

**CM-29118-CII-2014 in/and
FAO-10576-2014**

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-29118-CII-2014 in/and
FAO-10576-2014
Date of Decision: June 29, 2015**

Smt. Shyamwati and others

.....Applicant/Appellants

Versus

Surender Singh Yadav and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Vikas Kumar, Advocate
for the applicant/appellants.

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

Naresh Kumar Sanghi, J.

By way of present CM-29118-CII-2014, the applicant/appellants have prayed for condonation of delay of 2661 days in filing FAO-10576-2014.

Learned counsel contends that applicant No.1 is the widow while the remaining applicants are children of Hari Singh (since deceased). Due to their poverty they could not know the procedure for filing of the appeal, in time, before this Court,

therefore, the delay of 2661 days in filing the appeal be condoned. In support of his contention, he has placed reliance on **Mrs.Saroj and others vs Baljeet Singh and another**, 2010(3) RCR (Civil) 929 and **Pushpa Rani and others vs Gurbant Singh and others**, 2014 ACJ 1099.

Though the detailed discussion of the facts are not required for disposal of the present civil miscellaneous application, but to be clear on every aspect of the case, it is deemed necessary to have a glance over the factual aspects of the case, which are as under:-

On 21.02.2006 at about 5.00 p.m., Hari Singh (since deceased) while paddling his bicycle was going to Palwal from his village and when he reached within the jurisdiction of village Aurangabad, situate on National Highway, then the vehicle bearing registration No.DL 9 CG-1058 (for brevity, 'the offending vehicle') being driven by respondent No.1 Surender Singh Yadav, in a rash or negligent manner, at a high speed, without observing the traffic rules, emerged from the rear side and struck against the bicycle, being paddled by Hari Singh (since deceased).

As a result of the impact, Hari Singh (since deceased)

sustained fatal injuries and died at the spot. The accident was witnessed by Roop Chand and Bhoop Singh, both residents of village Aurangabad. On the basis of the report received, FIR was registered at Police Station, Sadar, Palwal.

The applicant-appellant-claimants filed a claim petition before learned Motor Accidents Claims Tribunal, Faridabad (for brevity, 'the learned Tribunal'). In response to the notices issued to the respondents, they appeared before the learned Tribunal and filed their respective replies.

On the pleadings of the parties, the issues were framed.

On the basis of the material available on record, the learned Tribunal held that the accident had occurred due to rash or negligent driving of the offending vehicle by its driver. It further held that Hari Singh (since deceased) was aged about 52 years at the time of accident and earning ₹3,400/- (Rupees three thousand and four hundred only) per month. After applying multiplier of 8, the dependency was assessed to the tune of ₹2,53,866/- (Rupees two lacs fifty three thousand eight hundred and sixty six only). A sum of ₹5,000/- (Rupees five thousand only) was awarded under the head 'consortium' and another sum of

₹2,000/- (Rupees two thousand only) was awarded for cremation expenses and, as such, a total sum of ₹2,60,866/- (Rupees two lacs sixty thousand eight hundred and sixty six only) along with interest @ 7.5% per annum was awarded in favour of the applicant-appellants. All the respondents were held jointly and severally liable to satisfy the award.

In the matter of **Saroj**'s case (supra), this Court held that if the case of the applicants seeking condonation of delay was good on merits, then the delay of 447 days could be condoned.

In the matter of **Pushpa Rani**'s case (supra), this Court held that if there were large number of dependents and the claimants residing in a border town, then the delay in filing the appeal could be condoned.

A Division Bench of this Court in the matter of **Oriental Insurance Company Limited vs Smt.Kailash Devi**, 1995(1) ACJ 212 held as under:-

“Existence of sufficient cause is the condition precedent in exercise of this discretion while deciding the application under Section 5 of the Limitation Act. Question of diligence or bona fide is to be considered thereafter. Sufficient cause has not been defined in the Act. However, as held by various

judicial pronouncements, it would mean a cause beyond the control of party invoking the aid of this section. The delay, if could be avoided by taking due care and attention, will not come within the ambit of sufficient cause.”

In **Jimmy Travels vs Lakhwinder Singh**, 2013 ACJ 1420, this Court held that by passage of seven years and three months, the rights of the parties have come to be settled and the award cannot be set aside lightly.

In the matter of **Oriental Aroma Chemical Industries Ltd. vs Gujarat Industrial Development Corporation and another**, 2010(2) RCR (Civil) 284, Hon'ble the Supreme Court declined to condone the delay of four years in filing the appeal. It was further held that law of limitation prescribes a period within which legal remedy can be availed for redressal of the legal injury. At the same time, the Courts are bestowed with power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Their Lordships further held that no hard and fast rule can be laid down in dealing with the applications for condonation of delay. There may be liberal approach in condoning the delay of short duration and stricter approach where the delay is inordinate.

The applicant-appellants in para No.1 of civil

miscellaneous application, have pleaded as under:-

“That the appellant No.1 is widow while the appellants No.2 and 3 are the children of deceased Sh.Hari Singh who died in the accident in question. The deceased Sh.Hari Singh was the only earning hand in the family and the appellants were fully dependent upon the income of the deceased for their bare survival. The appellants are poor and rustic persons who were unaware of the procedure of filing the appeal, therefore, the instant appeal could not be filed in this Hon'ble Court within the period of limitation. Lack of knowledge coupled with poverty has resulted into the said delay in filing the instant appeal.”

The averments in civil miscellaneous application coupled with the submissions made by the counsel representing the applicant-appellants, this Court finds no plausible reason for condoning the delay of approximately seven years in filing the appeal. There is no doubt that if sufficient ground exists, then the Court can condone the delay of any duration. But in this case no plausible explanation is emerging on record for condonation of such a huge delay of approximately seven years. Even otherwise, the applicant-appellants had received the compensation immediately after passing of the award and hence, it cannot be said that they had no money with them to file the

**CM-29118-CII-2014 in/and
FAO-10576-2014**

-7-

present appeal before this Court.

Finding no merit in the application, the same is hereby dismissed. As a necessary corollary, the accompanying appeal also fails and is hereby dismissed.

June 29, 2015
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(NARESH KUMAR SANGHI)
JUDGE