

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

**CM-20272-73-CII-2015 in/and
FAO No.6462 of 2015 (O&M).
Date of Decision: 16.03.2017.**

Banta Singh

....Appellant.

VERSUS

Ramesh Bahadur Suba and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Gurnam Singh, Advocate for the appellant.

Service of respondent No.1 was dispensed with
vide order dated 09.09.2016.

Mr. B.R. Gupta, Advocate for respondent No.2.

Mr. R.C. Gupta, Advocate for respondent No.3.

SNEH PRASHAR, J.

An appeal was filed by the applicant-appellant assailing the award dated 06.10.2005 passed by Motor Accident Claims Tribunal, Patiala (for short, 'the tribunal') in Claim Petition No.56-T of 10.09.2003/15.06.2004 under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988') filed by legal heirs (including the applicant-appellant) of deceased Jang Singh, claiming compensation on account of death of Shri Jang Singh in a motor vehicular accident that took place on 06.04.2003. The other claimants besides the applicant-appellant were widow, three minor children and mother of deceased Jang Singh. An amount of Rs.3,70,000/-

alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization was awarded as compensation to the claimants. Out of the award amount, Rs.1,20,000/- alongwith interest was held to be share of claimant No.1(widow) and the remaining claimants No.2 to 6 (appellant being claimant No.6) were held entitled to a sum of Rs.50,000/- each alongwith interest thereon.

No appeal was preferred by the claimants within the period of limitation. After ten years now the applicant-appellant has filed an appeal and alongwith the appeal he has filed an application under Section 5 of the Limitation Act for condonation of delay of 2612 days in filing the appeal. There is also a delay of 835 days in refiling the appeal and for condoning the said delay also, an application under Section 151 of the Civil Procedure Code has been filed.

The aforesaid applications filed by the applicant-appellant are being opposed with vehemence by the respondents by filing reply to the applications separately.

The submissions made by Mr. Gurnam Singh, learned counsel representing the applicant-appellant, Mr. B.R. Gupta, learned counsel for respondent No.2 and Mr. R.C. Gupta, learned counsel representing respondent No.3-insurance company have been heard.

The reason for the delay enumerated by the applicant-appellant in his application for condoning the delay of 2612 days in filing the appeal is that his daughter in law informed him that she had filed an appeal against the award dated 06.10.2005. Subsequently, she left the matrimonial home and married one Manjit Singh. After he was able to trace the whereabouts of

the Tribunal on 15.04.2010. The appeal was prepared in all respects, but inadvertently the file got misplaced. On 26.09.2013, the file was traced and on the same day the appeal was filed. The file was returned with objections by the Registry on 03.12.2013, but the file again inadvertently got misplaced in the office of the counsel. On thorough search, it was traced on 07.07.2015 after which the appeal was refiled.

The applicant-appellant neither mentioned the date on which his daughter in law informed him that she had filed the appeal nor the date on which she left the matrimonial home and remarried. It does not appear plausible that the whereabouts of his daughter in law were not known to the applicant-appellant even when she had three minor children with her. It is also strange that for almost five years, the applicant-appellant did not make any effort to enquire where the appeal was pending. It is further strange that on 17.04.2010 after the appeal at the instance of the applicant-appellant was prepared, it got misplaced in the office of his counsel in Patiala and also that when it was found after three years and was filed in the Court but was returned with objection by the Registry, the file again got misplaced in the office of the Advocate representing the applicant-appellant in the instant appeal. Needless to say that it is a loosely cooked story which totally fails to inspire truth. No sufficient reason worth in its name could be explained by the applicant-appellant for a delay of almost eight years in filing and 2-¼ years in refiling the appeal.

It may be added that widow and the minor children of the deceased have not preferred any appeal till date. As submitted by learned counsel for the respondents, the widow had remarried and had gone abroad alongwith the children. The mother of the deceased, who in addition to the

widow and children, was entitled to compensation is stated to be dead. The applicant-appellant being father though was not a dependent of the deceased yet was allowed share in compensation awarded by learned Tribunal equivalent to the share given to each child and the mother. There can be no enhancement of compensation amount at his instance. Therefore also, the appeal filed by him at this stage is not maintainable.

Thus, finding no sufficient ground for condonation of delay in filing or refiling the appeal, both the applications filed by the appellant are dismissed. For the same reasons, the appeal is also dismissed.

(SNEH PRASHAR)
JUDGE

16.03.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**