

FAO-6394 of 2016

In the High Court of Punjab and Haryana at Chandigarh

FAO-6394 of 2016(O&M)

Date of Decision: 25.10.2016

Bharti Axa General Insurance Company Limited

---Appellant

versus

Kuldeep and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

Rekha Mittal, J.

The appellant insurance company has filed the appeal to assail the award dated 26.8.2015 whereby the claimants have been awarded compensation of Rs. 52,418/- on account of death of Kuldeep in a motor vehicular accident that took place on 30.5.2013.

Alongwith the appeal, an application, CM No. 21371-CII 2016 has been filed under Section 5 of the Limitation Act for condonation of delay of 287 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. Thereafter,

present appeal was filed on 4.7.2016 i.e. the first opening day after the summer vacation. In the present case, inadvertently, the head office of the appellant-insurance company prepared the demand draft of statutory amount Rs. 17,680/- instead of Rs. 25,000/-. However, the demand draft of Rs. 17,689/- was deposited in the registry of this Court on 4.7.2016 but the registry of this Hon'ble Court raised objections regarding the insufficient statutory amount. Thereafter, the appellant-insurance company was again prepared the demand draft of Rs. 7320/- to make the deficiency of statutory amount. The said amount was deposited on 6.9.2016 by that time the registry of this Hon'ble Court declared the present appeal further barred of 287 days. 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 controversy raised in the present appeal is squarely covered by FAO no. 4740 of 2016 titled “Bharti Axa General Insurance Company Limited vs. Ram Parshad and others” decided on 17.10.2016.

The instant appeal is disposed of in the same terms.

(Rekha Mittal)
Judge

25.10.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No