

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

902 CIVIL APPLICATION NO. 14161 OF 2011
IN FA/584/2009

DATTATRAYA RAGHUNATH GITTE AND ANR
VERSUS
SHAIKH RASHID SHAIKH RAZZAK AND ORS

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Advocate for Applicant : Mr. S.S. Manale
Advocate for Respondents : Mr. A.S. Usmanpurkar

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CORAM : ANIL L. PANSARE, J.
DATE : 8th July, 2022

PC.:-

This court vide order dated 10.02.2012 directed the applicants/appellants, who are legal representatives of the original claimant/appellant no.1 to examine and make a statement whether right to sue survive upon death of original claimant/appellant.

2. The applicants who claim to be legal representatives of the original claimants/appellant no.1 have preferred this application seeking condonation of delay of 154 days in filing application so also for setting aside the order of abetment and for substitution of applicants as legal representatives of the deceased/original claimant.

3. The non-applicants have not attributed *mala fides* to the applicants in filing belated application. Accordingly, for the reasons assigned in the application for condonation of delay and to advance the cause of substantive justice, the delay deserves to be condoned.

4. The learned advocate for present applicants submit that the law then existing was not clear on the point whether the right to sue would survive in injury claims after the death of original claimant. The law has now been settled by the Supreme Court in the case of the **Original Insurance Company Limited V/s. Kahlon @ Jasmail Singh Kahlon in Civil Appeal No.4800/2021** (arising out of SLP(C) No.2873/2021). The Hon'ble Supreme Court has considered various judgments of various High Courts and held in para 18 as under:

“18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.”

5. The position of law is thus clear that the legal representatives of the deceased in injury claim are entitled to pursue the claim as aforesaid and the right to sue would survive to that effect.

6. In view thereof, the application is allowed in terms of prayer clause-B & C. Civil Application is disposed of.

[ANIL L. PANSARE, J.]