

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 CIVIL APPLICATION NO.14303 OF 2016
IN
FIRST APPEAL (ST.) NO. 29278 OF 2016

SUREKHA KUNDAN BATTISE AND ORS
VERSUS
THE ORIENTAL INSURANCE CO. LTD. AND ANR

.....
Advocate for Applicants : Mr. Madhav M Bhokarikar
Advocate for Respondent 1 : Mr. Dhananjay P Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 31st AUGUST, 2021

PER COURT:-

1. Heard learned counsel for the applicants and learned counsel appearing for respondent insurer.

2. Learned counsel for the applicants submits that after the judgment and award dated 9.5.2008 passed by the M.A.C.T. Jalgaon in M.A.C.P. No. 55 of 2004, the applicant Pooja died on 30.5.2008. Learned counsel for the applicants submits that inadvertently the name of Pooja is also mentioned in the application seeking condonation of delay so also in the appeal. Learned counsel thus seeks leave to delete the name of applicant-original claimant Pooja from the array of applicants so also from the array of appellants shown in the appeal which is yet to be registered. Leave granted. Delete the name of applicant Pooja from the array of applicants in civil application as well as appellants in the appeal.

3. There is delay of 2961 days i.e. almost 8 (eight) years in preferring appeal against the judgment and award dated 9.5.2008 passed by M.A.C.T. Jalgaon in M.A.C.P. No. 55 of 2004. The applicants are the original claimants.

4. Learned counsel for the applicants submits that the applicant No.1 is widow as her husband met with an accidental death. Applicant No.1 was 25 years of age when her husband met with an accidental death. Applicant Nos. 2 and 4 were 6 and 2 years of ages, respectively, at the time of filing of claim petition. Learned counsel submits that the bread earner of the family met with accidental death. The delay is occurred, as the applicants are poor persons having no source of income to pay the expenses of appeal and legal fees. Learned counsel submits that even applicant No.4 Mayur is still minor and is taking education and applicant No.2 Deepak was 18 years of age at the time of filing of this application seeking condonation of delay. Both were non earning members at the time of filing of application for condonation of delay. Learned counsel submits that though the applicants got knowledge about passing of judgment and award by the Tribunal, however, they could not understand the reasons assigned for awarding meager amount of compensation. In the month of August, 2016, they got legal advise about preferring appeal for enhancement of compensation in the light of concept "just compensation" considering the death claim.

Learned counsel submits that the applicants were prevented from sufficient cause to prefer appeal within a period of limitation. The delay is not intentional one. Learned counsel submits that the applicants are also ready to forgo the interest from the date of passing of judgment and award by the Tribunal till today i.e. the date of condonation of delay, in case the appeal preferred by the applicants is entertained and allowed.

5. Learned counsel for respondent No.1 insurer has strongly resisted the application on the ground that there is inordinate delay in preferring appeal for which no satisfactory explanation has been tendered. According to the claimants, they had no knowledge about the impugned judgment and award, learned counsel however, submits that in the year 2008 itself applicant No.1 withdrew the compensation awarded by the Tribunal. The applicants thus could have preferred appeal within limitation immediately after withdrawing the amount of compensation. Learned counsel in the alternate submits that if the applicants are ready to forgo the interest for the period, as stated above, their application seeking condonation of delay may be considered favourably.

6. The applicant No.1 is widow. Applicant No.4 is still taking education. The applicant No.4 was minor at the time of filing application seeking condonation of delay and now he is 18 years of age. The applicant No.2 was 18 years of age at the time of filing of

this application. It further appears that the husband of applicant No.1 met with motor vehicular accident at young age and the applicant No.1 was 25 years of age when she has filed the claim petition for awarding compensation. Applicant Nos. 2 and 4 were minor children and even applicant No.3, who is no more at present, was also minor at that time. The applicants have no source of income. The applicant No.1 is doing household work and minor applicants are still taking education. Thus, they have no sufficient income to prefer appeal by incurring the expenses. Even though applicant No.1 has withdrawn the compensation amount in the year 2008 itself, however, the same was required for maintaining the family, particularly the minor applicants, who were taking education at that time.

7. Further, learned counsel for the applicants, on instructions, has made statement that the applicants are ready to forgo the interest from the date of passing of award by the Tribunal i.e. from 09.05.2008 till today i.e. till the date of condonation of delay by this court. Even after condoning the delay if the appeal is entertained by this court and allowed to some extent, the applicants would get interest from the date of filing of claim petition till the date of judgment and award passed by the Tribunal and for further period from the date of condonation of delay till disposal of appeal.

8. In view of above and particularly in the light of the statement made on behalf of the applicants-claimants, I proceed to pass the

following order:-

O R D E R

- I. Civil application is hereby allowed in terms of prayer clause "B".
- II. The applicants, as agreed, to forgo the interest from the date of passing of judgment and award by the Tribunal i.e. from 09.05.2008 till today i.e. till the date of condonation of delay by this court.
- III. Civil application is accordingly disposed of.

(V. K. JADHAV, J.)

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