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HIGH COURT OF DELHI AT NEW DELHI

Decided on: 18th September, 2015

+ MAC. A. No.724/2015 & CM 20166-68/2015 (delay)

SUBHASH YADAV Petitioner
Through: Manoj Kumar, Advocate

versus

NARESH KUMAR & ORS (THE NEW INDIA ASSURANCE
CO LTD) Respondent

Through: Balwant Chaubey, Proxy Counsel
for Mr. Pankaj Seth, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI J. (ORAL)

1. The present MAC Appeal has been filed by the petitioner/revisionist with a prayer to set aside the order dated 03.03.2012 passed by the Ld. MACT by virtue of which an award to the tune of Rs. 4,29,779 along with interest at the rate of 7.5% per annum from the date of the claim petition till realization was passed in favor of the claimant/injured and against the appellant herein with recovery rights to the insurance company who was

directed to release the awarded amount to the claimant/injured forthwith. Along with the appeal, an application under S.5 of the Limitations Act 1963 seeking condonation of delay of 1158 days in filing and a delay of 4 days in refiling of the present appeal.

2. The appellant/applicant in the application seeking condonation of delay of 1158 days has attributed the same to the wrong legal advice of his counsel. It is contented that after the filing of the joint written statement the counsel representing the appellant in the matter assured him that since the vehicle was insured and that the driver/respondent no 2 had valid license and permits therefore the appellant had nothing to worry and his presence was not warranted in the court. It is stated in the application that it was on account of this misrepresentation that the appellant chose not to appear before the court under the bonafide impression that his counsel is contesting the matter with utmost professional care, unfortunately which was not so. This lead to an ex-parte order dated 18.12.2008. It is further averred that the appellant was summoned to depose before the court for the insurance company/ respondent no. 3 on 06.07.2009 and after recording of the statement was discharged on

the same date and again ill-advised by his counsel to not make any further appearance before the court as the same was not required. Consequently the impugned order dated 03.03.2012 was passed in the absence of the appellant herein. It is stated that the appellant received a notice from the Honorable Supreme Court in the SLP bearing No. 3023/2012 filed by the Insurance Company against the impugned order dated 03.03.2012 but since the same was dismissed, the appellant under the misconception that since no adverse order has been passed against him. The appellant did not opt to file any appeal against the impugned order.

3. It has been averred by the appellant that it was only in the execution proceedings that the appellant was appraised of the contents of the order dated 03.03.2012. Subsequently, it is stated on further advice of the counsel for the appellant a review was filed on 24.11.14 in the execution court which was dismissed vide order 22.05.15 with an observation that the appellant may challenge the order in appeal.
4. It has been stated by the appellant that thereafter he applied for the certified copies of the order dated 22.05.2015 and he got the same

on 30.05.2015 whereas the trial court record could be obtained only by 11.06.2015. It is further stated that the appellant vide letter dated 09.06.2015 sought a verification report with respect to the permit dated 01.05.2006 of the alleged offending vehicle, from the Transport department GNCT Delhi which was provided so on 04.07.2015. It is averred that after requisitioning all the aforesaid documents the appellant approached various counsels to seek legal advice and therefore many days were exhausted for the same as well.

5. It is the case of the appellant the delay caused in the filing of the present appeal is neither deliberate nor intentional but is attributable to the wrong and the poor legal advice from the counsels engaged in the matter. In the light of the aforesaid it is prayed that the delay of 1158 days be condoned.
6. I have heard the learned counsel for the appellant and perused the averments made in the application for condonation of delay. The reasons offered on account of which the delay has been caused do not show the bona fides of the appellant in preferring the appeal. As a matter of fact, the conduct of the appellant is full of gross

negligence. This is on account of the fact that no material information or evidence has been filed to support the reasons stated in the said applications.

7. It is true and correct that the counsel is duty bound to prosecute the matter with responsibility and professionalism but at the same time the litigant who is the affected party has to be aware of the developments in his own case. It is unfathomable that a litigant would not be updated where his interest or life savings are at stake.
8. In the instant case *prima facie* I am not convinced that any cogent reason has been given by the appellant in the application which may constitute 'sufficient cause' in the eyes of law. It is pertinent to note that the award came in the year 2012 but steps towards procuring the certified copy were made only after 22.05.2015 that is after a long delay of almost 3 years and it is finally now in September, 2015 that an appeal has been filed. Further there is also a delay of 4 days in re-filing of the present appeal.
9. The appellant has stated that he acted under the wrong advice of the counsel but the same seems to be a far-fetched theory and is more like an afterthought, in the absence of any evidence.

10. The act of the appellant clearly shows that there was a lack of seriousness in pursuing legal remedies that might be available to him. It clearly flows from the aforesaid that there was gross negligence on the part of the appellant in prosecuting the matter.
11. Section 5 of the Limitation Act clearly lays down that before the delay is condoned, it must be shown that there is a ‘sufficient cause’ for the same and the ‘sufficient cause’ which has been interpreted by the Apex Court in *Esha Bhattacharjee vs. Management Committee of Raghunathpur Nafar Academy and Others*; (2014) 2 SCC (LS) 595 is a cause which is beyond the human control. The Honourable Supreme Court in the aforesaid judgment very categorically stated that although the words “sufficient cause” must be interpreted with a liberal, justice oriented, pragmatic and non-pedantic approach but at the same time the bonafides of the applicant seeking condonation of delay must be made out. It was further held that the increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner and requires to be curbed.

12. In the instant case prima facie I am not convinced that any cogent reason has been given by the appellant in the application which may constitute sufficient cause in the eyes of law as no evidence has been adduced to substantiate the averments made in the application.
13. “*Vigilantibus Et Non Dormientibus Jura Subveniunt*” is a settled principle of law i.e the law assists those that are vigilant with their rights, and not those that sleep thereupon. Merely because the appellant has woken up belatedly to file the present appeal without showing any sufficient cause does not entitle the appellant to disturb a finding which has been returned by the Ld. MACT more than three years back.
14. Further even on merits, it is evident from the perusal of the impugned order that the appellant miserably failed to establish his case before the Ld. MACT. It has been recorded in the impugned order that a notice under Order 12 Rule 8 CPC was issued to the appellant herein with directions to produce the valid permit to ply the offending vehicle as on the date of the accident but the said notice were neither replied to or complied with showing the

negligent attitude of the appellant. It is suspicious as to why the appellant even after the notice chose not to prosecute the matter. After getting due notice of the order he could have sought a second opinion. Even otherwise the reasoning arrived at by the learned MACT is after a careful and judicious analysis of the facts and evidence and does not warrant the interference of this court. The injured was only 25 years of age and due to the accident had lost an eye and his face has been de-shaped and the quantum of compensation awarded does not seem exorbitant as the same is supported by a well reasoned award.

15. Accordingly the application for condonation of delay is dismissed as no sufficient cause is made out. Resultantly the appeal is dismissed as barred by limitation.
16. Pending application stands disposed off.

V.K. SHALI, J.

SEPTEMBER 18, 2015
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