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**CM No. 28955-CII of 2014 in/and
FAO No. 10522 of 2014 (O&M)
DECIDED ON: JANUARY 09, 2017**

.....APPLICANT/APPELLANT

ICICI LOMBARD GENERAL INSURANCE CO. LTD. & ORS

.....RESPONDENTS

Present: Ms. G.K. Mann, Advocate
for the applicant/appellant.

Mr. Rajneesh Malhotra, Advocate
for the respondent-Insurance Company.

JASPAL SINGH, J (ORAL)

CM No. 28955-CII of 2014

Through this instant application moved under Section 5 of the Limitation Act 1963, applicant/appellant has sought the condonation of delay of 975 days in filing the accompanying appeal i.e. FAO No. 10522 of 2014.

The contention of learned counsel for the applicant is that an award dated 05.01.2012 was passed by the Motor Accident Claims Tribunal, Jalandhar (for brevity, 'tribunal') in MACT Case No. 48 of 2010, captioned as Smt. Mona

& others v. Sher Singh & others. However, at that time, his counsel informed him that award has been passed against the Insurance Company and he was never told that the learned Tribunal has also given right to recovery to the Insurance Company while passing the award. This fact was not in the knowledge of the applicant/appellant, due to that reason, he could not prefer an appeal within the prescribed period of limitation. He only came to know about the passing of award and giving right of recovery to the Insurance Company qua him, when he received the summons in an execution application filed by the Insurance Company. Immediately, thereafter, he preferred the instant application alongwith appeal.

On the other hand, learned counsel for the respondent-Insurance Company has submitted that applicant/appellant has concocted a false story with regard to the non information by his counsel about the nature of award. Otherwise also, neither the inordinate delay has been explained nor any documentary proof has been produced on record to substantiate the reasons of condonation of delay. In fact, as per the provisions of Limitation Act, an appeal is to be filed within a period of 90 days of the passing of award and in case of delay, the delay of each day is to be explained properly to show that due diligence was taken by the applicant/appellant in filing the appeal and further that delay has not been caused deliberately. But in the instant case, since the applicant/appellant has miserably failed to explain the delay, he does not deserve any leniency.

This court has given an anxious thought to the rival submissions

made by learned counsel for the parties and have gone through the record available on file.

Undoubtedly, the award was passed on January 05, 2012 by the learned Tribunal and there is a delay of approximately three years in filing the appeal. There is no cogent and convincing evidence or the submission to explain such an inordinate delay of 975 days. It is well settled proposition of law that Law of Limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. Such observation was also made by the Hon'ble Apex Court in the case of **P.K. Ramachandran v. State of Kerala and another; AIR 1998 SC 2276;** in which there was an inordinate delay of 565 days and the order condoning the delay was set aside.

The explanation furnished by the applicant/appellant with regard to the delay that he was not informed by his counsel that recovery rights have been given to the Insurance Company does not inspire confidence. In fact, a false story in this regard appears to have been concocted by him just to make out a ground for condonation of delay. A perusal of application for condonation of delay transpires that neither any date has been mentioned when the summons were received by him in execution proceedings filed by the Insurance Company nor any date or the period was mentioned when he came to know about the passing of award.

In view of the fact that there is no plausible reason put forth by the applicant/appellant for condonation of huge delay, instant application stands dismissed.

FAO No. 10522 of 2014 (O&M)

Consequent upon the dismissal of application for condonation of delay, instant appeal is also dismissed.

JANUARY 09, 2017
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(JASPAL SINGH)
JUDGE

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