

FAO No. 190 of 2014 (O&M)

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

FAO No. 190 of 2014 (O&M)

Date of Decision: 10.08.2016

Sarita Yadav

.....Appellant

Vs.

New India Assurance Company Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Jangvir Singh Hooda, Advocate,
for the applicant-appellant.

Mr. Neeraj Khanna, Advocate,
for respondent No. 1-insurance company.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 439-CII-2014

This application seeks condonation of a delay of 1168 days in filing the accompanying appeal, by the owner of the vehicle which was involved in an accident in which respondent No.2 in the accompanying appeal was injured, leading to the filing of the claim petition by the said 2nd respondent. The appeal has been filed primarily due to the reason that in the impugned Award, the respondent insurance company has been held entitled to recover the compensation amount awarded by the Tribunal, from the present applicant-appellant.

The reason for the inordinate delay, given in the application, is that the applicant-appellant is an 'illiterate' widow, being a widow of an “Army Personnel” who died while serving the country. It is further stated

that she is not much educated and is residing in a rural area, bringing up her small children but she had engaged a counsel to represent her before the Tribunal and given him all the necessary documents, requesting him to inform her with regard to the case from time to time.

However, allegedly due to a communication gap between her and her counsel, she was not told about the finding given by the Tribunal with regard to the recovery to be made from her, and it was only when she received summons in the month of December 2013, from the hon'ble Supreme Court (in an appeal filed by the claimant before the Tribunal), that she was made to understand for the first time that the insurance company had been given a right of recovery from her, by the Tribunal.

It is further stated in the application that the applicant-appellant had always been under the bonafide belief that the driving licence held by the driver of the "offending vehicle" (respondent No.3 herein) was a valid driving licence and as such, it would be the insurance company that would be liable to pay the compensation awarded to the claimant.

Hence, it is contended in the application, that the delay of 1168 days has occurred in filing the present appeal.

Learned counsel for the applicant-appellant submitted in terms of the aforesaid pleadings, that the application deserves to be allowed, it being that of a widowed lady.

Learned counsel for the insurance company, though opposed the application on the ground that the delay was inordinate, could not deny that the applicant-appellant is actually the widow of a deceased Army personnel, and is residing in a village.

Having heard learned counsel for the parties, though

undoubtedly the delay of 1168 days (4 years) is a huge delay, but in view of the fact that the applicant-appellant is a widowed lady, stated to be the widow of an Army man who died in the service of the nation, and is further stated to be residing in a village and as such, it is very possible that the finer points of the Award of the Tribunal, with regard to the rights of recovery given to the insurance company, were not understood by her till the time that she received summons from the hon'ble Supreme Court in the appeal filed by the claimant, seeking enhancement of compensation, I am of the opinion that the delay still deserves to be condoned.

Consequently, this application is allowed and the delay of 1168 days in filing this appeal is condoned.

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Both learned counsel for the parties are *ad idem* that the only controversy in this appeal, filed by the owner of the 'offending vehicle', i.e. a car, model-Maruti Swift, bearing registration No. HR-26-AL-2468, is as to whether the driving license held by the driver of the said car, i.e. respondent No. 3 herein, was a valid driving license or not on the date of the accident, i.e. 20.07.2009.

A photocopy of the driving license has been annexed with the grounds of the appeal, showing that it was issued by the Chandigarh Administration, and was valid up-till 09.11.2010, having been issued on 16.04.1991.

Mr. Neeraj Khanna, learned counsel appearing for respondent No. 1, which is the insurance company with which the aforesaid vehicle was insured, submits that the insurance company has also verified that the license was actually valid on that date.

He has also placed on record a copy of the verification report obtained by the insurance company.

In view of the above, there is no ground for the insurance company to not indemnify the appellant-insured and to not pay the compensation to the respondent-claimant, i.e. respondent No. 2 herein.

Consequently, this appeal is allowed as above and respondent No. 1-insurance company is directed to make the payment of the amount awarded by the Hon'ble Supreme Court to respondent No. 2, vide its order dated 22.09.2014, passed in SLP (C) No. 35431 of 2013.

The statutory amount of Rs. 25,000/- deposited by the appellant, at the time of filing the appeal, would be immediately refunded to her.

(AMOL RATTAN SINGH)
JUDGE

August 10, 2016
nitin/dinesh

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No