

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

**FAO No.1223 of 2017 (O&M)
Date of decision: 22.02.2017**

M/s Mundian Carriers (India)

..Appellant

Versus

Kamal Kumar and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Sunil Kumar Nehra, Advocate
for the appellant.

Daya Chaudhary, J.

The present appeal has been filed to challenge impugned award dated 21.07.2015 passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter called as 'the Tribunal'), whereby, claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short ' the Act') for grant of compensation was allowed and the claimants have been awarded compensation to the tune of ₹8,47,000/-.

The present appeal has been filed after a delay of 430 days and an application for condonation of delay has been moved, which has been supported by an affidavit. The only reason mentioned for condonation of delay is that the delay was not intentional but it has occurred due to lack of knowledge as no proper guidance about filing the appeal in time was there.

Briefly, the facts of the case are that deceased-Kishore Kumar along with one Arshdeep @ Manni was coming to his house from Mehtiana by riding on motorcycle bearing registration No. PB-07AC-1872. Brother of

deceased was also following him. When they reached in the area of Davida Ahrana, a truck bearing registration No. HR-55N-5138, which was being driven in a rash and negligent manner, came from behind and struck against the motorcycle, due to which, Kishore Kumar died at the spot. FIR No.86 dated 20.08.2013, under Sections 279, 337, 304-A, 427 IPC was registered at Police Station Mehtiana, District Hoshiarpur. The claimants being brothers of deceased-Kishore Kumar filed claim petition before the Tribunal, which was allowed and they were awarded compensation amounting to ₹8,47,000/-.

The present appeal has been filed to challenge impugned award dated 21.07.2015 by raising various grounds and along with appeal, an application under Section 173 of the Act has also been filed for exemption from depositing the required amount.

Learned counsel for the appellant submits that the claim petition was not maintainable as both the claimants being brothers were not dependent upon the deceased. The driver of the alleged offending vehicle was not possessing the valid and effective driving licence at the time of accident. Learned counsel also submits that the accident had occurred due to negligent driving of the deceased himself and a false case was registered against the driver and owner of the offending vehicle. At the end, learned counsel for the appellant submits that the claimants were not entitled for compensation.

Heard arguments of learned counsel for the appellant and have also perused the impugned award as well as other documents available on the file.

Undisputedly, the appeal has been filed after delay of 430 days. No doubt, an application for condonation of delay has been moved on the ground that no proper guidance was there about the filing of appeal in time.

On perusal of application as well as the affidavit, it is apparent that an inordinate delay of 430 days in filing of the appeal has not been well explained with valid and cogent reasons. The explanation has been given in a very casual manner that no proper guidance was there for filing the appeal in time. No credible or trustworthy reasons have been mentioned for explaining the delay of 430 days. In case, there is inordinate delay, the parties are bound to explain each day's delay in filing the appeal by specifying the dates and events. In case, sufficient reasons are not mentioned in the application, the delay cannot be condoned.

Hon'ble the Apex Court in ***State of Nagaland vs. Lipok Ao, 2012(5) SCC 157***, in paragraphs 24 and 25 has held as under: -

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In case involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest".

After holding the same, Hon'ble the Apex Court in paragraph 28 has stated as follows: -

"28.The application filed for condonation of delay and the affidavits of Shri Sirsikar are conspicuously silent on the following important points:

(a) The name of the person who was having custody of the record has not been disclosed.

(b) The date, month and year when the papers required for filing the first appeals are said to have been misplaced have not been disclosed.

(c) The date on which the papers were traced out or recovered and name of the person who found the same have not been disclosed.

(d) No explanation whatsoever has been given as to

why the applications for certified copies of the judgments of the trial court were not filed till 23-08-2010 despite the fact that Shri Sirsikar had given intimation on 12-5-2003 about the judgments of the trial court.

(e) Even though the Corporation has engaged a battery of lawyers to conduct cases on its behalf, nothing has been said as to how the transfer of Shri Ranindra Y. Sirsikar operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against."

Similar view has also been taken by Hon'ble the Apex Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, Civil Appeal No. 8183-8184 of 2013 arising out of S.L.P.(C) Nos. 24868-24869 of 2011 in its judgment dated 13th September, 2013.***

Similarly, Hon'ble the Apex Court in ***Balwant Singh (dead) vs. Jagdish Singh and others, 2010 (92) AIC 103(SC)***, while interpreting the word 'sufficient cause', has laid down the principle, which is as under: -

"37. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom (supra). In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while

dealing with applications filed under the provisions of Order 22, Civil Procedure Code along with an application under Section 5 of the Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In SCC para 13 of the judgment, the Court held as under: (SCC pp.329-30)

"(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the

appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

*(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay **in re-filing the appeal after rectification of defects, (2008) 8 SCC 321.***

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect

the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

(emphasis in original)”

In another judgment of Hon'ble the Apex Court in ***Basawaraj and another vs. Special Land Acquisition Officer, 2013(14) SCC 81***, the 'sufficient cause' for the purpose of condonation of delay has been explained, which is as under: -

“Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there

*was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The Court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: **Manindra Land and Building Corporation Lrd. v. Bhootnath Banerjee & Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v. Veena @ Bharti, 2011 (2) R.C.R. (Civil) 155; 2011 (1) Recent Apex Judgments (R.A.J.) 611 and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629.**)*

In Arjun Singh vs. Mohindra Kumar, AIR 1964 SC 993,

Hon'ble the Apex Court explained the difference between a “good cause”

and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”.

In the present case, neither the delay has been explained nor any convincing grounds have been mentioned. Simply by mentioning in one line that no guidance was there for filing of appeal, is not a sufficient ground to condone the delay.

Even on merits also, the driving licence of the driver was proved on record as Ex.R-1 i.e., report of the Regional Transport Officer, Mokokchung, Nagaland, which was received from said office under the Right to Information Act by moving application and copy thereof was exhibited as Ex.R-2. The copies of the registration certificate and the route permit of the offending vehicle were also placed on record. It was for the insurance company to prove as to whether the documents were genuine or not. No evidence otherwise was placed on record. It cannot be said that the driver was not possessing a valid driving licence. The amount of compensation at the first instance is to be paid by the Insurance company and thereafter, the insurance company is at liberty to recover the same from the owner and driver jointly and severally. The insurance company has no right to challenge the award passed by the Tribunal on this ground.

There is no force in the argument raised by learned counsel for the appellant that the claimants were not entitled for compensation being brothers. Brothers/sisters of the deceased, who are bachelor and their parents are not alive, are entitled to claim compensation, if they were

dependent upon the deceased.

This view has been taken in *Divisional Manager, New India Assurance Company vs. G. Selvi and others, 2014 ACJ 293.*

Similarly, in *Managing Director, KSRTC vs. Venkataramappa K.S. And others II (2002) ACC 81 (DB)*, it was observed that in case of death of a male Hindu intestate and unmarried in the absence of Class-I heir of the deceased, his brothers and sisters will come as Class-I legal heir under Hindu Succession Act and they are competent to seek compensation under the provisions of the Act.

Same view was taken by Hon'ble the Apex Court in *Gujrat State Road Transport Corporation Ahmedabad vs. Ramanbhai Prabhatbhai and another, 1987 AIR 1690 (SC).*

In view of the facts and law position as discussed above, the appeal fails not only on the ground of delay but on merits as well and as such, the same being devoid of any merit is dismissed.

22.02.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No