

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

CIVIL APPLICATION NO.201 OF 2023

IN

FIRST APPEAL (ST.) NO.12721 OF 2020

(Baburao s/o Nagorao Dudhare and anr. Vs. Union of India)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.G. Bagul, Advocate for the appellants.
Ms Neerja Choubey, Advocate for the respondent.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 21, 2023.

Heard.

2. By this application, the applicants are seeking condonation of delay of 578 days which is caused in preferring the appeal against the judgment and award dated 04/02/2019 passed by the Railway Claims Tribunal, Nagpur in Claim Application No.181/2017.

3. Learned Counsel for the respondent opposed the application on the ground that the delay is not properly explained, it is inordinate and no sufficient grounds are made out for condoning the delay.

4. It is submitted by the learned Counsel for the appellant that the appellants are labourer coming from the weaker section. They are moving from one place to other and after break of some period they used to return to their native place. As they were out of contact their Counsel who is from Nanded could not communicate the order to them, and therefore, delay of 578 days is caused in

preferring the appeal. Delay is not intentional one. There is reasonable and justifiable cause for condonation of delay. It is further submitted that in the said accident, appellant No.1 has lost his mother. They are entitled for compensation however, learned Tribunal had not considered that the death of the deceased is caused in an untoward incident and erroneously rejected the claim.

5. Preferring the appeal is a statutory right of the applicant, and therefore, they be permitted to litigate their cause on merits.

6. Perused the application and the submission made by both the sides.

7. It is stated on affidavit that the appellants are from the poor strata of the society, they are labourer and moving from one place to other to attend their works, and therefore, they could not communicate with their Counsel. The appellants are illiterate persons. Admittedly, the appellant No.1 has lost his mother in an untoward incident. Whether she was a bonafide passenger or not and whether her death is in an untoward incident or not is a matter of evidence and appreciation of the evidence. Merely on the technical ground, opportunity cannot be denied to the appellants. In view of that the application deserves to be allowed. The delay is condoned on waiver of interest if appellants succeeded in getting the compensation in the present appeal.

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Appeal be registered.

2. Call for R. & P.
3. Paper book is dispensed with.
4. Place the matter for final hearing after receipt of R. & P.

(URMILA JOSHI-PHALKE, J.)

**Divya*