

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

CIVIL APPLICATION (F) NO. 187/2020 IN FIRST APPEAL STAMP NO. 12269/2019

(RAJU DHANIRAM SAKHARE & ANOTHER **VERSUS** UNION OF INDIA, GENERAL MANAGER SOUTH
EASTERN CENTRAL RAILWAY BILASPUR)

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

Court's or Judge's order

Shri K.P. Mirache, counsel for the applicants.

Ms Anjali Agrawal, Advocate h/f Ms A.S. Athalye, counsel for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : FEBRUARY 24, 2023.

By this application, the applicants are seeking condonation of delay of 173 days which is caused in preferring the appeal against the judgment and award passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur.

It is submitted by the learned counsel for the applicants that they are the parents of deceased Ashish who died in untoward incident of railway on 09.09.2015. As they lost their young son they were in trauma and grief and therefore they could not approach their counsel. It is further submitted that due to the death of the son, the applicant no.2 was under mental trauma and therefore the applicant no.1 was busy towards providing her medical assistance and that is also one of the reasons as to why they could not approach their counsel in time. There is just and reasonable cause for condoning the delay and hence the delay be condoned.

The application is strongly opposed by the learned counsel for the non-applicant. She submitted that the reasons mentioned in the application are not sufficient and the application deserves to be dismissed.

Heard the learned counsel for the parties and perused the application. Admittedly, both the applicants have lost their young son in an untoward incident. However, the Tribunal has rejected the application on the ground that the applicants failed to prove that the deceased was the *bona fide* passenger and the death of the deceased is caused in an untoward incident. The applicants have claimed compensation under the provisions of beneficial legislation. To prefer an appeal is a statutory right and merely because there is delay the parties cannot be deprived of filing an appeal.

In view of the reasons mentioned in the application, the delay is condoned subject to waiver of the interest if the applicants succeed in the appeal. The civil application is allowed and disposed of. The appeal be registered.

FIRST APPEAL STAMP NO. 12269/2019.

Issue notice to the respondent returnable in two weeks.

Learned counsel Ms Anjali Agrawal waives service of notice for the respondent.

Call for Record & Proceedings.

List the matter for final hearing at the admission stage after the receipt of the Record & Proceedings.

(URMILA JOSHI-PHALKE, J.)

APTE