

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

CIVIL APPLICATION (CAF) NO. 580 OF 2023
IN
FIRST APPEAL (ST.) NO. 3300 OF 2023

Deepa Wd/o Santosh Rajbenuk and others

..VS..

Union of India through General Manager, Central Railway, CSMT, Mumbai

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Sumesha Chaudhari, Advocate for applicants.
Ms. Neerja Choubey, Advocate for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 27, 2023

Present application is filed by the applicants for condonation of delay which is caused in preferring the Appeal against the judgment and Award passed by the Railway Claims Tribunal. However, delay of 1309 which is caused in preferring Appeal.

2. As per the contention of the applicant, they have filed the Claim Application No. O.A.(IIu)/NGP/2015/329 which was allowed by the Tribunal on 28.04.2017. However, the Tribunal has awarded the compensation as per the old Schedule. In fact, the Railway issued the Notification on 22.12.2016 which come into effect from 01.01.2017, by which compensation amount was enhanced at the Rs.8 Lakhs. However, the Tribunal has not considered the same and awarded the compensation

as per the old Schedule. Therefore, claimants have preferred the Review Application No. 1 of 2021 for enhanced the amount of compensation. The said review application was rejected by the Tribunal and therefore, present Appeal is preferred by the applicants.

3. As the review application was pending before the Tribunal, the applicants have not preferred the Appeal. It is further contention of the applicants that the applicant No.1 is an illiterate lady and she is not aware about the legal provisions and therefore, she could not approach this Court for preferring the appeal. The reasons mentioned in the application are sufficient and justifiable and hence delay be condoned.

4. The learned Advocate Ms. Neerja Choubey who waives notice for the non-applicant and submitted that the reasons mentioned in the application are not sufficient and justifiable one, hence the application deserves to be rejected.

5. Heard both the sides.

6. Perused the application. It is apparent that the applicants filed an application for compensation before the Railway Claims Tribunal which was decided on 28.04.2017. Admittedly, as per the old Schedule the compensation amount for the death of the person in untoward incident was fixed as Rs. 4 Lakhs. By issuing

the Notification dated 22.12.2016, the amount of compensation was enhanced and said Notification come into effect from 01.01.2017. It is also apparent from the record that in view of the said Notification, the applicants have filed Review Application which was rejected by the Railway Claims Tribunal on 03.09.2021, therefore there is a delay of 1309 days in preferring the appeal. The applicant No.1 is rustic villager and illiterate. It is well settled that the expression sufficient cause should receive liberal construction so as to advance substantial justice. As the applicants have filed review application, wherein the time was consumed.

7. Considering the background of the applicants that applicant No.1 is an illiterate lady and other applicants were minor at the relevant time, they have not preferred the appeal. The reasons mentioned in the application appears to be just and reasonable one. Delay is not intentional one. In view of the above said reasons, delay condonation application deserves to be allowed.

8. In view of that, I proceed to pass following order:

Delay of 1309 days is condoned subject to the waiver of the interest for the delayed period if applicants/appellants succeeds in the appeal and get enhanced amount of compensation.

Appeal be registered.

FIRST APPEAL (ST.) NO. 3300 OF 2023

Learned Advocate Ms. Neerja Choubey waives notice for the respondent.

2. Call for Record and Proceedings.

3. Appeal be placed before the Court after receipt of the Record and Proceedings.

4. Paper books is dispensed with.

5. Learned Advocate Ms. Sumesha choudhari, submitted that applicant No.5 is already dead and therefore she is not made a party in the application. So, the objection raised by the Office is not survive.

(URMILA JOSHI-PHALKE, J.)

Kirtak