



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

CIVIL APPLICATION (CAF) NO. 1134 OF 2023

IN

FIRST APPEAL (St.) NO. 8591 OF 2018

Smt. Manjula Wd/o. Suresh Hiwale and others

.VS.

Sunil Uttamrao Katkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr U. J. Deshpande, Advocate for the appellants
Mr Ajay Chaphale, Advocate for respondent No.2

CORAM : G.A. SANAP, J.

DATE : MARCH 19, 2024.

Heard learned Advocate Mr U. J. Deshpande for
the appellants and learned Advocate Mr Ajay Chaphale
for respondent No. 2.

2. This is an application for condonation of 3117
days delay caused in filing an appeal against the
judgment and award dated 29.06.2009 passed by the
Chairman, Motor Accident Claims Tribunal, Akola
whereby the claim was partly allowed.

3. The appellants are the legal heirs of the deceased, who died in a vehicular accident. The claim was partly allowed. According to the appellants, the learned Chairman of the Tribunal has not properly appreciated the evidence and has not properly applied the provisions of law to the facts proved on the basis of the evidence. It is stated that due to the ignorance of the appellants, the appeal could not be filed within limitation. The appellants, after their decision, approached the Advocate. The Advocate did not take timely steps to file the appeal. It is further stated that after the death of the husband of appellant No.1, the family suffered the shock of their life. They took time to recover from the shock. They were not financially well off. Appellant No.1, the widow of the deceased, was required to take care of her children in the absence of her husband. She could not concentrate on the litigation. The litigation was taken care of by the Advocate. The advocate did not take appropriate steps. The certified copy of the judgment obtained by the Advocate was handed over to her at a belated stage. It is stated that by the time the appellants approached the Advocate, there was a delay in filing the appeal.

4. The appellants were directed to file a separate affidavit and place on record specific reasons. In the affidavit, elaborate reasons have been stated with particulars as to the dates etc. It is submitted that the meager compensation has been awarded by the Tribunal. They are entitled to get more compensation in view of the evidence adduced on record, as per the salary of the deceased and also in view of the law laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited v. Pranay Sethi***¹. It is submitted that in order to meet the ends of justice, discretion may be used in their favour and the delay may be condoned.

5. Respondent No.2 Insurance Company has filed reply and opposed the application. It is contended that the delay is inordinate and therefore, cannot be condoned. It is further contended that the reasons stated in the application are not sufficient to make out a case for condonation of delay. The reasons are nothing short of figment of fertile imagination for seeking condonation of delay. It is further contended that the amount of compensation as ordered by the Chairman of the Motor

1 (2017) 16 SCC 680

Accident Claims Tribunal was deposited within time. The appellants were negligent. They slept over their rights and therefore, the delay cannot be condoned.

6. Heard learned Advocate for the parties. Perused the record and proceedings.

7. In the facts and circumstances, following points fall for my determination:

(i) Whether the appellants have made out a case to condone the delay caused in filing the appeal against the impugned judgment and award ?

(ii) What order ?

8. Learned Advocate for the appellants submitted that by not filing the appeal within time, the appellants were not likely to be benefited. Learned Advocate submitted that, therefore, the reasons stated in the application in support of a claim for condonation of delay deserves acceptance. Learned Advocate submitted that the delay in filing the appeal was not intentional.

Learned Advocate submitted that after the death of the sole breadwinner of the family, the appellants suffered the shock of their life and they took time to recover from the said shock. Learned Advocate submitted that the reasons stated in support of prayer for condonation of delay are material and not the number of days delay caused in filing the appeal. Learned Advocate submitted that the litigant, who has a meritorious claim, cannot be nonsuited only on the ground of delay. In order to seek support to his submission, he has relied upon the decision of the Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag and another .v/s. Smt. Katiji and others**². In this case, the Hon'ble Apex Court has held as follows:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must

be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

9. Learned Advocate for respondent No.2 relied upon a decision of the Co-ordinate Bench of this Court (CORAM: VINAY JOSHI, J.) in the case of ***Vinayakrao Mansaram Ramteke .v/s. Mrs A. Kalyani and another (decided on 11.12.2019) in civil Application No. 3772 of 2018*** and submitted that in a similar matter, the Co-ordinate Bench was not inclined to condone the delay. Learned Advocate submitted that the cause set out in the application as well as in the additional affidavit filed, could not be said to be sufficient cause to accept the

contention of the appellants. Learned Advocate submitted that the Advocate appearing for the appellants before the Tribunal has been unnecessarily blamed by the appellants. Learned Advocate submitted that the indulgence of nature sought for cannot be granted in favour of the party who has slept over his rights. In short, it is submitted that no case has been made out for condonation of delay.

