

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1540 of 2015 (O&M)
Date of Decision: March 18, 2015

Malkiat Singh

...Appellant

Versus

Jagdish Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Sandeeptha Mehta, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellant Malkiat Singh has filed this appeal against Jagdish Singh, Manmohan Lal, Narender Nath respondents and Shakti Devi proforma respondent challenging the impugned ex-parte award dated 27.04.2013 passed by learned Motor Accident Claims Tribunal, Sirsa(hereinafter referred to as 'Tribunal'), vide which compensation of ₹4,07,000/- along with interest @ 9% per annum from the date of filing the petition till realization has been awarded to the claimants to be paid by the driver and owner of the offending truck jointly and severally.

Along with the appeal, an application under Section 151 of CPC for condonation of delay of 48 days in re-filing the present appeal and application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 491 days in filing the present

appeal, have also been filed.

It is stated in the applications that the appellant and the owner had engaged an Advocate before learned Tribunal but the counsel did not file reply to the claim petition and kept the appellant in dark about the proceedings of the case and ultimately without reply being filed on record, the appellant was proceeded ex-parte vide order dated 12.03.2013. The appellant is a poor person and was not in a position to engage a lawyer for the purpose of filing the present appeal before this Court and it was only after arranging the funds from relatives and friends, the appellant approached the counsel and without causing any further delay, the present appeal has been filed.

The perusal of the record and specially these applications shows that no reasonable explanation has been given for such a long delay of 491 days. Though the law regarding condoning the delay is liberal but there should be some explanation for condoning the delay. The appellant engaged counsel before the Tribunal but never approached the counsel thereafter. No written statement has been filed and the ex-parte proceedings remained pending and ultimately, the claim petition was decided ex-parte on 27.04.2013. Even, thereafter, appellant never tried to approach the counsel to know the fate of the case. The reply was to be filed by the appellant before the Tribunal by contacting his counsel. There is no negligence on the part of the learned counsel engaged by the present appellant before the Tribunal. It is the duty of the appellant to contact his counsel and to pursue the proceedings diligently. In this case, there is gross

negligence on the part of the appellant, who did not try to pursue the case diligently for a long period. In these circumstances, I do not find any merit in the applications.

Therefore, both the applications for condoning the delay of 48 days in re-filing and 491 days in filing the present appeal are dismissed.

Even on merit, I find that the appellant has not appeared before the Tribunal and has been proceeded ex-parte and ex-parte proceedings were conducted and then ex-parte award was passed. Nothing has been argued on merit as to how the award is to be set aside when the evidence of the claimants remained unrebutted on the file. Even, there is nothing on the record that any application for setting aside the ex-parte award has been made before learned Tribunal.

In view of the above discussion, there is no ground to set aside the impugned ex-parte award. Therefore, finding no merit in the present appeal, the same is dismissed.

March 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE