

(2002) 05 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 868 of 1995

State of Rajasthan

APPELLANT

Vs

Virma Devi and Others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2003) 1 RLW 693 : (2002) 5 WLC 399

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Rizwan Ali, for the Appellant; Tripurari Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—This application for restoration has been filed against dismissal of the misc. appeal No. 865/95 by order dated 14.8.01 as the appeal was going unrepresented ever-since 17.11.97. This restoration application thereafter has been filed after a delay of 131 days on which a show cause notice was issued to the respondents in response to which they have appeared through their advocate Mr. Tripurari Sharma.

2. Having heard the counsel for the parties, it appears that the misc. appeal was preferred by the appellant-Commandant 7th Battalion RAC Bharatpur against an award passed by the Motor Accident Claims Tribunal Bharatpur in favour of the respondents for Rs. 3,80,000/- (Rs. three lac eighty thousand) alongwith interest at the rate of 12% per annum which was awarded to them towards compensation under the Motor Vehicles Act 1988 on account of death of the husband of the respondent No. 1 Smt. Virma Devi. A show cause notice was issued in favour of the appellant- Commandant and an interim order of stay was also granted in their favour in the year 1995. Consequently, no amount of compensation was paid to the respondents-claimants except Rs. 25,000/- which was paid to them by way of ad-interim compensation. The appellant thus absolved himself from the liability of paying the amount of compensation to the respondents-legal

representatives of the deceased by virtue of the order of the stay and the appeal was lying dormant on account of non-appearance of the appellant's advocate as a result of which the appeal finally stood dismissed as not pressed on 14.8.01. The appellant thereafter did not file any restoration application for a period of 131 days but filed this restoration application alongwith an application for condonation of delay u/s 5 of the Limitation Act on which a show cause notice was issued to the respondents as already stated hereinbefore.

3. The counsel for the petitioner-appellant has merely stated that the file was not traceable in the Department but he has failed to realise that this inaction of the appellant-7th Battalion was resulting into gross injustice to the claimants-respondents who could not avail the amount of compensation on account of the interim order of stay operating in their favour. The appellant in my view could not have been permitted to treat this matter in this fashion for there is nothing on record explaining such long delay and consistent non-appearance of the counsel in the appeal for such a long time resulting in grave hardship to the legal representatives of the deceased. Thus it is not a fit case where the appeal should be restored ignoring such gross latches and delay in pressing the appeal which was directed against indigent persons being the widow and children of the victim of the accident late-Shri Mahaveer Singh. If the appeal is restored to its original number, the legal representatives will again have to be dragged to this Court which in my opinion would result into mis-carriage of justice to the respondents. For the reasons stated hereinafter the Misc. Appeal is not fit to be restored after such long delay and latches for which no sufficient cause has been shown. Accordingly, this restoration application stands dismissed.