10. It is to be noted that the decision rendered by the Chairman, Motor Accident Claims Tribunal, Akola, was under a statute, which is a beneficial piece of legislation. The Hon'ble Apex Court, in the case of *Sarla Verma (Smt) & others .v/s. Delhi Transport Corporation and Another*³ as well as in the case of *Pranay Sethi (supra)*, has laid down a formula for the purpose of quantifying the compensation. It is necessary to state that, subject to the proof of the income of the deceased or injured, the formula and principles laid down in these two cases are required to be applied for the purpose of quantifying the compensation. I am conscious of the fact that while deciding the application for condonation of

3 (2009) 6 SCC 121

delay, the merits of the matter cannot be gone into. However, while taking a bird's eye view of the matter, the Court can see as to whether the meritorious matter has been decided by ignoring the provisions of law or not. As held by the Hon'ble Apex Court in the above decisions, cited by the learned Advocate for the appellants, an otherwise meritorious claim cannot be denied simply on the ground of the delay.

11. It needs to be stated that there cannot be a straight-jacket formula while deciding the application for condonation of delay. Whether the delay has been properly explained or not is a question of fact. By no stretch of imagination, it could be said to be a question of law. The question of fact, therefore, has to be decided keeping in mind the reasons stated in the application and facts obtained on record. In this case, therefore, the Court has to consider whether the reasons stated in the application are sufficient to condone the delay or not. It is not out of place to mention that the victim of the accident or the dependents of the victim of the accident are required to run from pillar to post. The dependents of the deceased in a vehicular accident are bound to suffer

the shock of their life. The loss of breadwinner is a permanent loss for dependents. In this case, the deceased was a Government servant. His salary slip has been placed on record. It has come on record in the evidence that after the death of her husband in the accident, the appellant No.1 got employment on compassionate ground. This aspect was taken into consideration by the learned Chairman of the Tribunal to deny her claim for compensation.

12. The reasons have been stated in the application. The main reason is that the Advocate despite knowing the niceties of the provisions of law did not take appropriate steps initially for obtaining certified copy of judgment and award and later on for filing the appeal within time. It is stated that the delay did not occur on account of the negligence of the appellants. They were not appropriately informed about their rights. It is common knowledge that the litigants who are coming to the Court are not supposed to know the niceties of the provisions of the law. The Advocate is always a guiding pillar to the litigant. The litigant is bound to trust and believe the Advocate. The Advocate owe a duty towards a

client to take care and safeguard the interests of the client in all respect.

13. In this case, the unfortunate appellants, whose breadwinner died in a vehicular accident, could not approach this Court within time. They have stated the reasons. In my view, the reasons, if considered in the totality of the facts and circumstances, appear to be just, proper and reasonable. The Court has to consider the reasons and not the number of days delay caused in filing the appeal. In this case, in my view, the technical approach will not subserve the cause of justice. In such a matter, depending upon the nature of the reasons, the Court has to prefer the pragmatic approach rather than the pedantic approach. The pragmatic approach is always justice oriented approach in such a litigation where the benefits of the beneficial piece of legislation are required to be extended to the unfortunate victims of the accident. In my view, therefore, the reasons stated in the application are sufficient. On the basis of the reasons, the delay has been explained.

14. Learned Advocate for the appellants, in all fairness, submitted that if the delay is condoned, then the Court, may pass a conditional order denying the appellants interest for the delayed period. In my view, this submission is just, fair and reasonable. Accordingly, I record findings on the above point in the affirmative. As such, I pass the following order.

ORDER

15. The civil application is allowed.

16. Delay of 3117 days is condoned, subject to the condition that the appellants shall not be entitled to interest for the delayed period.

17. Appeal be registered.

18. Civil application stands disposed of, accordingly.

FIRST APPEAL (ST.) NO. 8591 OF 2018

19. Heard.

20. Issue notice to the respondents, returnable within **eight weeks**.

21. Learned Advocate Mr Ajay Chaphale waives service of notice on behalf of respondent No.2

22. Respondent No. 1 and 3 are the parents of the deceased. They have been found not entitled to compensation. Therefore, notice is not necessary to them.

23. Call for record and proceedings.

24. Paper book be filed within eight weeks from the date of receipt of record and proceedings and then it be listed before this Court.

(G. A. SANAP, J.)

Namrata