

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.M. No. 9871-CII of 2015 in/and
F.A.O. No. 3306 of 2015 (O&M)

Date of Decision:13.10.2017

Kashmir Kaur and another

.....Appellants

Versus

Paramjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vijay Lath, Advocate
for the applicants-appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 4.2.2013 passed by the Motor Accidents Claims Tribunal, Shaheed Bhagat Singh Nagar (for short 'the Tribunal').

The present appeal has been filed along with civil application under Section 5 of the Limitation Act, for condonation of 689 days delay in filing the appeal.

The brief facts relevant for the decision of the present application are:

The applicants are the unfortunate parents who lost their young son aged 25 years in a motor vehicular accident that occurred on 21.2.2010.

On the death of the son, in 2010, the claim petition was moved under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') in 2010 itself.

The Tribunal awarded a sum of Rs.3,66,500/- as compensation.

Aggrieved of the said award, the present appeal has been filed

but with delay of 689 days. The explanation rendered in the application is that the appellants were under shock because of untimely death of their son. Secondly, it has been stated that on 7.4.2015 when they discussed the matter with their trial Court counsel, he advised that if they are dissatisfied with the award, they can file appeal before the Hon'ble High Court. Thereafter the appeal was filed on 9.4.2015.

Learned counsel for respondent No.3 has opposed the condonation of delay stating that the delay is in-ordinate and no sufficient cause has been given for condoning the delay.

The explanation put forth that the applicants were under shock is an acceptable explanation. There cannot be any doubt that the parents who lost their young son would be under shock and they will remain under shock for rest of their life. But the fact remains that inspite of the shock the claim petition was filed in the same very year in which the accident occurred. The claim petition was filed within two months of the accident. The Tribunal awarded the compensation vide award dated 4.2.2013. There was a period of almost three years between the death and passing of the award. Neither any medical evidence nor any pleading that the applicants were under some sort of depression etc, has been produced. At this stage, the parents being under the shock, cannot be taken a plea for not filing the appeal in time.

The second explanation is that when in April 2015, the applicants discussed the matter with the trial Court counsel and they were told that if they are dis-satisfied, they can file appeal before the High Court. In this regard also, no explanation is coming forward that why the matter was not discussed from February 2013 to April 2015. Nothing has been

stated that what prompted the discussion in April 2015, after a period of two years of passing of the award.

Learned counsel for respondent No.3 has pointed out that the certified copy of the award was received on 28.2.2013.

Learned counsel for the applicants was specifically asked during the course of hearing that as to when they received the awarded amount. Counsel was not in a position to give any satisfactory answer. If they had received the amount in 2013 or 2014, that itself will show that there was meeting between the applicants and the counsel.

Hon'ble Apex Court has held that in ***Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459*** held as under :-

*8. We have considered the respective submissions.
The law of limitation is founded on public policy.
The legislature does not prescribe limitation with
the object of destroying the rights of the parties but
to ensure that they do not resort to dilatory tactics
and seek remedy without delay. The idea is that
every legal remedy must be kept alive for a period
fixed by the legislature. To put it differently, the law
of limitation prescribes a period within which legal
remedy can be availed for redress of the legal
injury. At the same time, the courts are bestowed
with the power to condone the delay, if sufficient
cause is shown for not availing the remedy within
the stipulated time. The expression "sufficient*

cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

Similarly, the decision of Division Bench of this Court in **Municipal Committee (now Municipal Corporation), Bathinda vs. Bachan Singh through his LRs and another, 2017(3) R.C.R. (Civil) 145** (P&H) (DB) refused to condone the delay of 1760 days and as the explanation was not satisfactory it was held in para 10 and 11, which are reproduced as under :-

10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 1760 days in filing and 85 days in refiling the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The learned Single Judge

decided the matter on 11.5.2011 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellant has filed the appeal on 5.4.2016 and refiled on 10.8.2016, after a colossal delay of 1760 days. The explanation of the appellant praying for condonation of delay in filing and refiling the appeal, as noticed hereinabove, is bereft of sufficient cause for delay caused in filing the appeal. Moreover, even after the judgment dated 26.11.2014 was passed accepting the appeal against the judgment on the basis of which order was passed in the present case, the Letter Patent Appeal was filed on 5.4.2016, i.e., after about one year and four months. There is no satisfactory explanation for this delay as well. The Government department is supposed to pursue its litigation with due diligence. A stale matter cannot be revived by approaching the Court belatedly.

11. In view of the above, finding no merit in the applications for condonation of 1760 days' delay in filing and 85 days' in refiling the appeal, the same are hereby dismissed and consequently, the appeal is dismissed as time barred.

In the the above decisions, it has been held that parameters for condoning the delay would be liberal in cases where there is a short period of

delay and approach would be stricter where the delay is substantial.

The Hon'ble Apex Court in **Vedabai @ Vijayanatabai Baburao Patil vs. Shantaram Baburao Patil, AIR 2001 (SC), 2582**, has held that where the delay is inordinate more than cautious approach should be adopted. It was further held that the Court has to exercise its discretion on the facts of each case.

Learned counsel for the applicants contended that a liberal approach should be adopted while condoning the delay. He relied upon the decision of Hon'ble the Apex Court in **Land Acquisition, Anantnag and another Versus Mst. Katiji and others**, 1987 AIR 1353. There is no quarrel with the proposition that while dealing with the condonation of delay, the term sufficient cause has to be liberally construed. This liberal approach cannot be extended to mean that where a prima-facie explanation is not coming forth, yet the delay has to be condoned. The main requirement is sufficient explanation for delay. In the present case, the explanation given is that applicants were under shock due to untimely death of their son. The explanation cannot be accepted for the reason that inspite of shock of untimely death, the claim petition was not only filed within two months of the accident, but the same was pursued also. After a lapse of almost three years, between the accident and passing of the award, the plea of shock as such may not be available. Further the certified copy of the award was prepared on 7.2.2013. The same is attached with the present FAO. There is no pleading that the said award was not received before 2015. The obvious conclusion is that if the award was received in 2013 itself, the applicants must have met the counsel. In such circumstance, second plea that it was only in 2015 when they met the trial Court counsel, they were guided that the appeal can be filed before the High Court, cannot be accepted.

In the absence of any reasonable explanation, finding no merit in the application for condonation of delay, the same is dismissed and consequently, the appeal is dismissed as time-barred.

13.10.2017

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**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No