

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

CIVIL APPLICATION (F) NO. 1796 OF 2021

IN

FIRST APPEAL (STAMP) NO. 3849 OF 2021

Rekhabai wd/o Sanjay Kumbhar and others

vs.

Union of India

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

Court's or Judge's Orders.

Smt. Priyaka Mane, Advocate h/f. Shri Mahendra
Chaudhari, Advocate for applicants.
Shri Saurabh Chaudhari, Advocate for sole respondent.

CORAM : URMILA JOSHI-PHALKE J.

DATE : 03/04/2023

This is an application seeking condonation of delay of 663 days, which is caused in preferring the first appeal against the judgment and award dated 05/02/2019, passed by the Railway Claims Tribunal, Nagpur.

2. As per the contention of the appellants that they have filed the claim application before the Railway Claims Tribunal, however, the Tribunal dismissed the same on the ground that deceased, namely, Sanjay s/o Jivan Kumbhar was not a bonafide passenger and he was not involved in an

untoward incident. The appellant No.1 is illiterate and widow of the deceased, who is a house wife, did not aware about the legal provision and therefore, she could not file the present appeal immediately after her claim petition was dismissed by the said Tribunal.

3. It is contention of the appellant No.1 that she could not arrange the amount to pay Court fee and therefore, she could not approach the Court within time. It is further contention of the appellant No.1 that when the application was dismissed by the Railway Claims Tribunal, she engaged another lawyer, but he was not properly responded and then she asked him to hand over the case papers. Due to unavailability of the necessary documents, delay is caused in preferring the appeal.

4. The said application is strongly opposed by the learned Advocate for respondent on the ground that the appellant No.1 herself was reluctant to file the appeal. Ignorance of law cannot be excused and inordinate delay is not properly explained, therefore, the application deserve to be rejected.

5. Heard both sides. Perused the application. Admittedly, appellants are claiming compensation under the beneficial legislation. The applicant No.1 is the widow and other applicants are the legal heirs of the deceased. Considering the reason that the lawyer has not responded and not handed over the case papers to them, therefore, they could not file the appeal due to unavailability of the relevant papers, appears to be just and sufficient to condone the delay.

6. Moreover, while considering the delay condonation application, especially when the applicants are claiming compensation under the beneficial legislation, liberal approach is to be taken to do the substantial justice.

7. In view of that delay condonation application is allowed. The delay of 663 days is hereby condoned, subject to condition that if appellants succeeds in the appeal, they shall waive the interest for the delayed period of 663 days, which is caused in preferring the first appeal.

8. Application is disposed of in above terms.

9. Appeal be registered.

FIRST APPEAL NO. OF 2023

Heard.

2. **Admit.**

3. Learned Advocate Shri Saurabh Chaudhari
waives notice on behalf of sole respondent.

4. Call for Record and Proceedings.

5. Paper book is dispensed with.

[URMILA JOSHI-PHALKE J.]