

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

**CIVIL APPLICATION NO.362 OF 2019
IN FAST/34776/2018**

**FARHEEN NAAZ SAYYAD VIKHAR AND OTHERS
VERSUS
MOHANSINGH BAVSINGH THAGRE AND ANOTHER**

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Advocate for Applicants : Shri Afzal Husain M. Vakil h/f
Shri Taher Ali Quadri

Advocate for Respondent No.2 : Smt. Ankita J. Mantri h/f
Shri S. G. Chapalgaonkar

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CORAM : B. U. DEBADWAR, J.

DATE : 18th JANUARY, 2021

PER COURT :

1. This is an application for condonation of delay of 460 days caused in preferring appeal against the judgment and award dated 16-03-2017 passed by the District Judge-5 & Ex- Officio Member of MACT, Nanded, in Motor Accident Claim Petition No. 419 of 2015, whereby death claim for compensation is allowed partly with proportionate costs.

2. Heard Shri Afzal Husain M. Vakil, learned advocate for the applicants – original claimants and Smt. Ankita J. Mantri, learned advocate for respondent No.2 – original respondent No.2 – Insurance Company. None appears for respondent No.1 – owner of the vehicle involved in the accident, though served with notice.

3. Learned advocate for the applicants – original claimants submits that the applicants are legal heirs of deceased Syed Viqar s/o Syed Saber, who died in the accident involving offending truck. Applicants were fully dependent on deceased Syed Viqar s/o Syed Saber. They have no source of income of their own. They are entitled for compensation as claimed, however, learned M.A.C.T., Nanded, allowed their claim partly. Soon after passing the impugned judgment and award, applicants had moved application for certified copies thereof. After getting the same, due to paucity of funds and lack of knowledge regarding a period of limitation to prefer the appeal, they could not prefer the appeal within a period of limitation. After arranging the money, they have engaged lawyer and preferred the appeal with this application. Applicants have every hope of success in this appeal.

4. Learned advocate for the appellants, on instructions, submits that the appellants are ready to waive the interest of the period for which delay is caused in preferring the appeal, if the appeal is allowed.

5. Per contra, learned advocate for respondent No.2 vehemently argued that delay caused in preferring the appeal is large one. Applicants / appellants have not explained the same

properly. In the absence of proper explanation delay cannot be condoned.

6. In the light of aforesaid submissions made by both the sides, I have carefully gone through the record including paragraph Nos. 3 and 4 of the application. It is evident from the record that applicants / appellants are legal heirs of Syed Viqar s/o Syed Saber – victim of the accident. Applicants No. 2, 3 and 4 are minor daughters of applicant No.1, whereas applicants No. 5 and 6 are aged mother-in-law and father-in-law of the applicant No.1. It is contended that all the applicants were dependent on Syed Viqar s/o Syed Saber. Having considered the fact that none of the applicant has independent source of earning, contention raised in the application that due to paucity of money they could not prefer the appeal within the period of limitation, appears to be just and proper.

7. In view of the facts and circumstances of the case discussed above, it cannot be said that delay caused in preferring the appeal is either intentional or due to negligence of the applicants, therefore, delay deserves to be condoned.

8. In view of the above, this application is allowed. The delay of 460 days caused in preferring appeal against the impugned judgment and award is hereby condoned.

9. If the appeal is allowed after hearing, interest on additional compensation for the period of 460 days, which is condoned shall not be awarded, as applicants have waived the same. Copy of this order be placed on record of the appeal.
10. Appeal be registered, if it stands in scrutiny.

(B. U. DEBADWAR, J.)