

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF MARCH, 2014

:PRESENT:

THE HON'BLE MR.JUSTICE N.K.PATIL

AND

THE HON'BLE MR.JUSTICE PRADEEP.D.WAINGANKAR

M.F.A.No. 5888 OF 2013 (MV)

Between:

1. Smt. Nagarathna
@ Nagarathnanna,
Aged about 37 years,
W/o. Late M D. Shivakumar.
2. Roshini.S. Kumar,
Aged about 13 years,
D/o. Late M.D. Shivakumar.
3. M.C. Doddalingaiah,
Aged about 71 years,
S/o. Late Chikkalingaiah.
4. Smt. Kempamma,
Aged about 65 years,
W/o. M.C.Doddalingaiah.

All are R/at. Mylaralingeshwara Krupa,
5th Cross, No.433,
M. Vishweshwaraiah Extension,
SIT Main Road, Tumkur.

...Appellants

(By Sri. Abdul Khadar for Sri. Mushtaq Ahmed, Advocate)

And :

1. N.P. Rajesh,
Aged about 36 years,
S/o. N.V. Puttalakshmaiah,
Owner of Maruti Krupa bus,
Koratagere-572 129,
Tumkur District.
2. The United India Insurance Co., Ltd.,
Lahalakshim Complex,
I Floor, K.R. Road,
Bangalore-30.
Rep. by its Manager.

...Respondents

This MFA is filed U/S 173(1) of MV Act against the judgment and award dated: 02/11/2004 passed in MVC No. 944/2003 on the file of the Additional Civil Judge(Sr.Dn) and Motor Accident Claims Tribunal, Tumkur, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This M.F.A. coming on for Orders this day, **N.K. PATIL J**, delivered the following:

:JUDGMENT:

This appeal by the claimants/appellants is directed against the impugned judgment and award dated 02/11/2004 passed in MVC No.944/2003, by the Additional Civil Judge(Sr.Dn) and Motor Accident Claims Tribunal, Tumkur, (for short 'Tribunal'), for enhancement of compensation.

2. Along with the appeal, appellants have also filed I.A.1/2013, seeking condonation of delay of 3081 days in filing the appeal.

3. Heard learned counsel Sri. Abdul Khader appearing along with Sri. Mushtaq Ahmed for appellants.

4. The said delay of 3081 days in filing the appeal has been explained in paragraphs 3 and 4 of the affidavit dated 08.7.2013 accompanying the application, which reads thus:

“ 3. I uneducated, I further submits that my in-laws are also uneducated living in remote village, and I am working as cooli, and due to this accident we have lost out only earning member of the family, there is gloom in the family, we have totally dependent on the earnings of my husband. I further submits that we are from labour class, uneducated and we do not know the law. I further submits that I enquired with our advocate about my husband case and our advocate explained about our case, and with the help of others I met my advocate at Bangalore. And I have handed over all the certificate copies to our advocate and about two days back. I am not conversant with the procedure of filing this appeal. In the circumstances there is a

delay in filing this appeal. After consulting my well wishers and elders and they have instructed me to file this appeal. Hence there is a delay.... in filing this appeal. I am prevented from sufficient cause from preferring this appeal in time. Therefore I respectfully pray that this Hon'ble court be pleased to condone the delay of..... days in filing this appeal. The file may be taken on record and case may be proceeded with in the interest of justice.

4. No prejudice will be caused to the respondents if the delay is condoned, where as I will be put to irreparable loss and injury.”

Wherefore, I most respectfully pray that this Hon'ble Court be pleased to condone the delay of days in filing this appeal the same may be taken on record and the case may be proceed with in the interest of justice.”

5. After hearing the learned counsel appearing for the appellants and after perusing the statements made in the affidavit filed in support of the application, it emerges that, there is an inordinate delay of 3081 days in filing the appeal. The said delay has not been explained satisfactorily by the appellants by assigning cogent and valid reasons. The explanation offered is in a very casual manner. We referred the words casual

manner, for the reason that, in first, fourth line and in prayer column in the affidavit at ink page 32, the number of days of delay are left blank, but there is initial by the Oath Commissioner in red ink. But number of days of delay is not mentioned in the said application, which is nothing but abuse of process of Court. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the said delay. As there is an inordinate delay of 3081 days in filing the appeal, the appellants are bound to explain each day's delay in filing the appeal by assigning cogent and valid reasons. Much credibility cannot be given to the explanation offered by the appellants for condoning the said delay. Hence, in view of non explanation of inordinate delay in filing the appeal, in a satisfactory manner, we are of the view that the said delay cannot be condoned nor the appellants have made out a good case to condone the delay. Hence, for the foregoing reasons, I.A.1/2013 is liable to be dismissed as

misconceived and accordingly, it is dismissed. Consequently, the appeal filed by appellants is also dismissed.

**SD/-
JUDGE**

**SD/-
JUDGE**

tsn*