

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

**CIVIL APPLICATION NO.745 OF 2017 IN
FIRST APPEAL STAMP NO.36623 OF 2016**

Smt. Vaijayantabai Namdeo Patil
and others

... APPLICANTS

VERSUS

The New India Insurance Company Ltd.
and others

... RESPONDENTS

.....

Shri M.M. Bhokarikar, Advocate for applicants
Shri A.S. Usmanpurkar, Advocate for respondent No.1
Shri Shantanu A. Deshpande, Advocate holding for
Shri P.R. Patil, Advocate for respondent No.2-B

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CORAM : R. G. AVACHAT, J.

DATE : 4th MARCH, 2021.

ORDER :

Heard learned counsel for the parties. This is an application for condonation of delay of 2266 days in preferring First Appeal against the judgment and award dated 24/6/2010, passed by the Member, Motor Accident Claims Tribunal (MACT), Jalgaon in Motor Accident Claim Petition No.53/2005.

2. The applicants are legal representatives/ Class-I

heirs of deceased Rajendra Patil, who died in the accident involving motor vehicle on 27/9/2000. The applicants preferred claim for compensation. The same was allowed. The claim was quantified at Rs.4,17,500/-. The Tribunal found the deceased Rajendra Patil, an employee of original respondent No.2. It found that the liability cannot exceed the liability of the employer under Workmen's Compensation Act. The Tribunal, therefore, directed the Insurance Company and the owner of the vehicle to pay the applicants (appellants) a sum of Rs.3,05,775/- with interest thereon @ 7.5% p.a. The Tribunal further directed that the remaining amount of the award with 7.5% interest may be recovered from the legal representatives of the original respondent No.2.

3. Shri Bhokarikar, learned counsel for the applicants would submit that the applicants are poor. They did not have sufficient income to pay the expenses of the appeal. They, therefore, could not arrange money in time. The applicants are mother, widow and minor children of the deceased. They are illiterate and rustic. The delay in preferring the appeal is not intentional. The deceased was the sole bread winner of the family. The applicants could not contact an Advocate to prefer the appeal within time. The learned counsel relied on a number of authorities to ultimately urge for grant of the

application.

4. The learned counsel for respondent – Insurance Company and learned counsel for legal representatives of the original respondent No.2 would, on the other hand, submit that the applicants have suppressed very many facts from this Court. After the award was passed, the applicants put the same to execution. The respondent Insurance Company paid the amount of compensation under the award, which it had been directed to pay. During execution proceedings, the applicants and legal representatives of respondent No.2 arrived at a compromise. The applicants received Rs.1,50,000/- towards full and final settlement of the liability of the original respondent No.2. the same would falsify the grounds offered in the application for condonation of delay. They, therefore, urged for rejection of the application.

5. The authorities relied on by learned counsel for the applicant are :-

- (1) Bishundeo Narain & anr. Vs. Seogeni Rai & ors.
[AIR 1951 SC 280]
- (2) Kaushalaya Devi & ors. Vs. Baijnath Sayal, Deceased) & ors. [AIR 1951 SC 790]
- (3) Dharendra Kumar Garg & ors. Vs. Smt. Sugandhi Bai Jain & ors. [AIR 1989 SC 147]

- (4) Union Bank of India Vs. Byram Pestonji Gariwala & ors.
[AIR 1991 Bombay 185]
- (5) R. Rajanna Vs. S.R. Venkataswamy & ors.
[2015 AIR SCW 531]
- (6) Royal Sundaram alliance Insurance Company Ltd. Vs.
Smt. Manisha Suyog Jagdale & ors.
[2016 (2) an. W.R. 155]
- (7) Ramla & ors. Vs. National Insurance Co. Ltd. & ors.
[AIR 2019 SC 404]

6. The gist of the authorities relied on is that there should be a liberal pigmatic justice oriented approach while dealing with an application for condoantion of delay. The Courts are not supposed to legalise injustice. The term 'sufficient cause' should be understood in its proper spirit, philosophy and purpose. Substantial justice being paramount and pivotal, the technical concession should not be given undue and uncalled for emphasis.

7. Non-compliance of Order 32 Rule 7 of the Code of Civil Procedure renders a decree or order to be voidable. Interest of the minor should be of utmost importance. The compromise has to be for the benefit of minors.

8. There cannot be two views over what has been submitted by learned counsel for the applicant. Relying on

the aforesaid authorities, this Court would have been sympathetic and liberal in granting the application, but for the application being silent to mention the facts of compromise arrived at in the execution proceedings. The said facts falsify the grounds on which the delay is sought to be condoned.

9. The deceased Rajendra Patil was working as a Cleaner on a Dumper owned by the original respondent No.2. The Dumper met with an accident. No other vehicle was involved. Rajendra Patil was in the Cabin of the Dumper when it met with the accident on 29/7/2000. He died as a result of the said accident. The Tribunal, considering the age of the deceased and notional income of Rs.3000/- per month, awarded the compensation of Rs.4,17,500/-. The applicants had claimed compensation of Rs.6,00,000/-. The Tribunal passed the award as stated above. The applicants put the award to the execution. The respondent Insurance Company paid the amount of compensation it was liable to pay. The remaining amount that was directed to be paid by legal representatives of the original respondent No.2 appeared to have been not more than Rs.2,00,000/-. In the execution proceedings, the applicants and the legal representatives of the original respondent No.2 arrived at a compromise. They accepted Rs.1,50,000/- towards full and final settlement of

the claim as against legal representatives of respondent No.2. One may not find the said compromise to be unconscionable or against the interest of the minor children of the deceased. All the facts relating to the compromise entered into in execution proceedings have not been averred in the application for condonation of delay. These facts falsify the claim of the applicants that they did not have money to file appeal against the award within period of limitation. The delay in preferring the appeal is of 2266 days. No reliable and convincing reason has been offered for condonation of the delay. In this factual backdrop, I am not inclined to allow the application. The Civil Application, thus, fails. The same is dismissed.

(R. G. AVACHAT)
JUDGE

fmp/-