

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 678 OF 2017

Smt. Julaikha Bashir Momin
Aged 57 years, (Mother of original
applicant – Farman Bashir Momin)
R/at Trishul Building, Block No.11,
Kotali, Mahad A/p.& Tal. Mahad.
Dist. Raigad .. Appellant

Vs.

Union of India,
Through General Manager,
Konkan Railway, Having his office
at Plot No. 6, 4th Floor, Belapur Bhavan,
CBD Belapur, Navi Mumbai – 400 014 .. Respondent

.....

Mr. Balasaheb Deshmukh i/b Mr. Deepak T. Ajagekar for the
appellant
Ms. Shristi B. Shetty i/b M.V. Kini and Co. for the respondent

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 22nd DECEMBER, 2021.

PRONOUNCED ON : 23rd DECEMBER, 2021.

JUDGMENT :-

1. By this appeal, the appellant Smt. Julaikha Bashir Momin has challenged an order dated 20.09.2016 passed by the Railway Claims Tribunal, Mumbai in Original Application No. 1557 of 2012 rejecting their application for bringing legal representatives of the deceased – original claimant on record.

**UDAY
SHIVAJI
JAGTAP**

Digitally signed
by UDAY
SHIVAJI
JAGTAP
Date:
2021.12.23
15:41:20 +0530

2. Briefly stated the facts are as follows :-
3. Injured Farman Bashir Momin along with his brother Aslam Bashir Momin and cousin ADIL Amir Momin boarded Mumbai–Madgaon Konkan Kanya Express from Mumbai C.S.T. on 09.04.2012 to go to Mangaon Railway Station. On 10.04.2012, when the train reached Mangaon Railway Station around 3.00 p.m. and the applicant was alighting from the train, he suddenly fell down into the gap between train and the platform, mainly due to the rush in the compartment and pushed by the crowd of the passengers. He sustained several injuries to both of his legs and other parts of the body.
4. The claim application was filed by Farman Bashir Momin on 27.11.2012 before the Claims Tribunal for compensation of Rs.4 lakhs with interest @ 18% under the provisions of the Railways Act, 1989.
5. After a written statement by respondent, issues were framed and affidavit in lieu of evidence was filed on 29.06.2015.
6. However, during the pendency of the application, Farman Bashir Momin expired on 04.07.2015. The present appellant filed an Original Application No.1557 of 2012 on 15.06.2015 for bringing legal representatives of the deceased on record *inter alia* an application seeking condonation of delay.

7. Heard Mr. Deshmukh, learned Counsel for the appellant. It appears that the delay was of 8 months and 11 days to bring legal representatives on record. It is a matter of record that affidavit-in-lieu of examination-in-chief was filed by Farman Bashir Momin on 29.06.2015 and he died on 04.07.2015. The evidence was not closed by that time. The matter was fixed for recording further evidence. However, due to the death of Farman Bashir Momin, the Counsel could not contact him. It is submitted that due to the untimely death of Farman Bashir Momin, the entire family was in shock and grief. Even his father had a mental stress and was in depression, who also died on 26.04.2016. Due to sudden death of the father of Farman Bashir Momin, the family which was already in grief undergone tremendous mental stress and agony. The present appellant, therefore, was not in a proper frame of mind and, therefore, she could not contact her advocate to file an application for substitution of her name, within the time prescribed.
8. It is only after receiving a letter from the advocate in the name of Original Applicant, the appellant came to know about the status of the claim application.
9. On the other hand, Ms. Shetty, the learned Counsel for the respondent – Railway objected the prayer of the appellant on the ground that the deceased had filed his evidence on 28.06.2016 by appearing in the Tribunal. It appears that there is some misunderstanding of the learned Counsel for

the respondent – Railway for the reason that the copy of the affidavit of Farman Bashir Momin, which is filed along with the paper book at page 41, indicates that the affidavit of evidence *qua* Farman Bashir Momin was filed on 29.06.2015 and not on 28.06.2016. The seal and signature of the Notary beneath the affidavit as well as the seal and signature of the Assistant Registrar of Claims Tribunal, Mumbai and the signature of the learned Counsel Mr. Deepak Ajagekar substantiate the said fact.

10. This being a social legislation for the benefit of the unfortunate victims of railway accident, a pragmatic approach will have to be taken and the delay which has been properly explained needs to be condoned. The impugned order suffers from want of proper reasons, which are quite cryptic and without application of mind.
11. For all these reasons, the order impugned needs to be set aside.
12. Now, to the order :-

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order passed by the Railway Claims Tribunal, dated 20th September, 2016 is hereby set aside.

- (iii) The delay is condoned.
- (iv) The appellant shall amend the application in claim accordingly within 14 days from the date of receipt of this order.
- (v) After amending the application, amended copy be furnished to the respondents.
- (vi) The Tribunal shall proceed further to adjudicate the claim of the appellant in accordance with law as expeditiously as possible by giving due opportunity to the respective parties.
- (vii) The appeal is disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)