

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.22898-CII of 2013 in/and
FAO No.5390 of 2013 (O&M)
Date of Decision: July 14, 2015**

Sarif

...Appellant

Versus

Daud and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Gupta, Advocate
for the appellant.

INDERJIT SINGH, J.

CM No.22898-CII of 2013

This order of mine shall dispose of an application under Section 5 of the Limitation Act for condonation of delay of 1309 days in filing the appeal preferred by applicant-appellant Sarif against Daud and others, challenging the Award dated 31.10.2009 passed by learned Motor Accident Claims Tribunal, Fast Track Court, Nuh (hereinafter referred to as 'Tribunal'), for enhancement of the compensation.

It is stated in the application that applicant has earlier filed present appeal in this Court and his previous counsel told him that he need not appear on the date of hearings and as and when the case will be decided, he will be informed accordingly. On 18.05.2010, the

appeal was filed vide diary No.O-551645 and the same was returned by the Registry on 05.10.2010. However, the same has not been re-filed and paper book of the same has been lost. It is further stated that the applicant tried to contact his previous counsel but failed to contact him. Thereafter, he visited this Court and enquired about his case and came to know that his case has not been listed so far. Thereafter, the applicant contacted the present counsel on 27.08.2013, who told him that he has to file an appeal again and the appeal is now being filed and delay has happened due to the above-mentioned reasons.

I have heard learned counsel for the applicant-appellant and have gone through the application.

There is delay of 1309 days in filing the appeal. This application is not supported by any document except the affidavit of applicant Sarif, in support of this application. No previous grounds of appeal or any record has been filed along with this application nor any affidavit of earlier counsel has been filed. No complaint of any type has been filed against the previous counsel as to why he has not re-filed the earlier appeal after removing the objections. From the application itself, it is clear that applicant-appellant himself was grossly negligent in this case. It looks from the application that applicant never contacted his counsel and never tried to know the fate of the appeal within reasonable period. Therefore, it is a case of gross negligence of the applicant-appellant and a right has now accrued in favour of the respondents. If the delay is condoned, it will

cause prejudice to the respondents. This Court is cautious that law regarding condoning the delay is liberal but at the same time, the delay cannot be condoned in a routine manner where the applicant-appellant is grossly negligent.

In view of the above discussion, I do not find any merit in the application for condonation of delay and the same is dismissed.

As a consequence, FAO No.5390 of 2013 also stands dismissed.

July 14, 2015
Vgulati

(INDERJIT SINGH)
JUDGE