

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

FAO No.91 of 2009.

Date of Decision: 17.05.2016.

Premo Devi

....Appellant.

VERSUS

Union of India

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Dhriti Jasleen Sharma, Advocate for
Mr. Sanjeev Sharma, Advocate with
Mr. Jastej Singh, Advocate/Amicus Curiae.

Mr. Rajiv Sharma, Advocate for the respondent.

SNEH PRASHAR, J.

CM-8078-79-CII-2009

There being delay of 35 days in filing and 784 days in refiling the appeal, separate applications under Section 151 of the Code of Civil Procedure and under Section 5 of the Limitation Act, for condonation of delay were filed by the appellant. The applications have been supported by affidavit of counsel for the appellant. As such, considering the averments made in the applications, the delay in filing as well as in refiling of the appeal is condoned.

Applications stand disposed of.

FAO No.91 of 2009

Challenge in this appeal is to the order dated 18.01.2006 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (for short, “the Tribunal”) vide which the claim petition filed by the appellant was dismissed as she had failed to show sufficient cause for not preferring the claim petition within the stipulated limitation period.

The appellant filed a petition claiming compensation in respect of an untoward incident that was alleged to have taken place on 13.01.2000. The limitation for filing a claim petition, being one year, it was to be filed by 13.01.2001 but it was actually filed by the appellant on 19.01.2004. Thus, there was a delay of 1077 days in filing the petition. Seeking condonation of delay, the appellant filed an application invoking the provisions of Section 5 of the Limitation Act alongwith the petition. The only submission made by her in the application was that she is an illiterate lady and was not aware of the fact that claim is admissible to her in a railway accident. When informed by her relations in Chandigarh that she was entitled to claim compensation, she contacted a lawyer and filed the petition. The delay was not intentional and had occurred due to bonafide mistake.

The application was contested by the respondent-railway. It was submitted that no sufficient cause could be explained by the appellant to explain such long delay and therefore the application deserves outright dismissal.

Considering the submissions made on behalf of learned counsel

for the parties, learned Tribunal finding no sufficient cause for condoning the delay dismissed the application.

Feeling aggrieved, the appellant-claimant preferred the instant appeal.

The submissions made by Ms. Dhriti Jasleen Sharma, learned counsel for the appellant, Mr. Jastej Singh, Advocate/Amicus Curiae and Mr. Rajiv Sharma, learned counsel for the respondent have been heard and record perused.

Learned counsel for the appellant argued that the claim petition had been preferred by the appellant on account of death of her husband in a railway accident. She was residing in a village and did not know that she had a right to claim compensation in respect of the accident. As soon as she came to know about her right, she filed the petition. The provisions of Section 124-A of the Railways Act, 1989 (for short, “the Act of 1989”) are for the benefit of the legal heirs of the victim of an untoward incident involving Railways, therefore, considering the submissions of the appellant duly supported by her affidavit, the delay ought to have been condoned. To support her argument, learned counsel relied upon **Hulash Chand Choraria and Ors. Vs. Union of India, AIR 2003 Gau 151.**

The above argument of learned counsel for the appellant has been controverted with vehemence by learned counsel for the respondent-railway, who submitted that ignorance of law is no explanation for condonation of delay. Moreso, no sufficient cause could be explained by the appellant for not initiating the legal recourse for more than three long years.

Section 17 of the Railway Claims Tribunal Act, 1987 (for short, “the Act of 1987”) postulates the limitation period for admitting an application for any claim by the Claims Tribunal. It reads as under:-

17. Limitation--*(l) The Claims Tribunal shall not admit an application for any claim--*

(a) under sub-clause (i) of clause (a) of sub-section (1) of section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway;

(b) under sub-clause (ii) of clause (a) of sub-section (1) or, as the case may be, sub-section (IA) of section 13 unless the application is made within one year of occurrence of the accident;

(c) under clause (b) sub-section (1) of section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under section 78B of the Railways Act.

(2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (i) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.”

As is clear from the above provision, the limitation for filing application claiming compensation on account of an untoward incident is one year. The occurrence in respect of which the appellant filed application was alleged to have taken place on 13.01.2000 whereas the claim application was filed on 19.01.2004. Apparently, there was a delay of three years in filing the petition. For condonation of delay, the appellant had to explain some sufficient cause for not moving the application within the

period of limitation. The appellant stated that it was not in her knowledge that claim was admissible to her in a railway accident. She further stated that while sitting with some relations at Chandigarh she was informed that the claim was admissible. The relation, who informed her of her right, was neither named in the application nor in her affidavit. The date, month and year on which she received the information was also not mentioned. No reason was explained why that relation withheld the information for three years. The fact that every day's delay must be explained may not mean that a pedantic approach should be made but the fact remains that there has to be some sufficient cause which satisfies the Court/Tribunal that the delay was unintentional and beyond the control of the appellant. Absence of complete particulars with regard to a fact pleaded to explain the reason for delay shows that the reason presented was not bonafide. The facts in hand are completely distinguishable from the facts of Hulash Chand Choraria and others' case (supra) wherein the delay was only of 57 days in filing the claim petition and the petition had been dismissed for the reason that separate application for condonation of delay had not been filed. In the case in hand, no sufficient cause worth in its name could be presented by the appellant for explaining delay of 1077 days in filing the petition. Law of limitation has to be applied with all its rigor.

Thus, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

17.05.2016.

jitender