

Court No. - 4

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 15 of 2024

Appellant :- Qamar Ahmad And Another

Respondent :- The Oriental Insurance Company Ltd. Thru. Divisional Manager, Divisional Office-2, Lko. And 2 Others

Counsel for Appellant :- Manju Singh

Counsel for Respondent :- Vaibhav Raj

Hon'ble Rajnish Kumar,J

C.M. Application No. 1 of 2024

1. Heard Smt. Manju Singh, learned counsel for appellants and Sri Vaibhav Raj, learned counsel for the respondent no. 1. No one has appeared on behalf of respondent nos. 2 & 3 despite sufficient service.
2. This highly belated appeal has been filed against the judgment and award dated 01.04.2010 passed by Motor Accident Claims Tribunal/Additional District Judge Court No. 15, Lucknow in Claim Petition No. 230 of 2007; Parvan and another versus Qamar Ahmad and others, by means of which the claim petition was allowed and the respondent no. 1 i.e. Insurance Company was directed to make the payment of the awarded amount with a right of recovery from the appellants being the owners of the offending vehicle as the appellants have failed to prove that they had permit on the date of accident, thus there was violation of the terms and conditions of the insurance policy and the orders dated 27.07.2023 and 01.01.2024 passed in the execution proceedings.
3. Learned counsel for appellants submits that after filing of the written statement by the appellants neither the counsel of the appellants nor the Claims Tribunal had informed about the proceedings of the case, therefore after coming to know about it when the recovery notice was

issued in execution and served on the appellants, an application for recall was filed, which has been dismissed, therefore this appeal has been filed. He further submits that the counsel of appellants had also not appeared after filing of the written statement, therefore, the impugned judgment and award is in violation of principles of natural justice as no opportunity has been afforded to the appellants. Thus the submission is that delay may be condoned as it is not deliberate or intentional and appeal may be heard and decided on merit.

4. Per contra, learned counsel for respondent no. 1 submits that this highly belated appeal has been filed without any sufficient cause for such a long delay and only the allegations have been levelled against the counsel and the Tribunal, whereas there was no duty of the Tribunal to inform to the parties about the proceedings and the award.

5. He further submits that so far as the contention of learned counsel for the appellants in regard to allegation on his counsel is concerned, if the appellants had not pursued the matter and enquired about the status of case for such a long period, he is not entitled for any benefit and it is between the appellants and their counsel. The submission is that the application for condonation of delay, without any sufficient cause for such a long delay, cannot be allowed and the delay cannot be condoned. Even otherwise the submission is that the right of recovery has been given on account of violation of terms and conditions of policy as the permit was not produced and the appellants have failed to show that the appellants had permit on the relevant date. Therefore, the application for condonation of delay in filing the appeal is liable to be dismissed.

6. I have considered the submissions of learned counsel for parties and perused the records.

7. This highly belated appeal has been filed against the judgment and award dated 01.04.2010 and the orders passed in execution proceedings. The office has reported a delay of 4256 days after deducting 716 days from 4972 days (the actual delay) in the light of Hon'ble Apex Court's order dated 10.01.2022 passed in suo moto application on account of the

Covid-19. The appeal under Section 173 of Motor Vehicles Act, 1988 may be preferred within ninety days from the date of award. Second proviso to Section 173 provides that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Therefore, this Court has to see as to whether the appellant was prevented by sufficient cause from preferring the appeal within time or not.

8. The appellants have given the explanation for delay in paragraphs 5 to 9 of the affidavit filed in support of the application for condonation of delay, which are extracted here-in-below:-

"5. That the owners of vehicle did not know about the order dated 01-04-2010 and about the order dated 01-04-2010 no information was given to owners of vehicle by the Claim Tribunal. Counsel of owners of vehicle has also not given information to the owners of vehicle being said counsel not available in civil court, due to this reason owners of vehicle did not challenge the order dated 01-04-2010 being the order dated 01-04-2010 not communicated to the owners of vehicle.

6. That the insurance company filed misc.case for realization of compensation amount against owners of vehicle, for the same no notice given to owners of vehicle and by way of fraud order dated 27-07-2023 was passed by Claim Tribunal and further date was fixed 07-10-2023.

7. That when the collection amin came at the residence of owners of vehicle for realization of amount awarded in case of The Oriental Insurance Co.vs. Qamar Ahmad and another, without any delay recall application dated 07-10-2023 along with affidavit filed in case of Insurance Co.vs.Qamar Ahmad and another and all the facts were mentioned for recall of order dated 01-04-2010 and order dated 27-07-2023 and it is also stated owners of vehicle were could not be informed about the order dated 01-04-2010 and 27-07-2023 and when the owner of vehicle knew about the orders on 07-10-2023 application along with affidavit was moved to recall the orders dated 01-04-2010 and 27-07- 2023 and no objection was filed by insurance co. and on 26-12-2023 owners of vehicle filed supplementary affidavit but the illegal order dated 01-01-2024 was passed which is also under challenge. F.A.F.O. is maintainable and is in time being filed on 08-02-2024.

8. That file of F.A.F.O. was returned to the counsel of appellants on 09-02-2023 having made defects. The counsel

of appellants informed appellants for filing the application of condonation of delay and affidavit and to make signatures on vakalatnama of appellant No.2. They came on 12-02-2024 and on 10-02-2024 and 11-02-2024 were second Saturday and Sunday.

