

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**CIVIL APPLICATION (CAF) NO. 1411 OF 2020
AND
CIVIL APPLICATION NO. 1238 OF 2021
IN
FIRST APPEAL (ST) NO. 8232 OF 2020**

Gangadhar Jichkar
Vs.
Bhaskar s/o Sahebrao Mandhare

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.S. Warulkar, Advocate for applicant.
Mr. S.W. Sambre, Advocate for respondent.

CORAM : ABHAY AHUJA, J.

DATE : 26.09.2022.

This is an application seeking condonation of delay of 315 days in preferring an appeal against judgment and order dated 27.08.2019, passed by the Commissioner under the Employees Compensation Act, 1923, in ECA No.(B)-75/2014, whereby the Labour Court has granted compensation of Rs.5,55,668/- with 12% interest from the date of accident till the realization of the amount in addition to 30% penalty.

2. Mr. Warulkar, learned counsel for the appellant has drawn attention of this Court to paragraphs 2 to 5 of the application. Learned counsel submits that the applicant came to know of the passing of the impugned decision in the month of November, 2019 when he received a notice in execution proceedings. He submits that the appellant thereafter, contacted the local counsel, however, due to a number of matters filed against the applicant, no one appeared in the trial Court and the decision came to be passed against him. He further submits that the applicant obtained certified copies on 10.12.2019, after which he was trying to arrange for the amount to be deposited in Court for filing the appeal.

3. Learned counsel further submits that the appellant is an agriculturist and also an aged person and therefore, he took time to arrange for the funds and for payment to be deposited before the trial Court. He submits that thereafter, there was an outbreak of Corona and due to his old age and ill-health, he could not come to the Court and therefore, the delay. The learned counsel submits that the appellant has a good case on merits and therefore, the delay be condoned.

4. Mr.Sambre, learned counsel for the respondent has expressed his formal objection to the application for condonation of delay.

5. Having heard the learned counsel and having perused the application, this Court is of the view that the delay of 315 days in filing the appeal be condoned. The delay is hereby condoned.

6. The appeal be registered within a period of two weeks.

7. The civil application stands disposed of.

Civil Application (CAF) No.1238/2021

This is an application seeking withdrawal of the amount deposited by the appellant.

2. Mr.Sambre, learned counsel for the respondent/claimant submits that the deceased was a widow labourer, namely, Mrs. Anusaya Bhaskar Mandhare, who died being crushed under the trolley of a tractor on which she was travelling, while returning from the farm of the appellant.

3. The learned counsel for the respondent/claimant submits that there is a clear finding in paragraph 8 of the impugned decision that the deceased Anusaya Bhaskar Mandhare, was a labourer with the applicant. He also submits that there is a documentary evidence that the deceased died in an accident arising out of and during the course of her employment with the applicant. He submits that these findings are unchallenged and the applicant has also not cross-examined the witness Mr. Bhaskar Mandhare. He therefore, submits that the entire amount of compensation, be allowed to be withdrawn.

4. On the other hand, Mr. Warulkar, learned counsel for the appellant vehemently opposes the application for withdrawal. Learned counsel submits that the Tribunal has failed to consider the evidence that the deceased was not an employee or a labour with the appellant. The learned counsel for the appellant has drawn attention of this Court to paragraph 4 of the impugned decision, as well as to the evidence of affidavit of the claimant/respondent.

5. Learned counsel submits that in fact the deceased was not employed by the appellant, but

only hitch hiked i.e. since she was going from Waygaon towards Umred and since the tractor along with trolley was going towards her village, she along with other ladies also got on to the trolley, which is a usual practice in villages in India

6. The learned counsel submits that the appellant is a poor agriculturist and had to take a Bank loan in order to make the deposit as being saddled with this liability.

7. Learned counsel for the appellant submits that the deceased was not a labour working with the appellant and draws the attention of this Court to paragraph 11 of the impugned decision to submit that the Commissioner has clearly found that the respondent/claimants are not having any documentary evidence regarding monthly salary of the deceased. The learned counsel submits that there is neither any register, nor any salary bill to show that any salary has been paid to the deceased.

8. Learned counsel also submits that there is also a penalty that has been imposed which is illegal inasmuch as proviso to Section 4(A)(3)(b) requires that no penalty can be imposed without affording a reasonable opportunity to the employer to show

cause and no show cause notice has been served upon his client.

9. Mr. Sambre, learned counsel for the claimant/respondent strongly opposes the submissions made by Mr. Warulkar, learned counsel for the applicant.

10. Having heard the rival contentions and having perused the proceedings, I am of the view that interests of justice would be served if 50% of the amount deposited in this Court is allowed to be withdrawn at this stage. Accordingly, the following order is passed :-

ORDER

11. 50% of the amount deposited in this Court is allowed to be withdrawn by the claimant/respondent in the following manner :

(i) 25% upon furnishing of solvent surety/security to the satisfaction of the Registrar Judicial of this Court and

(ii) 25% upon furnishing usual undertaking that in the event the impugned judgment is modified

or set aside, the amount withdrawn will be returned to the appellant.

12. The balance 50% of the amount deposited to be invested in a fixed deposit in any Nationalized Bank until further orders.

13. The civil application stands disposed in the above terms.

First Appeal (St.) No.8232/2020

The learned counsel for the appellant undertakes to serve a copy of memo of appeal along with complete annexures upon the learned counsel for the respondent/claimant within a period of two weeks.

2. List the matter on **10.10.2022**.

JUDGE