

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

**CIVIL APPLICATION NO. 8630 OF 2017
IN
FIRST APPEAL [ST] NO. 10407 OF 2017**

Najmunnisa Begum Mirza Salimullah Baig & Ors. **...Applicants**

Versus

M.S.R.T.C. Through its Div. Controller,
Aurangabad & Anr. **...Respondents**

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Shri. S. B. Darwande, Advocate h/f Shri. M. R. Deshmukh, Advocate
for the applicants
None for respondent/State

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CORAM : B. U. DEBADWAR, J.
DATE : 25th January, 2021

PER COURT : -

1. This is an application for condonation of delay of 381 days caused in preferring an appeal against the Judgment and Award dated 09.12.2015 passed by Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 319 of 2014, whereby the death claim came to be allowed partly.

2. Heard Shri. S. B. Darwande, learned Counsel holding for Shri. M. R. Deshmukh, Advocate for the applicants/appellants. Nobody has appeared for respondent nos. 1 and 2, though served with notice.

3. Shri. Darwande, learned Counsel argued that, Mr. Mirza Salimullah Baig died in an accident took place on 11.04.2014 on Aurangabad – Paithan road at about 04:30 p.m. The said accident took place due to rash and negligent driving of offending S.T. bus by respondent no. 2. The applicants are the legal heirs of deceased Mirza Salimullah Baig. Nobody from the applicants had independent source of income. They were fully dependent on the deceased- Mirza Salimullah Baig. The compensation awarded by MACT, Aurangabad, is inadequate. The applicants have every hope of success in appeal. Due to paucity of money, they had instituted the claim on token court fees after obtaining necessary permission from the Tribunal. Soon after passing award, any how they managed to collect the necessary court fees and deposited the same so that award can be prepared. The respondents were duty bound to comply the award. Since they did not comply with the award, the applicants approached to the Tribunal and filed MACP Darkhast. Respondent No. 1 – M.S.R.T.C. after hard persuasion deposited the compensation amount in the Tribunal on 12.09.2016. After following necessary procedure, the applicants recived the said compensation amount through Demand Draft from the Tribunal on 29.09.2016. There were mistakes in Demand Draft. The applicants applied for carrying out the corrections therein. They

received the corrected Demand Draft in November – 2016. Thereafter, applicants approached to the Advocate and sought his advice. Meanwhile, the applicant no. 1 fell ill. Considerable time was passed in her treatment. After coming out of all these difficulties, on 05.06.2017, the applicants have preferred an appeal along with this application for condonation of delay.

4. According to Shri. Darwande, though the delay is little bit more, it is neither intentional nor deliberate or due to negligence but for *bona fide* reasons.

5. Respondents are the owner and driver of the offending vehicle have not resisted the application by appearing before the court though served with notice.

6. It is the matter of record that, at the time of accident and pendency of claim before the Tribunal, the applicant nos. 3 and 4 were minor whereas applicant no. 2 was on the verge of majority. It is contended in the application that, nobody from the applicants had own source of income. They were dependent on the deceased- Mirza Salimullah Baig, victim of the fatal accident.

7. Having considered all these aspects and the aforesaid causes pleaded in para nos. 3 to 6 of the application, it can not be said that no case of sufficient causes within the meaning of Section 5 of the Limitation Act has been made out. Therefore, the delay of 381 days deserves to be condoned. Hence, the following order.

ORDER

- [i] The Civil Application is allowed.
- [ii] The delay of 381 days caused in preferring the appeal against the Judgment and Award dated 09.12.2015 passed by Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 319 of 2014, is condoned.
- [iii] Appeal be registered.

[B. U. DEBADWAR]
JUDGE