IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No.15214-CII of 2013 in/and
FAO No.3753 of 2013(O&M)
Date of Decision:06.11.2017

Naveen Kumar Aggarwal. ...**Appellant**

V/S

The New India Assurance Company Ltd., & ors. ...**Respondents**

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr.Kapil Aggarwal, Advocate for the applicant-appellant.

Mr.Rajesh K. Sharma, Advocate for respondent no.1.

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B.S.Walia, J. (Oral)

C.M. No.15214-CII of 2013

[1] Appeal has been filed along with an application for condonation of 1087 days delay in late filing of the appeal. Challenge in the appeal is to award dated 08.02.2010 passed by the learned Motor Accidents Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as the Tribunal) awarding compensation of Rs.2,12,000/- in favour of claimant - proforma respondent Nos.3 and 4 and against the owner i.e. appellant as well as respondent No.2 i.e. driver with liberty to recover the same from the appellant i.e. owner as well as driver of the offending vehicle.

[2] Application seeking condonation of delay in late filing of the appeal mentions that counsel conducting the case on behalf of the appellant before the Tribunal had informed the appellant that the impugned award had been passed against the Insurance Company but he did not inform that the Insurance Company had been given the right to recover the amount in question from the

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appellant i.e. owner and driver i.e. respondent No.2. The application further mentions that the applicant-appellant in good faith believed that he had no liability to pay any claim, therefore, did not challenge the impugned award and came to know only in the first week of May, 2012 from the counsel in FAO No.6851 of 2010 in case titled as '***Usha Sood Vs. Tejinder Kumar and others'*** about the impugned award saddling the appellant with liability by giving right of recovery to the Insurance Company. The application further mentions that the applicant-appellant had seen copy of award dated 08.02.2010 passed by the learned MACT, Fatehgarh Sahib for the first time in the first week of May 2012 whereupon the applicant-appellant immediately gave instructions to counsel for filing of appeal, therefore, the delay in filing the appeal was neither intentional nor deliberate but due to communication gap between the applicant-appellant and his counsel before the Tribunal.

[3] Application for condonation of delay has been vehemently opposed by learned counsel for respondent No.1, who contended that the application was not only vague and bereft of particulars, but also contained false averments.

[4] Learned counsel for respondent No.1 contended that certified copy of the award attached along with the appeal was applied for on 22.09.2011 and was delivered to the applicant-appellant on 28.09.2011 whereas the appeal was filed on 01.07.2012, therefore, the period from 08.02.2010 to 30.06.2012 had to be counted while working out delay in late filing of the appeal after giving benefit of 90 days within which the appeal was to be filed. Learned counsel contended that as per the applicant-appellant, he learnt about liability having been imposed on him by way of award dated 08.02.2010 when counsel conducting FAO No.6851 of 2010 titled as '***Usha Sood Vs. Tejinder Kumar and others'*** informed him in the first week of May, 2012 that liability had also been fixed

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on him by the learned MACT. Learned counsel contended that once the applicant-appellant was respondent in the claim petition, it was incumbent upon him to have obtained a copy of the award to ascertain the liability and as per the showing of the applicant-appellant himself, no copy of the award was applied for prior to 22.09.2011 and the applicant-appellant was satisfied on the verbal intimation given by counsel conducting the case before the learned MACT that liability had been imposed on the Insurance Company only.

[5] I have considered the submissions of learned counsel for the parties and am of the view that the stand of the applicant-appellant as noted above does not disclose exercise of due care and attention. It was incumbent upon the appellant to have verified the question of liability after obtaining a copy of the award. The same was not done on the passing of the award and was done much later. Besides, the applicant-appellant has taken up the stand that he learnt about liability having been imposed on him only in the first week of May 2012 after he showed copy of the award to counsel conducting FAO No.6851 of 2010 titled as '***Usha Sood Vs. Tejinder Kumar and others***' . In other words, copy of the award was already available with the applicant-appellant, yet he did not choose to read the same, thereby did not come to know of liability having been imposed on him by the MACT. In the circumstances, the applicant-appellant not having acted diligently cannot blame any other person except himself.

[6] The factual position as has been noted above goes to show beyond an iota of doubt that the applicant-appellant did not act with due care and attention. Therefore, it cannot be said that sufficient cause stands established justifying non filing of appeal within the stipulated period of time.

[7] In the circumstances, the application being bereft of merit, I find no merit in the application seeking condonation of delay. Accordingly, the same is

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dismissed with no order as to costs.

[8] Resultantly, the appeal is also dismissed.

(B.S.WALIA)
JUDGE

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

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