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HIGH COURT OF DELHI AT NEW DELHI

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MACA 13/2016

Decided on: 8th January, 2016

ASHWANI SHARMA

..... appellant

Through: Mr. Atul Sharma with Mr. Manish Jain and Mr. Abhishek Sharma, Advocates.

versus

NEW INDIA INSURANCE CO. LTD. & ORS. Respondent

Through: Mr. Shoumik Mazumdar,
Advocate for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J (ORAL)

1. This is an appeal filed by the appellant against an award dated 04.06.2012, by virtue of which the MACT has awarded a sum of Rs. 4,59,000/- to the appellant on account of the death of Mr. Sohail Ahmed Khan. The award has been passed on 04.06.2012 and the present appeal has been filed by the owner of the vehicle after 1201 days delay. Reasons for delay, which have been stated by the appellant in the application are that after the award was passed, the appellant was informed by the previous counsel that he has won the

case, however this fact was found to be totally incorrect when he received summons for execution of the award from the court, whereupon it is stated that he applied for a certified copy on 15.10.2015, which was prepared on 26.10.2015 and received on 02.11.2015 and learnt about the award having been passed against him. He immediately engaged a counsel and filed the present appeal. This is resulted in delay of 1201 days delay. It is contended that the delay was not intentional and deliberate and, therefore, the delay may be condoned.

2. I have heard the learned counsel for the parties and also gone through the record. The law regarding condonation of delay is very well settled by now and the courts have repeatedly held that Section 5 of the Limitation Act must be construed liberally to condone the delay. However, it has been observed that while condoning the delay what is to be seen is not only the length of delay, but the bonafides and explanation furnished by the appellant.
3. In the instant case, the reason for the delay, which has been given by the appellant is that he was informed about the case having been won by him by his counsel. The appellant has not disclosed the name of counsel or his office or residential address. Simply by

saying that he was informed by the counsel that he has won the case, a party would not rest unless and until he sees the orders himself. The appellant ought to have requested the counsel to provide a copy of the order, which he does not seem to have done. Therefore, he is grossly negligent in pursuing the matter. The plea that he was informed by his counsel that he has won the case, and that he only came to know that the award has been passed against him, when he received the summons from the court, cannot be believed. But what is important is that when the appellant learnt about the award having been passed against the appellant, what action was taken by him against the counsel. Did he informed the Bar Council for filing the complaint. There is no mention about this fact in the application.

4. In the absence of all these details, plea which is taken by the appellant seeking condonation of delay about the wrong information having been given to him, seems to be only a make believe story and is not good enough to inspire confidence of the court that the appellant was bonafide for the reason that he was informed about the award having been passed in his favour.
5. All these facts clearly proved that the appellant was totally, unduly, grossly negligent. The law does not help those persons, who are

grossly negligent in taking any action. Moreover, a vested right has been created in favour of the claimant, which should not be disturbed on flimsy pretext.

6. For the aforementioned, I feel that application filed by the appellant is totally misconceived and the same deserves to be dismissed. As the application for condonation of delay is dismissed, the appeal also becomes barred by time.

V.K. SHALI, J.

JANUARY 8th, 2016
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