

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

FAO-7114 of 2015 (O&M)  
Date of decision: 29.09.2017

Malkiat Kaur and others

.... Appellants

Versus

Raghubir Singh and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr.Ramandeep Singh, Advocate  
for the appellants.

Mr.Lalit Garg, Advocate  
for respondent No.3.

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**Avneesh Jhingan, J.**

The present appeal has been filed against the award dated 10.02.2000 passed by Motor Accidents Claims Tribunal, Gurdaspur (hereinafter referred to as the 'Tribunal').

Sumit Singh lost his life in an accident which occurred on 26.02.1997.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the parents and minor sister who is now stated to be married.

The Tribunal after considering the witnesses and evidence, awarded a sum of Rs.1,80,000/- along with interest @ 12% per annum.

The appeal has been filed after almost 15 years of passing the award. An application under Section 5 of the Limitation Act has been filed

for condoning the delay of 5566 days in the filing the appeal.

In the application, the explanation given for delay is that the papers along with award dated 10.02.2000 were handed over to Sh.D.P.S.Kahlon, Advocate in May 2000. It is stated that the clerk of Sh.D.P.S.Kahlon, Advocate informed the applicants that appeal has been filed and the same has been admitted. It is further stated that the Clerk informed that it would come up for hearing after 10-15 years. It is further stated that Sh.D.P.S.Kahlon, Advocate died on 18.10.2014. On coming to know about the death of the Advocate, the applicants went to the office of late Sh.D.P.S.Kahlon, Advocate in May, 2015 to take back the brief. The brief could not be traced out in the office and when it was checked from the High Court Registry, it came to their notice that no appeal has been filed. Thereafter, applicants applied for certified copy of the award on 02.06.2015 which was prepared on 09.06.2015 and in the first week of August, 2015, the appeal was filed.

Learned counsel for the applicants argued that this is the welfare legislation and this case is a hard case where the parents lost their young son in an accident and the amount awarded by the Tribunal is very meager.

Learned counsel for the respondent has argued that delay is almost of 15 years and no explanation worth acceptance has been furnished in the application.

I have heard learned counsel for both the parties and perused the paper-book and record.

There is no dispute that motor accidents claims are filed under

the welfare legislation. There is no dispute on the proposition that substantial justice must prevail over technicalities. The proposition of law is settled by a catena of decisions of the Hon'ble Apex Court that the sufficient cause mentioned in Section 5 of the Limitation Act should be applied with a liberal approach. In spite of all this, the fact remains that the statutory limitation is on the statute and has to be applied.

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.

Similarly, The Hon'ble Apex Court in **Pundlik Jalam Patil (D) by Lrs vs Exe. Eng. Jalgaon Medium Project & Anr., 2008(17) SCC 448**, has held as under :-

*It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.'*

In the present case, the delay is of 5566 days, which is not stretch of imagination and can not said to be short delay, therefore, liberal approach cannot be adopted.

Apart from the legal position discussed above, the perusal of the application, it would be clear that the explanation put forth is not supported by an iota of evidence. Firstly, the award was handed over to the counsel beyond the limitation prescribed under the Act. Thereafter, the stand that the clerk of the advocate informed that the appeal has been filed and same has been admitted is not supported by an affidavit. Thereafter, there was no inquiry or steps taken by the claimants even to have a copy of appeal filed or check the status of the pending case almost for 15 years. At this stage, it would be appropriate to be mentioned that though the counsel is no longer there but the application is not supported even by an affidavit of the clerk. Nothing has been brought on record to show that the documents were actually handed over to Mr.D.P.S.Kahlon, Advocate and some fee or expenses were paid to him.

In such circumstances, such claim cannot be allowed to be pursued after 15 years. There is no sufficient cause to condone the delay of 5566 days.

The application for condonation of delay is accordingly dismissed.

Consequently, the main appeal is dismissed as time barred.

**(AVNEESH JHINGAN)**  
**JUDGE**

**29.09.2017**  
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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes