

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

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CM Nos.26324-25-CII of 2015 and
FAO No.8332 of 2015

Date of Decision: April 11, 2016

Chandigarh Transport Undertaking, Chandigarh and others

...Appellants

Versus

Balbir Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikram Vir Sharda, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J.

CM Nos.26324-25-CII of 2015 and
FAO No.8332 of 2015

Prayer in this application is for condonation of delay of
4 years and 272 days (1732 days).

It has been stated in the application that the impugned order was passed by the Commissioner under Workmen's Compensation Act, 1923, Kurukshetra, on 23.11.2010. Certified copy of the order was applied for on 14.12.2010 and the same was prepared on 22.12.2010. Advice of the Legal Remembrancer, U.T. Chandigarh was obtained, who opined that the order needs to be challenged in the higher Court of law. Shri Amar Vivek, Advocate was engaged as a Government counsel on 20.06.2011 to file the appeal and accordingly the papers were handed over to him. The officials of the department visited on various occasions the office-cum-residence of the counsel but to no avail. On 31.10.2013, Shri Amar Vivek, Advocate was removed from the panel by the Chandigarh Administration. Letters dated 02.09.2014 and 16.02.2015 were sent to the said counsel for handing over

the case file but to no avail. Thereafter it came to the knowledge of the applicants-appellants that the Director, Prosecution, Chandigarh Administration, had issued revised Instructions dated 19.08.2014, whereby the present counsel was engaged and a request was made to him to prepare the appeal so that the impugned order of the Commissioner under Workmen's Compensation Act, 1923, Kurukshetra, may be challenged. Certain clarifications were sought by the counsel and thereafter he on 26.05.2015 had informed that as per Section 30 of the Workmen's Compensation Act, 1923, pre deposit of the amount payable under the order appealed against, was required. A Demand Draft No.103989 dated 29.07.2015 amounting to ₹4,07,917/- was deposited with the Commissioner, Kurukshetra. A further Demand Draft dated 08.09.2015 of ₹1,73,800/- was also deposited to make the entire payment as per the impugned order dated 23.11.2010. It is thereafter that the present appeal was filed on 29.10.2015 resulting in delay of 1732 days in filing the appeal.

The counsel for the applicants-appellants has asserted that the delay in filing the appeal is neither deliberate nor intentional and the same has been explained in detail and, therefore, the application be allowed and the delay be condoned.

I have considered the submissions made by learned counsel for the applicants-appellants and have also gone through the application which is supported by the affidavit but do not find myself in a position to accept that the inordinate delay in filing the appeal has been duly explained or that there has not been any negligence or inaction on the part of the applicants-appellants.

Firstly, as is apparent that the certified copy of the order was received on 22.12.2010, thereafter, nothing has been mentioned as to when the matter was put up before the Legal Remembrancer, Chandigarh and as to when the advice was received. The next date, as mentioned in the application, is 20.06.2011 when a counsel was engaged to file the appeal. It would not be out of way to mention here that the period for filing the appeal is 60 days which had expired on 30.01.2011. The date on which the relevant documents/record including the copy of the judgment which was handed over to the counsel has not been mentioned. Even the dates on which the efforts were made to approach the counsel have not been detailed in the application. The next date which is mentioned in the application is 31.10.2013, where the name of the counsel was removed from the panel. No explanation is forth coming for the period of more than two years. Not only this, the first letter which is addressed to the counsel Shri Amar Vivek, is dated 02.09.2014 which is almost one year after the date of removal of the name of the counsel from the panel which is followed by a letter dated 16.02.2015 for return of the case file. The next step taken by the Director, Prosecution, Chandigarh Administration, is on 19.08.2014 when revised Instructions were issued to engage the present counsel, who has filed the appeal along with this application. There is no explanation with regard to the period taken from 31.10.2013 till 19.08.2014 except for the two letters referred to above. The next date which is mentioned is 26.05.2015 when the newly appointed counsel sent an e-mail for compliance of the provisions as contained under Section 30 of the Workmen's Compensation Act, 1923. The period spent in complying with the said provisions ends up with the

deposit of the Demand Drafts dated 29.07.2015 and 08.09.2015 and thereafter the appeal has been filed on 29.10.2015.

A perusal of the above would show that the applicants-appellants have not pursued the case with due diligence, rather there has been inaction and lethargy at every step including the decision making process at various stages. The delay which has occurred has not been explained at all and it cannot be said that it has been explained reasonably, what to say of completely. There is admittedly a delay of 4 years 272 days in filing the appeal which remains unexplained and, therefore, the application cannot be accepted and deserves dismissal.

On the insistence of the counsel for the applicants-appellants, the impugned order has also been perused by this Court, where the facts are not in dispute that deceased-workman-Sucha Singh son of Tarlok Singh was a driver with the applicants-appellants. He had gone on duty driving vehicle No.CH-01G-8168 and had started from Chandigarh and reached Haroli Bus Stand, District Una (Himachal Pradesh) at 7:15 pm and has parked his vehicle there. After taking his meals, he slept on the roof of the bus, from where he fell down while sleeping. He was taken to C.H.C., Haroli, from where he was referred to P.G.I., Chandigarh and was declared dead on 05.07.2007. DDR No.27 dated 07.05.2007 was registered at Police Station Haroli and the postmortem was conducted on 06.07.2007. On the basis of the evidence led by the parties and keeping in view the age of the deceased i.e. 49 years, compensation of ₹3,12,940/- along with interest at the rate of 9% from 04.08.2007, was granted by the Commissioner under the Workmen's Compensation Act, 1923, Kurukshetra, by the impugned order

dated 23.11.2010.

Counsel for the applicants-appellants had asserted that sleeping on the bus roof was not part of the duty and, therefore, it cannot be treated as “during and out of course of employment”. However, he could not dispute the fact that the drivers are entitled to Travelling Allowance and even Night Allowance when they are to take the bus out of station and have to stay overnight for the return trip. It may further be added here that the counsel on 11.12.2015 when the appeal had come up for hearing for the first time, sought time to inform the Court as to whether there was arrangement for the drivers and conductors to take rest at night time at Haroli Bus Stand because he had argued that they are provided Rest Houses for night stay. He has referred to a communication dated 06.04.2016 received by him from the General Manager, Chandigarh Transport Undertaking, Chandigarh, that there is no arrangement to take rest at night time for drivers and conductors at Haroli, District Una (Himachal Pradesh).

In view of the above factual position, it cannot be accepted that the accident which has occurred is not arising out of and in course of his employment.

In view of the above, the application for condonation of delay stands dismissed and consequently, the appeal dismissed as barred by limitation.

In the light of the dismissal of the appeal, the application for stay i.e. CM No.26325-CII of 2015, stands disposed of as infructuous.

April 11, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE