

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

**FAO No.2868 of 2013 (O&M).
Date of Decision: 26.02.2016.**

M/s Overseas Container Services and anotherAppellants.

VERSUS

National Insurance Company Ltd. and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Puneet Kumar Sharma, Advocate for the appellants.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate for respondent No.1.

SNEH PRASHAR, J.

The present appeal had been filed assailing the award dated 16.03.2010 passed by Motor Accident Claims Tribunal, Ludhiana (for short, “the Tribunal”) passed in MACT Case No.17 of 2008 holding respondent No.3-insurance company (respondent No.1 herein) at liberty to recover the amount of compensation from the insured (appellant No.1 herein) if it makes payment of compensation to the claimant first.

Bhuvneshwar, a boy aged 21 years died in a vehicular accident that took place on 28.11.2007 at about 11 p.m. in front of Aarti Steels, Focal Point, Ludhiana. The accident occurred due to rash and negligent driving of trolly no.PB-08AG-1199 (hereinafter referred to as “the trolly”)

by appellant No.2 Surjit Singh (appellant No.2 herein). First Information Report No.355 dated 29.11.2007 under Sections 279, 337, 338, 427 and 304-A of the Indian Penal Code was registered in respect of the accident at Police Station Focal Point, Ludhiana. Kamlawati, mother of the deceased boy filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation from driver and owner (appellants herein) and insurer (respondent No.1 herein).

On notice of the petition, the appellants appeared before learned Tribunal through counsel but later on account of default in appearance they were proceeded against exparte. The respondent-insurance company contested the petition raising objections with regard to factum of accident as well as its liability to indemnify the insured. It alleged that driver of the trolly was not holding a valid and effective driving licence on the date of accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy.

After trial, the claim petition was partly allowed by learned Tribunal vide award dated 16.03.2010. An amount of Rs.2,88,000/- was awarded to the claimant. The respondents were held jointly and severally liable for payment of the compensation amount to the claimant within a period of three months from the date of award failing which they were directed to pay interest at the rate of 6% per annum from the date of award till realization of the amount of compensation. The insurance company (respondent No.3 in the petition) was given liberty to recover the amount of

compensation from the insured (appellant No.1) in case it is made to pay the compensation to the claimant first.

The insured and the driver (appellants No.1 and 2) being aggrieved of the award preferred this appeal assailing the findings of learned Tribunal giving liberty to the insurer (respondent-insurance company) to recover the amount of compensation from the insured (appellant No.1).

The appeal having been filed after expiry of the period of limitation, an application under Section 5 of the Limitation Act was filed by the appellant for condonation of delay of 1056 days in filing the appeal.

The respondent-insurance company has filed reply contesting the application.

The submissions made by Mr. Puneet Kumar Sharma, learned counsel for the appellants and Mr. Vipul Sharma, learned counsel for respondent No.1-insurance company have been heard and record perused.

Learned counsel for the appellants argued that the main reason for delay in filing the appeal is that the appellants neither knew nor were informed about the award dated 16.03.2010 by their counsel. It was in January-February, 2012 when the summons in the recovery petition filed by the insurance company were received by them that they came to know about the award. Thereafter, on investigation it was discovered that they had been proceeded ex parte during the trial on account of non appearance of their counsel and that even the written reply on their behalf had not been filed by him. They approached the counsel who assured that he will get the ex parte

award rectified by filing required documents i.e. driving licence, route permit, fitness certificate and registration certificate etc. of the trola. Subsequently, he refused to pursue the matter on which this appeal was preferred.

Apparently, there is no ground much less a sufficient ground presented by the appellants for condoning the delay in filing the appeal. The notice of the claim petition was duly served on the appellants. Perusal of the orders of learned Tribunal reproduced in the grounds of appeal by the appellants indicates that appellant No.1 was served for 10.09.2008 and on the said date a counsel appeared on its behalf. Although appellant No.2 (respondent No.1 in the petition) was driver of appellant No.1, yet he could not be served through ordinary process despite repeated orders and ultimately after he was ordered to be served through publication in newspaper that the same counsel who was appearing for insured-appellant No.1 appeared on his behalf as well. Number of opportunities were availed by the counsel representing the appellants for filing written statement but ultimately on 16.10.2009 when there was no representation on behalf of the appellants they were proceeded against exparte. The award thereafter was passed on 16.03.2010 i.e. after five months.

No reason has been explained by the appellants for not contacting their counsel from 02.08.2008 i.e. the date on which the advocate filed his Power of Attorney on behalf of the insured-appellant No.1, upto January-February, 2012 when they allege receipt of summons of the recovery petition filed by the insurance company. Admittedly, they had

received due notice of the claim petition and had engaged a counsel to represent them. Therefore, it was their responsibility to keep contact with their counsel and to pursue their case by doing the needful. Needless to say that they were themselves responsible for their inaction.

Further, according to the appellants they had come to know about the award passed against them in January-February, 2012 yet even thereafter this appeal was filed on 06.05.2013 i.e. after more than one year and four months. No reason worth in its name has been put forth for that inordinate delay.

In the above facts and circumstances, there appears no ground least a sufficient cause for condonation of 1056 days delay in filing the appeal and there being no merit in the application of the appellants, the same is dismissed.

Since there is an inordinate delay of 1056 days in filing the appeal and the application for condonation of delay filed by the appellants has already been dismissed, the appeal also being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

26.02.2016.
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