

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 1111/2022

1. Smt. Sheela Kunwar Wife Of Late Shri Surendra Singh Yadav, Aged About 50 Years,
2. Arpit Son Of Late Shri Surendra Singh Yadav, Aged About 21 Years,
3. Kum. Avini Daughter Of Late Shri Surendra Singh Yadav, Aged About 16 Years, Minor Through Her Legal Guardian And Mother Smt. Sheela Kunwar.
All resident Of House No. 2-R-30, Vigyan Nagar Kota (Raj.).

----Claimants Appellants

Versus

1. Rakesh Panchal S/o Shri Lal Chand Panchal, Aged About 38 Years, Resident Of Mahaveer Nagar First, Kota (Raj) (Driver Truck No. R.J.-14-GA-1377).
2. Bhairu Lal Son Of Shri Hazari Lal, Resident Of Near Adarsh Chetna Govt. School, Prem Nagar Third, Kota (Raj.) (Registered Owner Truck No. R.j.-14-Ga-1377).
3. Shri Ram General Insurance Company Limited, Regional Office, 10003 E, 8-RIICO Industrial Area, Sitapura, Jaipur (Raj.) through Regional Manager
(Insurance validity from 27.12.2011 to 26.12.2021)
Insurance Co. Truck No. RJ 14 GA 1377)

----Non Claimants Respondents

सत्यमेव जयते

4. Mangal Singh Yadav S/o late Shri Janggannath Singh, aged 82 years
5. Smt. Kanchan Kunwar daughter of Shri Mangal Singh Yadav, Aged 78 years
Both residents of House No. 2-R-30, Vigyan Nagar, Kota (Raj.)

For Appellant(s) : Mr. Sandeep Mathur, Advocate

HON'BLE MR. JUSTICE PRAKASH GUPTA

Judgment**30/06/2022**

This Civil Misc. Appeal has been filed by the appellants-claimants (for short, 'the claimants') against the judgment dated 15.1.2019 passed by the Motor Accident Claims Tribunal No.2, Kota (for short, 'the Tribunal') in Claim Case No. 90/2018, whereby the Tribunal has awarded a sum of Rs. 23,44,017/- alongwith interest @ 7.5% p.a. from the date of filing the claim petition as compensation. Since the appeal has been filed with a delay of 1116 days, an application under Section 5 of the Limitation Act has also been filed seeking condonation of delay.

Learned counsel for the claimants submits that earlier only proforma respondent no. 4 used to contact the counsel with regard to proceedings of the case. However, later on he did not regularly attend the proceedings and the applicants were not informed about the outcome of the case. After passing the impugned judgment and award, the claimants were informed by their counsel that compensation has been awarded in their favour, but they were not informed that the Insurance Co. was exonerated from its liability to pay the compensation. He further submits that the claimants were also not advised by their counsel to file an appeal for enhancement of compensation. He further submits that because of Covid-19 pandemic, the claimants could not contact their counsel and were in the impression that deposition of compensation amount is awaited. When a little bit situation was improved, the claimants contacted their counsel, who did not respond. Thereafter they contacted another counsel, who advised them to file an appeal. Accordingly, the claimants applied for certified copies of the record and after obtaining the same, they

are filing the appeal. Hence, the delay in filing the appeal may be condoned.

Heard. Considered.

Reason given in paragraph 3 of the application is reproduced as under:

"3. That applicant no.1 is an illiterate widow lady and applicants no. 2 and 3 were minors at the time of the filing of the claim petition. Proforma respondents No. 4 and 5 are also old aged persons. Earlier only proforma respondent no. 4 used to contact the counsel with regard to proceedings of the case. However, later on he did not properly attend the proceedings and the applicants were not properly informed about the outcome of the case. After passing of the impugned award, because of information of grant of compensation, the applicants were under the bonafide impression that they will get amount of compensation, whenever it is deposited with the learned Tribunal and for this purpose they were informed that execution proceedings have also been initiated. After that because of Covid-2019 situation, the applicants could not contact their counsel and were in the impression that the deposit of compensation amount is awaited. When the situation improved a little bit, the applicants contacted their counsel and after not getting proper response, they had contacted one other counsel in this regard. He, after examining the file, had advised the applicants that they should file an appeal before the Hon'ble High Court for challenging the finding by which insurance company has been exonerated from the liability of paying compensation as well as

for enhancement of compensation. Thus, the applicants had applied for certified copies of the record and after obtaining the same, are filing this appeal."

From a perusal of the material on record, it transpires that nothing has been mentioned in the application under Section 5 of the Limitation Act as to when the claimants were informed that compensation has been awarded in their favour and how they came to know that the proforma respondent no.4 did not properly attend the proceedings of the case. It has also not been mentioned as to how the claimants came to know about the judgment passed by the Tribunal and by whom they gathered the information that execution proceedings have also been initiated. No date has been given as to when the claimants contacted their previous counsel and the present counsel, who advised them to file the appeal. The application is bereft of material particulars and vague averments have been made.

The civil misc. appeal has been filed with an inordinate delay of 1116 days, but no sufficient cause / reasonable explanation has been given in the application to condone the same.

For the aforesaid reasons, I find no good reason to condone the inordinate delay of 1116 days in filing the appeal. The application under Section 5 of the Limitation Act is accordingly dismissed.

Consequent upon the dismissal of the application under Section 5 of the Limitation Act, the appeal also stands dismissed accordingly.

(PRAKASH GUPTA),J