

IN THE HIGH COURT OF DELHI AT NEW DELHI

+CM No. 3855/2008 in MAC APP. No. 161/2008

Judgment delivered on: March 14, 2008

Shri HariKishan Gulati Appellants
Through: Mr. Inderjit Singh, Adv.

Versus

Oriental Insurance Co. & Anr. Respondents
Through: Ms. Manjusha Wadhwa, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

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By way of this application, the appellant seeks condonation of delay of 1142 days in preferring the appeal.

I have heard learned counsel for the appellant.

It is stated in the application that the appellant came to know about the impugned award dated

13.10.2004 only on 29.1.2005 when the summons for the execution proceedings were served upon him. It is further stated that immediately thereafter on the advice of his counsel, the appellant had appeared before the executing court and filed necessary application on 14.2.2005 for recalling of the order of the execution on various grounds stated therein. It is further stated that the appellant was not advised to file an appeal against the impugned award and therefore, he continued to attend all subsequent proceedings before the executing court and not only this, the appellant also kept making the payments as directed by the executing court with all the verbal assurances given by the insurance company that matter will be amicably settled with the insurance company if part payments were made by him. It is further stated that despite payment of major part of recovery amount, warrants have been issued against him for attachment of the property of the appellant bearing no. 140, Sainik Vihar, Shakur Basti, Delhi. The appellant has also preferred an application bearing C.M. No. 737/2007 under Article

226/227 of the Constitution of India seeking setting aside of the attachment order but the same was dismissed as withdrawn vide order dated 5.2.2008. It is further stated that the appellant is new in the trade of plying private buses and was not properly advised by the counsel during the trial of the case and even at the stage when the execution was pending against him. It has been thus pleaded that delay of more than three years in filing the appeal may be condoned.

Invariably it has been noticed that owner and driver of the offending vehicle do not appear before the Motor Accident Claims Tribunal and in most of the cases they are proceeded ex-parte. Same is the story in the present appeal. The appellant and the driver of the offending vehicle had filed the joint written statement but thereafter eclipsed. In all such cases blame is fastened on the counsel by the parties that they were not properly advised to continue appearing in the matter. Once the owner and driver are impleaded in a case then they are duty bound to prosecute the case effectively. The owner

and driver of the offending vehicle chose not to appear presumably on the assumption that since the vehicle is duly insured then certainly insurance company would be made liable to pay the award amount and thus they need not bother to appear and continue with the proceedings. A problem certainly comes in all those cases where the insurance company succeeds in establishing their defence within the four corners of the statutory defences available to it under Section 149 (2) of the M.V.Act and due to which ultimately liability gets fastened on the driver and the owner of the offending vehicle.

I, therefore, do not find any reason or justification on the part of the owner of the offending vehicle who remained complacent and negligent in pursuing his case. Once appeared in the matter and subsequently refrained then necessary consequences have to follow and for such demeanour the owner has to suffer and the lawyer representing him cannot be put to blame for his own recklessness. It is more interesting in the present matter that before the executing court the

appellant had appeared and started paying the amount towards part satisfaction of the decree and now the appellant is taking the plea that counsel did not advise the appellant to take the remedy as available to him under Section 173 of the M.V. Act.

Ms. Manjusha Wadhwa counsel for the respondent insurance company has drawn my attention to the fact that even notice under Section 12 Rule 8 was served upon the appellant but he did not choose to appear despite service of the said notice.

The pleas as raised by the appellant in the present application are ex- facie, false, preposterous and untenable.

There is no ground to condone the delay.

Dismissed.

March 14, 2008
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KAILASH GAMBHIR, J.