

IN

FIRST APPEAL STAMP NO.12099 OF 2018

Smt. Venubai Bhimrao Rathod and another.

Vs.

Kisan Kaniram Rathod and others.

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

Court's or Judge's orders

Shri C. A. Joshi, Advocate for applicants.

CORAM : AVINASH G. GHAROTE, J.

DATE : JANUARY 07, 2020.

This is an application for condonation of delay in filing of appeal against the judgment and award dated 23.10.2002 passed by the Motor Accident Claims Tribunal, Akola in M.A.C.P. No.114 of 1997. The appeal has been filed on 04.06.2018. In so far as the applicant no.1 is concerned the delay is about fifteen years eight months. The only reason for condonation of delay so far as applicant no.1 is concerned, is reflected in para three of the application which states that the applicant no.1 was suffering from depression, anxiety and other mental ailments during the period of 01.06.2013 to 20.02.2018. The application however does not disclose any reason explaining the delay from the date of judgment/award till 01.06.2013. Therefore the appeal at least prima facie is barred by limitation.

2. The respondents have been duly served. None appears for the respondent nos.1 to 3. Shri S. V. Jaiswal, learned counsel for the respondent no.4 has filed reply whereby the delay is vehemently opposed. When the matter was called up in the first half, Shri S. V. Jaiswal, learned counsel for the respondent no.4 was absent, therefore, the matter was kept in second half. The learned counsel is absent in the second half too.

3. Heard Shri C. A. Joshi, learned counsel for the applicants. Admittedly, the application does not disclose any reason for the delay occurred from 23.10.2002 till 04.06.2018, when the appeal as well as application for condonation of delay has been filed and that light of the matter, in view of the unexplained delay, the application and contentions of applicant no.1 are rejected.

4. Shri C. A. Joshi, learned counsel for the applicants thereafter submits that on the day of the accident the applicant no.2 the daughter of the deceased was aged three months and on the day of filing of the claim petition she was seven months old. The applicant no.2 attained majority on 22.04.2014. It is further contented that the applicant no.2 was unaware of the proceedings which were filed before the Tribunal.

5. The delay in filing of the present application is 1384 days, about four years and one and half months approximately, in so far as the applicant no.2 is concerned.

6. Thereafter it is claimed that she made an independent enquiry with the counsel, who upon ascertaining the details from the Court, informed her about the passing of the judgment/award dated 23.10.2002 and as such the present appeal, along with application for condonation of delay has been filed on 04.06.2018.

7. Shri C. A. Joshi, learned counsel for the applicants relied upon the judgment of Hon'ble Apex Court. **Ram Sumiran and others vs. D.D.C. and others (1985) 1 SCC 431** wherein it has been held that considering the rural background of the appellants and the prevailing illiteracy in the country, every endeavour should be made to get the matter decided on merits.

8. It is trite in so far as matters under the Motor Vehicles Act are concerned, a liberal and pragmatic approach needs to be adopted. In the present case the applicant no.2 admittedly, became a major on 22.04.2014. It has been stated she acquired knowledge about the proceedings only on 28.02.2018 consequent to which, information was obtained.

9. Shri C. A. Joshi, learned counsel for the applicant

no.2, on instructions makes a categorical statement that in so far as merits of the matter are concerned, the applicant no.2 will not claim any benefit of any interest from 23.10.2002, the date of the passing of the judgment/award till 04.06.2018, in case any order increasing the compensation is passed in these proceedings. The statement is accepted and recorded.

10. The respondent no.4 in its reply, except for a bare denial, nothing has been stated in respect of the applicant no.2.

11. Considering the above, in the peculiar facts and circumstances of the case, the delay of 1384 days as explained by the said applicant no.2 is condoned, subject to the condition that the applicant no.2 will not be entitled to any benefit of account interest or otherwise from 23.10.2002 to 04.06.2018. The application is accordingly disposed of.

JUDGE