

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

CIVIL APPLICATION (CAF) NO.2210 OF 2019
IN
FIRST APPEAL STAMP NO.27283 OF 2018

Vijayashri wd/o Ashish Yawalkar and others
Vs.
Afsar Khan Ataullah Khan (deleted) and others

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

Court's or Judge's orders

Mr. S. D. Khati, Advocate for appellants.
Ms. Mallika Babhulkar, Advocate h/f Mr. M. A. Kadu, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/02/2023

1. By this application, appellants are seeking condonation of delay which is caused in preferring the appeal against the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Amravati.
2. By this appeal appellants are seeking enhancement of the compensation. As per the contention of the appellants they have applied for the certified copy on 31.07.2008, after the limitation period was over. As the appellants were laymen they could not approach to their Counsel and obtained the certified copy. After obtaining the certified copy on 07.08.2018, they have to prefer the appeal. But, due to the death of the earning member in the family, they could not arrange Court Fees, and therefore delay of 157 days is caused in preferring the appeal. The delay is not intentional one. There is just and reasonable

cause for condonation of delay.

3. Learned Advocate Ms. Mallika Babhulkar holding for learned Advocate Mr. Kadu for respondent No.3 raised objection on the ground that the delay is not properly explained and hence application deserves to be rejected.

4. Heard learned Advocate Mr. S. D. Khatri for the appellants and learned Advocate Ms. Mallika Babhulkar holding for learned Advocate Mr. Kadu for the respondent No.3.

5. Perused the application. Admittedly, the appellants are the widow and minor children of the deceased who have filed application for compensation. As the Tribunal has awarded inadequate compensation, they preferred this appeal for enhancement of the compensation. The nature of the legislation under which compensation is claimed is beneficial legislation. The appellant No.1 being the widow was not aware about the legal provisions, and therefore she had not applied for the certified copy within time. Thus, it is apparent that delay is not intentional one and reasonable and just cause is mentioned in the application. However, considering the delay of 157 days on waiver of the interest, if appellants succeed in enhancement of the compensation, delay can be condoned.

6. In view of that Civil Application No.2210/2019 is allowed.

7. Delay of 157 days is condoned subject to the waiver of the interest, if the appellants succeed in getting enhancement of the compensation, in the present appeal.

8. Appeal be registered.
9. Civil Application is disposed of.

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1. **Admit.**
2. Learned Advocate Ms. Mallika Babhulkar waives notice for respondent No.3.
3. Call for record and proceedings.
4. Appellants to file paper-book within eight weeks, after receipt of the record and proceedings.
5. Place the matter for final hearing after paper book is filed and its verification.

(URMILA JOSHI-PHALKE, J.)

Sarkate