

FAO No. 4740 of 2016(O&M)

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In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:17.10.2016

FAO No. 4740 of 2016(O&M)

Bharti Axa General Insurance Company Limited

---Appellant

vs.

Ram Parshad and others

---Respondents

FAO No. 4741 of 2016(O&M)

Bharti Axa General Insurance Company Limited

---Appellant

vs.

Rameshwari and others

---Respondents

FAO No. 4742 of 2016(O&M)

Bharti Axa General Insurance Company Limited

---Appellant

vs.

Ram Niwas and others

---Respondents

FAO No. 4743 of 2016(O&M)

Bharti Axa General Insurance Company Limited

---Appellant

vs.

Dharambir and others

FAO No. 4740 of 2016(O&M)

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---Respondents

FAO No. 4744 of 2016(O&M)

Bharti Axa General Insurance Company Limited

---Appellant

vs.

Pardeep Kumar and others

---Respondents

FAO No. 4745 of 2016(O&M)

Bharti Axa General Insurance Company Limited

---Appellant

vs.

Anil Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rajbir Singh, Advocate
for the appellant-insurance company**

Rekha Mittal, J.

By way of this order, I shall dispose of FAO Nos. 4740 to 4745 of 2016 filed by Bharti Axa General Insurance Company Limited, emerging out of award dated 26.8.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short “the Tribunal”) as identical questions of

law and fact are involved for adjudication. For brevity, facts are taken from FAO No. 4740 of 2016.

The appellant insurance company has filed the appeal to assail the award in favour of Ram Parshad in respect of death of Shanti Devi in a motor Vehicular Accident that took place on 24.6.2012 in which several persons sustained injuries and some of them succumbed to injuries. Alongwith the appeal, an application, CM No. 16224-CII 2016 has been filed under Section 5 of the Limitation Act for condonation of delay of 223 days in filing the appeal. The plea of the applicant-appellant raised in para 2 of the application reads as follows:-

“That after passing the award dated 26.8.2015 the certified copy of the same was applied by the counsel before the Ld. Tribunal on 27.8.2015, the same was prepared on 31.8.2015. After receipt of the certified copy the same was sent to the Divisional Office of the appellant-insurance company, thereafter, the Divisional Office sent the same to Regional Office. In the present case there are total 10 claim petitions were filed and the packet of certified copies of the cases was

misplaced in the Regional Office, due to that the approval for filing the appeal from the Head office was not obtained by the Regional Office. The passing of the award in these cases came under the knowledge of Regional Office in the first week of June 2016, thereafter the photocopy of the certified copy was called for by the Regional office and then the approval was sought from the head office. Thereafter alongwith the approval the demand draft of statutory amount was prepared on 21.6.2016. After completing the relevant documents and demand draft the case file was sent to the undersigned counsel through courier, which was received on 30.6.2016. Hence the appeal is being filed without any further delay. In this way the delay in filing the appeal has occurred.”

The application is supported by an affidavit of Dipshikha Chatterjee, Legal Claims Bharti Axa General Insurance Company Limited.

Counsel for the applicant-appellant has submitted that delay in filing the appeal is not intentional but due to the time consumed in processing the case and taking a final decision in the matter for filing the

appeal. The file moved at different levels from Divisional office to Regional office and then to head office. It is further submitted that packet of certified copies of the cases was misplaced in the Regional office due to which approval from the head office was not obtained in time by the Regional office.

