

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

**CIVIL APPLICATION NO.5641 OF 2012
IN FAST/6989/2012**

**VIMALBAI VISHWANATH BHALERAO AND OTHERS
VERSUS
VIJAY RAMDAS KALLEY AND ANOTHER**

...
Advocate for Applicants : Shri Pavankumar S. Agrawal
Advocate for Respondent No.1 : Shri P. C. Mayure
...

CORAM : B. U. DEBADWAR, J.

DATE : 25th JANUARY, 2021

PER COURT :

1. Heard Shri P. S. Agrawal, learned advocate for the applicants and Shri P. C. Mayure, learned advocate for respondent No.1. Shri V. N. Upadhye, learned advocate for respondent No.2 is absent, when called.

2. This is an application for condonation of delay of 1109 days, caused in preferring appeal against the judgment and award dated 29-11-2008, passed by the Motor Accident Claims Tribunal, Hingoli, in M.A.C.P No.62/2003, whereby the death claim is partly allowed.

3. Shri Agrawal, learned advocate, vehemently argued that applicants No. 1 and 5 are the widow and mother of deceased Vishwanath Bhalerao, who died in an accident involving motor vehicle. They both are illiterate women. Applicants No. 2 to 4 are

the sons of applicant No.1 born from deceased Vishwanath. They were minor when claim application was instituted. Applicants No. 2 and 3 attained age of majority in the year 2012. They were not aware about the impugned award. Due to illiteracy and paucity of money and also mental shock sustained due to death of Vishwanath, they could not manage to approach to the advocate to seek advice and file the appeal. However, after getting advised from the relatives and arranging money, they approached the advocate, instructed him for drafting and filing the appeal, and accordingly, the appeal along with the present application came to be filed. Though the delay is little bit more, it is neither intentional nor deliberate. It is only due to illiteracy, paucity of funds and heavy shock suffered by applicants No. 1 and 5. Therefore, delay deserves to be condoned.

4. Shri Agrawal, learned advocate, on instructions, submitted that applicants / appellants are ready to waive the interest on additional compensation for the period for which delay is caused in preferring the appeal, if the appeal is allowed.

5. Per contra, Shri Mayure, learned advocate for respondent No.1 – owner of the offending vehicle, made submission that, the delay is huge and explanation given for the said in the application is not sufficient.

6. In the light of aforesaid submissions made at par, I have carefully gone through the record. The record speaks volumes that Vishwanath Bhalerao, predecessor in the interest of the applicants, when met with the accident and died, was 35 years old. He died leaving behind 30 years old wife, three minor children and aged mother. Record speaks volumes that all the applicants were dependent on the victim of fatal accident – Vishwanath Bhalerao. Having regard to the conditions of the applicants due to sudden death of sole bread earner and difficulties faced for survival due to paucity of money, in any angle, it cannot be said that delay of 1109 days caused in preferring appeal was either intentional or due to gross negligence. Thus, delay deserves to be condoned.

7. In view of the above, the application is allowed. Delay of 1109 days, caused in preferring appeal, is hereby condoned.

8. If the appeal is allowed after hearing, the interest on additional compensation for the period of 1109 days, which is condoned hereby, shall not be awarded, as applicants have waived the same. Copy of this order be placed on record of the appeal.

9. The appeal be registered, if it stands in the scrutiny.

(B. U. DEBADWAR, J.)