



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

FIRST APPEAL NO.516 OF 2021

Mr. Rakesh Shivaji Kamble

Age – 39 years, Original Applicant

R/o. Room No.87, Behind Building No.3,

Shell Colony Road, Near Samaj Kalyan

Kendra, Saibaba Nagar, Chembur,

Mumbai-400 071.

... Appellant

Versus

Union of India,

Through General Manager,

Western Railway,

Churchgate

... Respondent

Mr. Deepak T. Ajagekar for the Appellant.

Mr. Arun Kumar Roy for Respondent.

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 1 NOVEMBER 2023

P.C.

. Heard. Admit. Taken up for hearing by consent of parties.

2. Appellant is aggrieved by an Order dated 6 August 2021 passed by (the Bench of Learned Member Technical Ved Prakash of) Railway Claims Tribunal, Mumbai (“Tribunal”) in Original Application No.314 of 2020, thereby refusing to condone delay of three years and seven months in filing the claim application.

3. Appellant while traveling in a local train between Meera Road to Andheri Railway Stations, on 30 April 2016 was hit by an article and lost vision of his left eye. At the time of incident, the Appellant was standing near the door due to heavy rush. Appellant got down at Andheri Railway Station and with the help of co-passengers and GRP was sent for medial treatment. He was discharged on 3 May 2016. He claimed that due to severity of injury and as Appellant lost his vision of left eye and he went into shock and mental depression. Due to his prolonged absence from the workplace, he lost his job. He being the only earning member in the family, due to loss of job went into depression. In April 2020, he came to know about the compensation can be claimed. Hence, he has approached Tribunal by filing claim application. He, therefore, requested for condonation of delay of three years and seven months in filing the application.

4. Respondent-Western Railway opposed the maintainability of the ground of limitation. According to Respondent, no plausible reason is mentioned in delay condonation application. Tribunal after hearing parties and Appellant, rejected the application. Hence, the present First Appeal.

5 Heard learned Counsel for Appellant as well as Respondent-Western Railway. Perused documents placed on record and reply filed by Respondent.

6. Learned Counsel for the Respondent has strenuously opposed the appeal contending that though Tribunal verified from the Appellant as to reason for belatedly approaching the Tribunal, he has failed to assign any reason. By relying on the impugned Order and reply affidavit filed, he submits that no fault can be found with the Order passed by the Tribunal and appeal being devoid of merits liable to be dismissed.

7 The Tribunal had ignored the settled legal position that delay is to be liberally condoned. The appellant has to get nothing by belatedly approaching Tribunal by filing the claim application. Appellant cannot be denied opportunity to prove his claim on merit on technical ground. Tribunal while rejecting delay condonation application has adopted hyper technical approach and has ignored said legal position enunciated in the case of **Esha Bhattacharjee Vs.**

**Managing Committee of Raghunnathpur Nafar Academy And Others¹
and Revajeetu Builders and Developers Vs. Narayanaswamy And Sons
And Others².**

8 For the aforesaid reasons, the First Appeal is allowed. The impugned Order dated 6 August 2021 passed by the RCT, Mumbai Bench, in Original Application No.314 of 2020 is quashed and set aside. Delay condonation application is allowed. It is made clear that Applicant/Appellant in case succeeds before the Tribunal, shall not be entitled for interest, if any, for the period from the date of accident, i.e. 30 April 2016 till date.

(NITIN B. SURYAWANSHI, J.)

1 (2013) 12 Supreme Court Cases 649

2 (2009) 10 Supreme Court Cases 84