Counsel for the applicant-appellant has further submitted that law regarding condonation of delay under Section 5 of the Limitation Act is quite liberal and it has been repeatedly held by the Courts that the Court should not adopt a pedantic approach while dealing with an application for condonation of delay so that contesting claims of the parties are not thrown overboard at the threshold without providing an opportunity to be heard on merits. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India *State of Nagaland vs. Lipok AO and others* 2005(2) RCR (Civil) 375, *Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others* 1987 AIR (SC) 1353, *Oriental Aroma Chemical Industries Limited vs. Gujarat Industrial Development Corporation* 2010(2) RCR(Civil) 284, *B. Madhuri Goud vs. B.Damodar Reddy* 2012(12) SCC 693, *S.Ganesharaju (D) Lrs. and another vs.*

Narasamma (D) Thr. Lrs and others 2013(11) SCC 341. Further reference has been made to judgment of this Court *Mrs. Saroj and others vs. Sh. Baljeet Singh and another 2010(3) RCR(Civil) 929.*

I have heard counsel for the applicant-appellant and perused the paper book.

The question for adjudication is whether the averments raised in the application satisfies the requirements of Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) to uphold plea of the insurance company that the company was prevented by 'sufficient cause' from preferring the appeal in time.

Indisputably, Hon'ble the Supreme Court of India in “*Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*”, (2013) 12 SCC 649 has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay as the courts are not supposed to legalize injustice but are obliged to remove injustice. On the other hand, Hon'ble the Apex Court in “*Ramlal and others vs. Rewa Coalfields Limited*”, AIR 1962 SC 361, has held that even if sufficient cause has been

shown, parties are not entitled to condonation of delay as a matter of right. The proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction vested in the court by Section 5 of the Limitation Act. If sufficient cause is not proved, nothing further has to be done; the application for condoning delay has to be dismissed on that ground only. If sufficient cause has been shown then the Court has to enquire whether in its discretion, it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.

Before advertng to the submissions made by counsel for the applicant, it is pertinent to note that the application for condonation of delay has been filed under Section 5 of the Limitation Act and so also reference has been made to the judgments rendered while interpreting the provisions of Section 5 of the Limitation Act. There cannot be any quarrel with the settled position in law while interpreting Section 5 of the

Limitation Act that courts should be liberal in condoning delay and the expression 'every day's delay must be explained' does not mean that a pedantic approach should be made. It has also been held that 'sufficient cause' is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of justice, that being the life purpose for the existence of the institution of Courts. However, the case in hand is to be examined in the light of provisions of Section 173 of the Act that provides for appeal by any person aggrieved by the award of claims Tribunal and specifically provides the limitation of 90 days for filing the appeal in the High Court from the date of award. Proviso second appended to Section 173, relevant in the present context, reads as follows:-

“Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.”

Section 5 of the limitation Act, on the other hand, provides for condonation of delay and a relevant extract therefrom reads thus:-

“Any appeal or any application, other than an application under

any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

The difference in the language adopted in Section 5 of the Limitation Act and second proviso to Section 173(1) of the Act needs to be noticed. Section 5 of the Limitation Act provides that any appeal or application etc. may be admitted, after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making application within such period. On the other hand, second proviso to Section 173(1) of the Act provides for a different satisfaction that the appellant was prevented by 'sufficient cause' from preferring the appeal in time.

The matter with regard to condonation of delay in filing the appeal under the provisions of the Act came up for consideration before different High Courts. In *The Managing Director, Apsrtc, Musheerabad, Hyderabad vs. Laghshetty Leelavathi* 1995(3) Andh LD 43 the Division

Bench of Andhra Pradesh High Court refused to condone delay of 197 days in filing the appeal after referring to judgments of Hon'ble the Supreme Court of India *Ajit Singh vs. State of Gujarat AIR 1981 SC 733*, *Government of Andhra Pradesh vs. Y.S.Parkash Rao (1982) 2 SCC 385*, *State of Gujarat vs. Sayed Mohd. Bakir EI Edross AIR 1981 SC 1921*, *Collector, Land Acquisition Anantnag's case (supra)*, *Binod Bihari Singh vs. Union of India (1993)1 SCC 572*, *G. Ramegowda vs. Special Land Acquisition Officer, Bangalore AIR 1988 SC 897*.

