

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7216 of 2015 (O&M)

Date of Decision: 27.09.2017

Dev Raj and others

.....Appellants

Versus

Baj Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. L.S. Mann, Advocate
for the appellants.

Mr. J.S. Ghumman, Advocate
for respondent No.1.

Ms. Shamsher Kaur, Advocate
for respondent No.2.

Mr. M.B. Jain, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

C.M. No.22695-CII of 2015

This is an application under Section 5 of the Limitation Act for condonation of delay of 994 days in filing the present appeal, which is supported by an affidavit.

Though delay period is long but in this case since two minor children of the deceased lady are involved, therefore, a sympathetic view is being taken.

From perusal of the application, it appears that this is a classic case where litigants under the present system have blind faith upon the

counsel. As per reasons given in para-3 of the application, the matter was handed over to the counsel for filing of the appeal and even an amount of Rs.2000/- was paid to him. The counsel instead of filing the appeal kept the papers with him in order to get more money, as according to him, the fee was not settled. It appears that on one hand the counsel let the limitation expire and on other hand he never, in so many words, informed the applicants that their case would not be filed until and unless his account is settled.

In this background that delay of 994 days has occurred in filing the present appeal.

The applicant took the case record from the said counsel and approached another counsel, thereafter, the present appeal has been filed.

Learned counsel for the respondents have opposed the application for condonation of delay on the ground that the delay is for a substantial period and the same should not be condoned.

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

The law is well settled on the issue of condonation of delay. Hon'ble the Apex Court, has time and again held that substantial justice should not be allowed to suffer on account of technicalities.

Hon'ble the Apex Court in **Prabha Vs. Ram Parkash Kalra**, 1987 Supp. SCC 339, had held that Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay.

In **O.P. Kathpalia Vs. Lakhmir Singh**, 1984 (4) SCC 66, Hon'ble the Apex Court has held that if refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

In G. Ramegowda, Major Vs. Spl. Land Acquisition Officer,

1988 (2) SCC 142, it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preparing the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of delay.

In case of **N. Balakrishnan Vs. M. Krishnamurthy,** 1998 (7)

SCC 123, the Hon'ble Apex Court has held as under:

"9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory....."

10.....The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

In **Ramlal Vs. Rewa Coalfields Ltd.,** (1962) 2 SCR 762,

Hon'ble the Apex Court has held as under:

"In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the

decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decreeholder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice."

In the present case, though delay cannot be said to be of a short period but reasons given are sufficient for condoning the delay. One can imagine the plight of a family where a young lady aged 35 years died leaving behind three children, two of them minor.

In such circumstance, it cannot be expected from the husband that he would be vigilant enough to keep running after the counsel to know about the fate of his case.

In such circumstances, even the counsel is under social duty to have humanitarian touch while dealing with such cases.

In the present case, the party would not have gained anything by delaying the filing of the appeal. The present is the case where misdemeanour of the counsel has made the claimants to suffer. The Court cannot be a party to the suffering of innocent party merely because his chosen advocate defaulted. In order to discharge the primary function of the Court to adjudicate dispute between the parties and to advance substantial justice, the delay should be condoned in the present case.

Keeping in view the facts and circumstances of the case, delay of 994 days in filing the appeal is hereby condoned.

FAO No. 7216 of 2015

The present appeal has been filed against the award dated 10.10.2012 passed by the Motor Accidents Claims Tribunal, Ludhiana (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal are as under:

On 7.11.2009 Smt. Meenu, aged 35 years, lost her life in a motor vehicular accident. She was a pillion rider on motor cycle bearing registration No.PB-10-BR-6362. The said motor cycle was struck by a truck bearing registration No.PB-05-J-5313 which was being driven rashly and negligently at a very fast speed. As a result of the impact, Smt. Meenu fell down and was crushed under the wheels of the truck. She died on the spot. FIR No. 72 dated 7.11.2009 was registered at Police Station Laddowal, District Ludhiana.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by her husband, two minor children and a son.

The Tribunal awarded a sum of ₹ 4,09,000/- alongwith interest at the rate of 9% per annum. The said amount includes ₹ 5000/- for funeral expenses, ₹ 10,000/- for loss of consortium and ₹ 10,000/- for loss of estate.

The facts have not been disputed by either of the parties.

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

The only issue raised by learned counsel for the appellants is

that the amount awarded under various heads is on the lower side and nothing has been awarded for loss of love and affection.

Learned counsel for the respondents could not raise any serious objection with regard to awarding of compensation under the head of loss of love and affection, though counsel for respondent No.2 raised objection to the enhancement of the amount already awarded. She further argued that adequate compensation has already been awarded.

Learned counsel for the appellants has not challenged the income assessed by the Tribunal.

The contention of learned counsel for the appellants with regard to awarding the amount for loss of love and affection deserves acceptance.

Hon'ble the Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767***, held as under:

*“17. Further, the High Court has erred in awarding only ₹ 5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award ₹1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation, 2014 (2) R.C.R.(Civil) 876: 2014 (3) Recent Apex Judgments (R.A.J.) 112: 2014 (5) SCALE 479, ₹ 25,000/- towards funeral expenses and ₹ 1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013 (3) R.C.R. (Civil) 170; 2013(3) Recent Apex Judgments (R.A.J.).659; (2013) 9 SCC 54.*****

18. Further, we award ₹ 1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision

*of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjamma Mohan & Ors.**, 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166. Further, a sum of ₹ 50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs. United India Insurance Co.Ltd.**, 2013(4) R.C.R.(Civil) 729 : 2013(5) Recent Apex Judgments (R.A.J.) 516 : 2013 (12) SCALE 324.*

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads-loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love, care and guidance of the minor children.

Hon'ble the Apex Court in **Rajesh and others Versus Rajbir Singh and others**, 2013 (9) SCC 54, has held as under:

“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of ₹ 2500/- to ₹ 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased.”

A perusal of the above decisions shows that the compensation

under the heads mentioned therein is to be awarded.

From perusal of the above decision of Hon'ble the Apex Court, it is evident that the amount awarded by the Tribunal under various conventional head needs to be enhanced in the present case.

An amount of ₹ 1,00,000/- is awarded for loss of love and affection.

The amount awarded by the Tribunal is enhanced as per the table given below:

<i>Sr. No.</i>	<i>Description</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Loss of dependency	₹ 3,84,000/-	₹ 3,84,000/-
2	Funeral expenses	₹ 5000/-	₹ 25,000/-
3	Loss of consortium	₹ 10,000/-	₹ 50,000/-
4	Loss of estate	₹10,000/-	₹ 25,000/-
5	Loss of love and affection	Not awarded	₹ 1,00,000/-
	Total	₹ 4,09,000/-	₹ 5,84,000/-

The award dated 10.10.2012 is modified to the extent that the amount of ₹ 4,09,000/- awarded by the Tribunal is enhanced to ₹ 5,84,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the appeal till realization of the amount.

It is clarified that the liability to pay compensation to the claimants would be the same as has been held by the Tribunal.

27.09.2017

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No