

* HIGH COURT OF DELHI : NEW DELHI

FAO No.229/2008

% Judgment reserved on: 23rd October, 2009

Judgment delivered on: 3rd November, 2009

1. Smt. Gargia & Gargi
W/o Late Sh. Kallu
2. Ms. Sunita,
D/o Late Sh. Kallu.
3. Ms. Santosh,
D/o Late Sh. Kallu.
4. Ms. Anita (Minor),
D/o Late Sh. Kallu.
5. Master Ravi (Minor),
S/o Late Sh. Kallu.
6. Ms. Vineeta (Minor),
D/o Late Sh. Kallu.

Appellants No. 4 to 6
Through their mother &
Natural Guardian Smt. Gargia
Presently At:
H. No. B-1724, Shastri Nagar,
Delhi-52

....Appellants
Through: Mr. N. K. Gupta, Adv.

Versus

Union of India,
Through General Manager,

Northern Railways,
Baroda House.

.....Respondent.
Through: Mr. P. K. Dey with Mr.
Kaushik Dey, Advs.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present appeal has been filed by appellants against judgment dated 30th May, 2008 of Railway Claims Tribunal, Delhi (for short as 'Tribunal'). Vide impugned judgment application under Section 17 (2) of the Railways Claims Tribunal Act (for short as 'Act') filed by the appellants was dismissed.

2. Appellants have filed claim petition for compensation against respondent on account of death of Late Kallu, who died in an untoward train accident

on 18th July, 2006. Along with it, application for condonation of delay was also filed, in which it is stated, that appellants were under deep sorrow due to untimely death of husband of appellant no. 1 and father of appellants' no. 2 to 6. Appellant no. 1 visited GRP, Faridabad number of times to know about preparation of the inquest report but they did not give any satisfactory reply. After numerous visits, police of GRP/Faridabad supplied few documents on 18th June, 2007.

3. Thereafter, appellant no. 1, approached an advocate Sh. Sanjay Adhana at District Court, Faridabad and handed over all documents which were demanded by him. That Advocate told her that he has prepared the case and got the signatures of appellant no. 1, on various documents and stated that he will file the case within one year. He further told appellants, that they need not come and he will inform them about the progress of the case. However, that advocate never informed appellants about progress of the case.

On 20th February, 2008, appellant no. 1 demanded the case number and next date of hearing from her counsel but he refused to give the same. Thereafter, appellant no. 1 demanded her file and said advocate supplied few documents. After this, appellants contacted the present counsel who filed the present petition. There is a delay of eight months and three days in filing this petition. This delay is neither deliberate nor intentional, rather it is due to the reasons stated above. Appellants would suffer irreparable loss if delay is not condoned, especially when rights and interest of minor appellants are involved.

4. In reply, it is stated by respondent that story of the appellants being duped by her previous counsel cannot be accepted in absence of any proof of the same. If any such illegal practice ever happened, the appropriate forum for lodging complaint against such counsel would have been the Bar Council. In absence of the same, it is nothing but an attempt to mislead this Court by concealing material facts. Appellants have

failed to give concrete and justifiable reasons for not making the application within time. Thus, no ground for condonation of delay is made out.

5. It is contended by learned counsel for appellants that appellants are poor and illiterate villagers and they did not have the knowledge of filing the claim petition within one year. They handed over all the documents to their counsel, who assured them he will file the petition but unfortunately, said advocate did not prepare the case nor he filed the claim petition before Tribunal. Appellants cannot be punished for the wrong committed by their Advocate. Moreover, appellants 4 to 6 are minors and they cannot be punished for the wrong committed by appellant no. 1. Hence, there are sufficient grounds for condonation of delay. In support learned counsel referred the following cases;

- (i) ***Ram Nath Sao & Others Vs. Gobardhan Sao and Anr;*** (2002)3 Supreme Court Cases 195;
- (ii) ***M. K.Prasad Vs. P. Arumugam,*** (2001) 6 Supreme Court Cases 176;

- (iii) ***N. Balakrishnan Vs. M. Krishana Murthy*** (1998) 7 Supreme Court Cases 123;
- (iv) ***Collector, Land Acquisition, Anantnag & Anr Vs. Mst. Katiji & others***; AIR 1987 Supreme Court 1353, and;
- (v) ***Nagarjuna Patnaik Vs. Jayaky construction & Anr***; III (2007) ACC 130, Orissa High Court.

6. On the other hand, it is contended by learned counsel for the respondent that appellants have put entire blame on their previous counsel. However, there is nothing on record to show as to whether appellants ever took any action against their previous counsel. The explanation given for condonation of delay is neither plausible nor reasonable and story given by appellants, being duped by previous counsel cannot be accepted in the absence of any proof. In support, learned counsel referred to;

Lachman Das Arora Vs. Ganeshi Lal and Others; (1999) 8 Supreme Court Cases 532;

7. Appellants have placed on record the railway ticket, which prima facie, shows that deceased was a bonafide passenger. Deceased was husband of

appellant no.1 and father of appellant nos. 2 to 6. Appellants no 4 to 6 are minors, their interest and legal rights cannot be over looked and they cannot be punished for the wrong done by appellant no.1.

8. Though, there is delay of eight months and three days in filing the petition, but this Court cannot over look the facts that appellants are illiterate persons and only bread earner of their family had died. There is nothing on record to show that there was any other adult member in the family to properly guide the appellants with regard to their legal rights towards the claim. Appellants being widow and children (including minor children) of the deceased, as best could have engaged an advocate and asked him to file the petition. If their advocate had duped them and did not file the claim petition within prescribed period, then appellants cannot be made to suffer for that. When only bread earner of a family dies, the family goes under a state of shock and grief. There was no time for the family members to pursue the legal remedy

available to them, unless they had completely recovered from that shock.

9. In ***Vedabai @ Vijayanatabai Baburao Pateil vs. Shantaram Baburao Patil & Ors*** (AIR 2001 SC 2582), it was observed;

“In exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance”.

10. In ***Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Ors.*** (AIR 1978SC537), Supreme Court held;

“It is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' under Section 5 of the Limitation Act. But those words should be liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party, i.e., the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps which he would have or should have taken. What would be such necessary steps will again depend upon the circumstances of a particular case”

11. In ***State of West Bengal Vs. The Administrator, Howrah Municipality and Ors*** (AIR 1972 SC 749), the court held;

“The legal position when a question arises under Section 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what facts or matters would constitute "sufficient cause" under Section 5 of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and

each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to "sufficient cause" or not. It is needless to emphasize that courts have to use their judicial discretion in the matter soundly in the interest of justice."

12. In various judgments cited by learned counsel for the parties, basic principle is that the "Court has to exercise discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance".

13. In the present case, there is a special circumstance to be taken into consideration and, that is, that three of the appellants are minors. The period of their minority has to be taken into account for the purpose of limitation. Since rights of minor are also involved in this case, I deem it necessary in the interest of justice to condone the delay in filing of the

claim petition. Accordingly, the present appeal stands allowed.

14. The tribunal shall dispose of the matter on merit, as per law. Parties shall bear their own costs.

15. Record of Tribunal be sent back.

16. Parties are directed to appear before Tribunal on 7th December, 2009.

November 3, 2009
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V.B.GUPTA, J.