

(1984) 10 GUJ CK 0014
In the Gujarat High Court

Kamleshkumar Kishanchand Ramchandani and Others	APPELLANT
Vs	
Chelabhai Khushalbai Rami (Decd.) by His Heir Rameshbhai Chelabhai Rami	RESPONDENT

Date of Decision : 01-10-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115
Limitation Act, 1963 — Section 5

Citation : (1985) 1 GLR 372

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—This is a revision application u/s 115 of the CPC against the judgment of the Motor Accident Claims Tribunal for Banaskantha at Palanpur. The petitioners are the widow and two minor children of the deceased Kishanchand Ramchandani, who was killed in an accident while he was in a jeep car driven by opponent No. 1 Chelabhai Khushalbai Rami. The accident occurred on 14th June 1975. The present petitioners filed the motor accident claim on 2nd August 1980 together with an application for condonation of delay in filing the claim. In her application for condonation as well as in her affidavit, the petitioner No. 3 Vidyaben, widow of Kishanchand Ramchandani has stated that after the accident occurred, she was residing with the younger brother of her deceased brother one Tedaram as there was no one to look after her and her two minor children aged 5 and 4. According to her, her said brother-in-law i.e. the younger brother of her deceased husband told her that he did not want the money for the blood of his deceased brother and therefore, he told her not to file a motor accident claim. She has further stated that if she had insisted on filing the motor accident claim, her brother-in-law would have turned her out of his house and she and her children would have become shelterless. Therefore, according to her, she abstained from filing the motor accident claim. She has further stated that now she has been able to secure a job and therefore she has left her aforesaid brother-in-law and therefore now that she is free from his control, she had filed

this motor accident claim application. She therefore prayed for condonation of delay of over four years.

2. The opponent did not file any affidavit-in-reply to the averments made in the condition of delay application. Hence, all the facts stated in the said condonation application have remained uncontroverted. The learned member of the Motor Accident Claims Tribunal while rejecting her application for condonation of delay, has given the reason that the petitioner-widow had not adduced any evidence to prove the facts stated by her application for condonation of delay. According to the Tribunal, she did not state when she left her brother-in-law; when she got the job with whom she was serving nor has she produced any evidence to show that her brother-in-law had infact prevented her from filing the claim application.

3. Mr. D.K. Trivedi, the learned Counsel for the petitioners has urged that the Tribunal was not justified in rejecting the application for condonation of delay on the ground that the fads stated therein are not supported by any evidence. According to Mr. Trivedi, the fact that the opponents did not controvert the facts stated in the application, was enough for the Tribunal to hold that the avertments made in the application were correct and the delay should have been condoned. There is a considerable force in the argument of Mr. Trivedi. When the facts stated in an application are supported by an affidavit, they should be accepted unless they are controverted by the other side.

4. Moreover the Tribunal should have taken into consideration the fact that the widow was quite young aged about 23 years at the time of accident and she had two minor children a daughter aged about 5 years and a son aged about 4 years at the time of accident. It is quite obvious that she must have been utterly helpless and, therefore, it appears quite believable when she says that she was wholly dependent on the younger brother of her deceased husband. The application for condonation of delay by young widow and two minor children deserved to be dealt with in a more considerate manner than what the Tribunal has done.

5. Mr. H.L. Patel, the learned Counsel for the opponent No. 2 has not been able to show any material on the record of this case to show that the facts stated and the averments made in the condonation of delay application, are false or got up ones. Mr. Patel has urged that the delay has been quite long viz. four years and more and therefore, according to him, such an enormous delay should not be condoned. This submission of Mr. Patel cannot be accepted in view of the fact that there is no counter affidavit controverting the facts stated in the condonation application, and also considering the fact that the accident in question had left the young widow and infant children in an utterly helpless condition and that she was wholly depending oil the younger brother of her deceased husband. Hence, on the facts and in the circumstances of the case, it is held that the reason given by the petitioners for delay in filing the claim application is a sufficient cause within the meaning of Section 5 of the Limitation Act and the same deserves to be condoned.

6. In the result, the petition is allowed. Rule is made absolute with no order as to costs. The Tribunal is directed to take up the motor accident claim application of the petitioners and dispose it of on merits as early as practicable. Considering the fact that the accident had occurred as far back as on 14th June 1975, it is hoped that the Tribunal will dispose of the petitioners claim application on or before 31st December 1984.