

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

**CM No.31170-CII-2011 in/and
FAO No.7340 of 2011 (O&M)
Date of Decision: May 17, 2017**

Neelam Kumari

..Appellant(s)

Versus

The Oriental Insurance Company Ltd. and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Kuldip Sanwal, Advocate
for the appellant.

Mr. Sanjeev Pabbi, Advocate
for respondent no.1-insurance company.

ANITA CHAUDHRY, J.

This appeal has been filed by the owner disputing her liability. The appeal has been filed with a delay of 1343.

Before going into the question whether the delay is to be condoned or not few facts are being referred.

Som Nath died in an accident which occurred on 15.09.2004. The accident was caused by tanker which came from Dappar side and was driven by respondent no.1. The driver fled from the spot. The complaint was given by the son of the deceased who was following him and was at a distance, on his cycle. Som Nath was a government employee and was working as a Chowkidar in ITI

Lalru. The Tribunal assessed the income and calculated the compensation of Rs.8,65,682/- with interest @ 6%.

The driver failed to appear and was declared ex-parte. The owner too failed to appear in the witness box and instead examined her accountant who deposed that he was the authorized power of attorney of Neelam Kumari and their driver was employed in 1994 and they had checked the driving licence and they had verified from the licensing authority that a driving licence had been issued for HMTV.

The insurance company produced the verification report to show that the licence had been issued from Cuttack and a report had been received that no driving licence had been issued in 1986 in the name of Om Parkash. The driving licence which was placed on record had been renewed from Ambala for the relevant period. The Tribunal accepted the verification report and placed the liability of payment of compensation on the respondents jointly and severally and the insurance company was given liberty to recover the amount from the owner.

The award had been passed on 18.05.2007. The appeal was filed in 2011. Along with the appeal an application was moved for condonation of delay and it would be relevant to reproduce paragraphs 2 to 4 of the application which read as under:-

“2. That no doubt the applicant/appellant was intimated about the award by her counsel that it has been passed in favour of the claimants but since the vehicle was insured, so it is to be

paid by insurance company. However, the applicant/appellant asked her counsel to send certified copy of the award.

3. That it transpired that the counsel for the applicant/appellant was ailing and later on he died.

4. That applicant/appellant received no notice in between. It is only on 20.01.2011 she came to know that an official from court came enquiring at her petrol pump about the vehicle in question. After enquiring she came to know that recovery proceedings for the accident case are pending before the Motor Accident Claims Tribunal at Patiala, and she appeared through counsel on 20.01.2011. After getting certified copy of the award she came to know about the exact nature of the award.”

The matter was listed for the first time in April 2012 and no-one appeared on that day and the case was adjourned. On the adjourned hearing notice in the application for condonation was issued. A report was received that the driver had died and therefore, the case was adjourned for several dates to implead the LRs of driver. The Co-ordinate Bench noted in its order that the driver was ex-parte before the Court below and the dispute was between the appellant and the insurance company and therefore, there was no need to send any notice to the LR of the driver.

On 27.07.2015 the counsel for the appellant leading his arguments had contended that the counsel had died and the delay was mainly on that account and he wanted to verify the actual date of death and sought adjournment. The case was adjourned eight times in a span of 18 months but that information was not given nor the death

certificate of the lawyer was placed on record. The counsel for the appellant today states that they had been unable to get the date of the death of the counsel.

I have heard the counsel for both the sides.

Counsel for the appellant submitted that though the appellant came to know of the award but since the vehicle was insured, therefore, it was assumed that the amount was to be paid by the insurance company and the appellant had asked her counsel to get the copy of the award but thereafter, the counsel fell ill and died and it was only in January 2011 when an official of Court came inquiring at their petrol pump for recovery of the amount that they appeared before the Executing Court and applied for the certified copy to know the exact order passed by the Tribunal. It was urged that they had a good case on merits as the owner had stepped into the witness box to make a statement that they had verified the driving licence at their own level and the driver knew how to drive a tanker and the verification report could not have been considered and no official from the Department was summoned to prove the verification report. Reliance was placed upon *LIC of India and anr. Vs. Ram Pal Singh Bisen 2010(2) RCR (Civil) 459, Sait Tarajee Khimchand and others Vs. Yelamarti Satyam and others AIR 1971 Supreme Court 1865 and Pepsu Road Transport Corporation Vs. National Insurance Company (2013) 10 SCC 217.*

On the other hand, the submission on behalf of the insurance company is that they have placed the entire burden on the

counsel who was representing them without disclosing the name or the date when the counsel had died and they had taken numerous adjournments. It was urged that the appeal had been filed after a delay of almost 4 years and the application does not explain as to why the appellant did not contact the counsel and when the counsel had died and the delay is huge and the appellant is running a petrol pump and is educated enough to understand the consequences and no appeal was filed in time and the finality of the judgment cannot be disturbed by a party who does not act and there cannot be unlimited limitation and the equity is not in their favour. It was urged that it was a fake driving licence and even if that is ignored the driver was driving a hazardous vehicle and as per the Clause 14(2) of the Act an endorsement is required and the licence is granted only for a year and the Sections speaks about the special training which has to be imparted and there is no evidence that the driver had undergone any special training and the GPA given to the Accountant was not to appear as a witness.

Counsel for the appellant urged that the driver had undergone a training at Murthal and they have reproduced the certificate in para no.11 of their appeal. The counsel was asked to refer to the copy of the certificate but he did not have it.

It is settled legal proposition that law of limitation may harshly affect a particular party but it has to be equally applied with all its rigour when the statute so prescribes. The Court has no power

to extend the period of limitation on equitable grounds. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

According to Halsbury's Laws of England, Vol.24, p.181:

***330. Policy of Limitation Acts.** The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a Defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.*

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

The delay in this case in approaching the Court is definitely in-ordinate. There is absolutely no explanation for the delay. A right had accrued in favour of the insurance company which cannot be taken away without explaining the delay for very cogent reasons. The entire application fails to disclose any reason for the delay. The appellant was duly represented by a counsel. The appellant was made aware of the passing of the award but still the appellant did not bother to find the details. The award was passed in May 2007 and she did not contact her counsel for four years. It is difficult to accept the explanation offered. The appellant had availed a number of

opportunities to inform the date of death of the counsel. The name of the counsel was not disclosed in the application. The appellant has been unable to give even the year of death of her counsel. The law of limitation cannot be considered literally to the extent of taking away a substantive right of a party.

Even otherwise there is no case on merits. The driver was driving a hazardous vehicle and the driving licence which was made available on record shows that it had been renewed for a period of three years whereas in terms of Section 14(2) of the Motor Vehicle Act, the renewal is only for a year, meaning thereby driver was not authorized to drive a transport vehicle carrying goods of dangerous or hazardous nature. Even now there is no material to show that he had undergone any refreshers course prescribed for such drivers. The accountant who appeared for the owner was not authorised to make a statement in the Court. The Power of Attorney was given only for release of the vehicle.

In view of the above, I find that there is no sufficient cause for condonation of the huge delay in filing the appeal. The application for condonation of delay is dismissed.

The appeal would also stand dismissed as time barred.

**(ANITA CHAUDHRY)
JUDGE**

May 17, 2017

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No