

*** HIGH COURT OF DELHI : NEW DELHI**

FAO No.147 of 2003 & CM No.336/2003

% Judgment reserved on: 1st May, 2008

Judgment delivered on: 5th May, 2008

The New India Assurance Co. Ltd.
Through its Divisional Manager
Keltron Chamber
18/7-8, Ist Floor,
Arya Samaj Road, Karol Bagh
New Delhi 110005

.....Petitioner
Through: Mr. S.L. Gupta, Adv.

Versus

1. Smt. Kuldeep Kaur
W/o. Late S. Jagjit Singh
2. Ms. Harvinder Kaur
D/o. Late S. Jagjit Singh
3. Jaspal Singh
S/o. Late S. Jagjit Singh
4. Sh. Joginder Singh
S/o. Late S. Jagjit Singh
5. Smt. Daljit Kaur
D/o. Late S. Jagjit Singh

All R/o. T-2229/3 & T-1050
Ashok Nagar, Faiz Road
Karol Bagh, New Delhi

6. Kashmiri Lal
S/o. Sh Sewa Ram
R/o. 231, Ghee Mandi
Paharganj, Delhi

7. Sh. P.C Chhatwal @ R.C. Chhatwal
R/o 6/33, Ramesh Nagar
New Delhi

Respondents
Through: Mr. O.P. Goyal, Adv.

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.

The present appeal has been filed by New India Assurance Company under Section 173 of Motor Vehicle Act, 1988 (for short as 'Act') against the judgment dated 31st January, 1997 passed by Sh. Rakesh Kapoor, Judge, MACT, Delhi, vide which the learned Tribunal has passed an award for a sum of Rs.38,400/- along with 12% p.a. interest against the appellant Insurance Company.

2. Along with the present appeal, the appellant has also filed an application under Section 5 of Limitation Act, 1963 for condonation of delay in filing this appeal.

3. Reply to the application of condonation of delay has been filed on behalf of respondent No.7, the alleged owner of the offending vehicle.

4. There has been a delay of 5 years, 9 months and 10 days in filing the present appeal and as such application for condonation of delay is taken at the first instance.

5. In this application, it has been stated that the claim file of the present matter was misplaced in the Insurance Company record and when the appellant received the summons from this Court in FAO No.184/1997, the appellant deputed a person to trace the file, but the same could not be traced.

6. On 18th November, 2002, Sh. S.L. Gupta, Adv. for the Insurance Company had applied for the certified copy of

the judgment and the same was delivered only on 7th January, 2003. Thereafter, the claim was processed and the competent authority came to the conclusion that in the present case, the Insurance Company was not at risk as the cheque of the premium was dishonoured and policy of insurance was cancelled. After receiving a copy of the judgment on 7th January, 2003, necessary steps were taken for filing the appeal. Thus, the delay in filing the present appeal is not intentional and it is on account of the Insurance Company procedure involved in for filing the FAO.

7. It is further stated that unlike the private litigant, the matter relating to the Government are required to be considered at various levels and then only the decision is taken to file the FAO and the process of referring a particular file from one department to another is time consuming process and thus leads to delay. So, it is therefore, prayed that delay may be condoned considering

the public interest involved and because of the genuine difficulties which are peculiar in the functioning of Government and circumstances beyond the control of the appellant.

8. In reply to the application filed by respondent No.7, it is stated that the period of limitation prescribed for filing the appeal is ninety days under the Act and that period expired on 1st May, 1997 and the present appeal was filed on 17th February, 2003. There is a delay of 2117 days and there is no explanation for delay in filing the appeal. The appeal being hopelessly time barred should be dismissed.

9. Admittedly, there is a delay of 5 years, 9 months and 10 days in filing of the present appeal.

10. The ground taken for non filing of the present appeal in time is that, the claim file in the present matter was misplaced in the Insurance Company record. It is nowhere stated in the application as to when and on which date the

claim file in the present matter was misplaced and on which date and under what circumstances the same was traced out. Furthermore, it is nowhere mentioned in the application as to who was the person who has misplaced the file and in what manner the file was traced out. The present application is absolutely vague.

11. It is well-settled that each day's delay has to be explained for getting the delay condoned. Here, there is a delay of 2117 days and there is no explanation for each day's delay. Moreover, seeking condonation of delay is not a matter of right. The litigant who comes to the court after the prescribed period of limitation is bound to satisfy the court that he has sufficient cause for delay. Sufficient cause for condoning the delay is an essentially a question of fact.

12. The present application is absolutely vague and the appellant has given no circumstances to show that delay of

2117 days was not due to any laches on the part of the appellant. The provisions of limitation Act do not extend any immunity relaxing period of limitation in favour of State Government or Government bodies. The State Government and other Government bodies also stand on the same footing like the ordinary litigant.

13. So, from the material available on record, I do not find any sufficient ground for condoning the delay of 2117 days in filing the appeal and the application for condonation of delay is not maintainable and is hopelessly time barred.

14. Thus, the application for condonation of delay is dismissed and the appeal filed by the appellant also stands dismissed, being barred by limitation.

15. No orders as to costs.

**V. B. GUPTA
(JUDGE)**

**5th May, 2008
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