



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

FIRST APPEAL NO.93 OF 2016

1. Shri Pundlik Hari Shirsagar
Age 52 years, occ. Business.

2. Sau. Janabai Pundalik Shirsagar
Age 50 Years. Occ. Household.

Both R/o. Gosavi Laine, Chbaudhari Wada,
Opp. Central Naka, Old Power House
Road, Chalisgaon, Tal. Chalisgaon,
Dist. Jalgaon

... Appellants

Versus

Union of India,
Through the General Manager,
Central Railway,
Mumbai

... Respondent

Mr. Milind Desai for Appellants.

Mr. T.J. Pandian a/w Mr. Gautam Motanwal for the Respondent.

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 3 NOVEMBER 2023

P.C.

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

2. Appellant is aggrieved by an Order dated 25th August 2014
passed by the learned Member (Technical), Railway Claims Tribunal,

Mumbai Bench, Mumbai (“Trubunal”), in Misc. Application No.MA/MCC/2013/0094 thereby refusing to condone delay of five years, five months and 29 days in filing the claim application.

3. Son of the Appellants, namely, Prakash was traveling from Chalisgaon to Nashik on 8 December 2006, for the purpose of interview in the office of Vaibhav Placement. He boarded an ordinary bogie of the express train. While train was coming near Lasalgaon station, there was jerk and Prakash fell down from bogie and died in the accident. A ticket bearing No.22250289 dated 8 December 2006 was seized from the dead body of Prakash, who fell down from 8030 up Howrah Kurla Express train. The deceased was unmarried and he was serving as Electric Engineer at Aurangabad. The Appellants had no knowledge to file application.

4. The claim application ought to have been filed on or before 7 December 2007, but the Appellants filed it in the month of June 2014. There was delay of five years, five months and 29 days in filing the claim application.

5. Along with the claim application, Appellants filed delay

condonation application, contending that the Appellants are the resident of Tal. Chalisgaon, Dist. Jalgaon and that they were not aware that the application was required to be filed at Railway Tribunal at Mumbai. Due to death of their son, they were under depression, as the deceased was the sole earning member of their family. Police papers were received late and they were misplaced. Appellants handed over papers to Advocate Pawar in the year November 2008. Advocate Pawar gave documents to Advocate K.M. Dayama, resident of Jalgaon for filing the claim. Advocate Dayama expired on 11 August 2010. Appellants were under bonafide impression that their claim is already filed. Appellants when approached Advocate Dayama's office, they were told that so many cases were lying in the office and his son was at Mumbai and whenever he comes back, their documents would be traced and returned. In September 2012, Appellants received documents. Appellants were not keeping well, they handed over documents to Advocate Anita Neve in May 2013. Appellants contended that they were illiterate persons and Appellant No.1 had to earn their livelihood. Appellants, therefore, claimed that they have a good case on merits and they have hope to succeed in the matter. Therefore,

delay needs to be condoned.

The Tribunal after hearing parties, rejected delay condonation application. Hence, the present First Appeal.

6. Heard learned Counsel for Appellants as well as Respondent-Central Railway. Perused documents placed on record and reply filed by Respondent.

7. Learned Counsel for the Respondents has strenuously opposed the appeal contending that though Tribunal verified from the Appellants the reason for belatedly approaching the Tribunal, he has failed to assign any reason. By relying on the impugned Order, 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.

8. Sufficient grounds are given by the Appellants for belatedly approaching the Tribunal. From the facts narrated in delay condonation application, it cannot be said that delay is caused due to negligence of the Appellants. Admittedly Railway Claims Tribunal Act (54 of 1987), is beneficial legislation and tribunal needs to adopt

a liberal approach in the light of settled legal position that delay is to be condoned liberally.

9. In **Nishant s/o. Devrao Wasnik Vs. Unon of India**¹, the tribunal has refused to condone delay of 1380 days. While condoning the said delay, this Court held :-

“Tribunal has discretion to entertain application even beyond period of one year prescribed and while condoning delay tribunal is expected to adopt a justice oriented approach. The words ‘*sufficient cause*’ for not making application within prescribed period should be understood and applied in reasonable, pragmatic and liberal manner depending upon facts and circumstances. Court is not supposed to take a pedantic or hyper-technical view.”

This judgment is squarely applicable to the facts of the present case.

10. For the aforestated reasons, the impugned judgment cannot be sustained and same is liable to be quashed and set aside. First Appeal deserves to be allowed. Hence, the following order :-

¹ 2022(6) Mh.L.J. 160

: O R D E R :

- (i) The Appeal is accordingly allowed.
- (ii) The impugned Order dated 25th August 2014 passed by the Learned Member (Technical), Railway Claims Tribunal, Mumbai Bench, Mumbai in Misc. Application No.MA/MCC/2013/0094 is quashed and set aside.
- (iii) The delay in filing the claim application before the Tribunal is condoned.
- (iv) The claim application be heard on merits.
- (v) Appellants shall not be entitled to claim interest on the compensation amount, if awarded to them, for the period from 8 December 2006 till 3 November 2023.
- (vi) It is made clear that I have not made any observations on merits of the contentions.
- (vii) No order as to costs.

(NITIN B. SURYAWANSHI, J.)