9. That according to order dated 01-01-2024 the F.A.F.O. was also filed and order dated 01-01-2024 is under challenged and as such F.A.F.O. is in time. If there is a delay in filing F.A.F.O., the same is liable to be condoned being application for condonation of delay supported with affidavit filed."

9. Perusal of the aforesaid explanation submitted by the appellants indicates that they have only levelled allegations against their counsel and the Claims Tribunal for not communicating to the appellants, the information of the judgment and award dated 01.04.2010. It was duty of the appellants to pursue the matter and contact his counsel to know about the proceedings and obtain the copy of order and if he has not done so, he cannot claim any benefit on the ground for such a long delay by leveling allegations only, when the case was contested. Even otherwise there are only excuses.

10. Perusal of the impugned judgment and award indicates that the licence of the driver was got proved on behalf of respondents by producing an employee of RTO Office, therefore, contention of learned counsel for appellants that no information was given by counsel after filing of written statement seems to be misconceived also and not tenable. However, learned counsel for appellants had not appeared on the date of arguments.

11. This Court has to see as to whether the grounds taken by applicants/appellants are sufficient for condonation of delay on account of which he was prevented from preferring the appeal in time or only the excuses have been given. As discussed above the appellants have not given the sufficient ground for condonation of delay. Only the excuses have been given levelling allegations against the counsel and the Tribunal, which are not sufficient to condone the delay of such a long period.

12. The Hon'ble Supreme Court, in the case of **K.B. Lal (Krishna Bahadur Lal) Vs. Gyanendra Pratap and Other; 2024 (42) LCD 828**, has held that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant. The relevant paragraph 10 is extracted here-in-below:-

10. There is no gainsaying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (See Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (See P.K. Ramachandran v. State of Kerala and Anr., (1997) 7 SCC 556). Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (See Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649, and are reproduced as under:

"21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. 21.2.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. 21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are

required to be vigilant so that in the ultimate eventuate there is no real failure of justice. 21.7.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

....." (emphasis supplied)

Having perused the application under Order IX, Rule 7 of the CPC dated 23.11.2020, filed by the appellant, and the accompanying affidavit, wherein the appellant had sought the benefit of Section 5 of the Limitation Act, for condonation of a delay of almost 14 years, we find there was no satisfactory or reasonable ground given by the appellant explaining the delay. We say this for two reasons. First, it is an admitted position by the appellant himself that upon an inspection of the case file in the year 2011, he came to know about the order dated 06.09.2006, by which the Trial Court had decided to proceed ex-parte against him. What prevented the appellant from filing the application under Order IX, Rule 7 that year itself has not been satisfactorily explained at all, as the first application was only filed in the year 2017. Secondly, the explanation offered by the appellant, which is that the advocate appointed by him did not pursue the matter diligently, and then another advocate was appointed by him who inadvertently forgot to file the application does not find support from the records. What is clear is that the appellant has been grossly negligent in pursuing the matter before the trial court. Thus, the trial court, the revisional court as well as the High Court, were correct in dismissing the belated claim of the appellant. We find no reason to interfere with the impugned order dated 19.05.2022 of the High Court of Judicature at Allahabad.

The appeal stands dismissed."

13. This Court has to see the sufficient 'explanation' for condonation of delay and not the 'excuses' for condoning the delay as held by the Hon'ble Supreme Court in the case of **Sheo Raj Singh & Others Vs. Union of India and Another; (2023) 10 SCC 531**. The relevant paragraphs 31 and 32 are extracted here-in-below:-

"31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an "explanation" and an "excuse". An "explanation" is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an "explanation" from an "excuse". Although people tend to see "explanation" and "excuse" as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An "excuse" is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an "excuse" would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

14. The right of recovery has been given on account of violation of terms and conditions of policy as the permit was not placed on record and proved. On a query, learned counsel for appellants invited attention of this Court towards page no. 84 of the appeal to show that the appellants had a valid permit and submits that the same was placed on record as paper No. C-27. It is an office order dated 07.11.2005, by means of which the vehicle in question was attached with the UPSRTC and it has been considered by the Tribunal and upon consideration the Tribunal found that it is not a permit. The appellants further invited attention of this

Court towards a certificate dated 28.09.2023 issued by the UPSRTC, Qaiserbagh Depot, Lucknow. The said certificate has been issued by the UPSRTC, whereas admittedly the permit is issued by the RTO and this certificate also does not indicate that the permit was issued to the appellants by the competent authority. Learned counsel for appellants also failed to show any law or provision under which the UPSRTC was authorized to issue the permit to the appellants. Thus, he has failed to show that the appellants had valid permit on the date of accident.

15. In view of above and considering the overall facts and circumstances of the case this Court is of the view that the application has been filed on misconceived and baseless grounds, which is liable to be dismissed.

16. The application for condonation of delay is **dismissed**.

17. Consequently the appeal is **dismissed**.

18. The statutory amount deposited by the appellants shall be remitted to the concerned Tribunal forthwith and in any case within a period of four weeks from today for adjustment in payment to be made to the claimant-respondents.

Order Date :- 21.10.2024

Satish