The Division Bench of this Court in *Oriental Insurance Company Limited vs. Smt. Kailash Devi 1994 AIR (Punjab) 45* refused to condone delay of 47 days in filing the appeal by referring to judgment of Hon'ble the Supreme Court of India in *Collector, Land Acquisition Anantnag's case (supra)*. Similarly, the Division Bench of Jammu and Kashmir High Court in *Union of India vs. Manzoor Ahmad and others 1982 AIR (J&K) 6* refused to condone delay of 102 days in filing the appeal under the Motor Vehicles Act, 1939, on a detailed consideration of various judgments rendered by different High Courts. The Division Bench of Madhya Pradesh High Court in *Oriental Insurance Company Limited*

vs. Bilkishbee 2004(1) ACJ 232 refused to condone delay of 106 days in filing the appeal. The Division Bench of Allahabad High Court in *Prakash and others vs. Om Prakash and another 1988(1) ACC 313* refused to condone delay of about three years in filing the appeal under the Act. The single Bench of Gujarat High Court in *New India Assurance Company Limited vs. Vijaybhai Laxmanbhai Solanki and others 2000(1) ACJ 302* refused to condone delay of 180 days. The Delhi High Court in *State of Haryana and another vs. Shimla Devi and others 1997(1) ACC 408* refused to condone delay of 65 days in filing the appeal.

A careful reading of the provisions of Section 5 of the Limitation Act, second proviso appended to Section 173(1) of the Act and the judgments rendered by various High Courts while dealing with the appeals preferred under Section 173(1) of the Act, it can be safely concluded that it is incumbent on a person preferring an appeal under Section 173(1) of the Act to take care to see that the appeal is filed within time and unless he shows 'sufficient cause' which prevented him from preferring the appeal in time in spite of care and diligence, the appellate court will not entertain an appeal preferred out of time. The second proviso

to Section 173(1) of the Act will naturally depend upon the appellant's establishing that despite all care and diligence, it was not possible for it to prefer the appeal in time.

Reverting to the case in hand, the appellant had time of 90 days prescribed by law for filing the appeal. The application clearly spells out that the award was passed on 26.8.2015, certified copy was applied on 27.8.2015 and the same was prepared on 31.8.2015 just within five days of the passing of the award. Nothing has been mentioned as to when and by whom the certified copy was sent to the Divisional office of the insurance company. Similarly, the application is silent as to when the Divisional office sent the same to the Regional office. There is no averment as to when the packet of certified copies was received in the Regional office and how and when the same was found to be misplaced requiring the Regional office in the first week of June, 2016 to ask for another set of copies.

The court cannot overlook that in view of modern technology particularly computerization and internet, any information between offices operating at different levels can be exchanged within seconds. Had the Divisional office been careful and diligent, there was no reason for the

officers/officials at the helm of affairs not to update about status of the proceedings in the Regional office particularly in the alleged circumstances that there was no response from the said office till first week of June 2016 and by that time filing of appeal had already been delayed for about five months. Hon'ble the Apex Court in *Office of the Chief Post Master General and others vs. Living Media India Limited and another, 2012 (2)*

RSJ 308 has held that plea for condonation of delay on account of impersonal machinery and bureaucratic methodology of making several notes can not be accepted in view of the modern technologies being used and available. In the given circumstances, it is difficult to uphold that the insurance company was prevented by sufficient cause from filing the appeal in time or delay of 223 days has occurred despite care and diligence. It further appears that the applicant has sought condonation of inordinate delay of more than seven months just on mere asking. I would hasten to add that despite expiry of more than one year from the date of award, the insurance company has not even paid a single penny. The system does not permit the insurance company to be slow and lethargic in satisfying claims of victims of motor vehicle accidents, disregarding that the provisions are

benevolent social legislation.

Taking a cumulative view of the facts and circumstances of the case when examined in the light of discussion made hereinbefore, it is difficult to accept plea of the applicant to condone delay and accordingly the applications are dismissed. As a natural corollary, the appeals are dismissed being barred by limitation. No order as to costs.

(Rekha Mittal)
Judge

17.10.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No