

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

FAO No.1530 of 2017(O&M)

Date of decision: 31.7.2017

Satya Dev Upadhya

.....Appellant

VERSUS

Prem Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rahul Rampal, Advocate for the applicant-appellant.

REKHA MITTAL, J.

CM No.5118-CII of 2017

Prayer in this application is for condoning delay of 83 days in re-filing the appeal.

Heard.

In view of the averments made in the application supported by an affidavit of Satya Dev Upadhya- appellant, the application is allowed. Delay of 83 days in re-filing the appeal stands condoned.

Disposed of accordingly.

CM No.5120-CII of 2017

The applicant-appellant prays for condonation of delay of 362 days in filing the appeal.

Counsel for the applicant-appellant, in line with the allegations raised in para 2 and 3 of the application has submitted that the Motor Accidents Claims Tribunal, Ludhiana (in short 'the Tribunal') passed the award on 28.07.2015 but his counsel before the Tribunal did not inform

him about passing of the award and he came to know about passing of the award after November 2015. He contacted an Advocate practising in Punjab and Haryana High Court, Chandigarh for filing the appeal but was unable to arrange Rs.25,000/- to deposit the statutory amount nor could arrange funds for payment of counsel's fee. The earlier counsel neither filed the appeal nor informed the applicant with regard to non-filing of the same. Thereafter, he contacted the present counsel and the appeal was preferred with an application seeking exemption from depositing the requisite amount. It is further submitted that delay in filing the appeal is neither intentional nor mala fide. The applicant will suffer irreparable loss and injury in case delay in filing the appeal is not condoned. The application is supported by an affidavit of applicant Satya Dev Upadhya.

I have heard counsel for the applicant and perused the records.

Before advertng to the submissions made by counsel for the applicant, it is appropriate to note that Prem Chand and others filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') for grant of compensation in respect of death of Bache Lal in a motor vehicular accident that took place on 06.01.2013 at about 7:15 due to rash and negligent driving of motorcycle bearing No.PB10-DC-9617 by Satya Dev Upadhya. The petition filed in March 2013 culminated in award dated 28.07.2015 whereby compensation to the tune of Rs.14,09,000/- was assessed in favour of the claimants.

The applicant was being represented by a counsel in those proceedings. In the said case, the applicant appeared in the witness box to counter case of the claimants with regard to accident being the result of rash and negligent driving on his part. Once the applicant had been contesting the proceedings before the Tribunal, he was under an obligation

to remain in touch with his counsel to know about fate of the case. The allegations raised in para 2 of the application that the applicant learnt about the award after November 2015 are quite vague as he has neither specified the date of knowledge of the award nor the source through whom he came to know about passing of the award. Similarly, he has not given the name of advocate contacted by him for filing an appeal before this Court. This apart, once the applicant has not paid counsel's fee, there was no occasion for the said advocate to file an appeal on behalf of the applicant. It appears to the Court that the allegations raised in para 2 of the application are bereft of truth and have been concocted with a view to seek indulgence of the Court for condoning huge delay of 362 days.

On a pointed query raised by the Court, counsel for the applicant has fairly informed that till date, the applicant has not paid even a single penny to the claimants despite the award being passed two years ago. Though no doubt, the Court is required to be liberal in condoning delay in filing an appeal so that meritorious claim of a party may not be thrown overboard due to technical considerations but at the same time, a party who sleeps over his right has no right to seek indulgence of the Court in exercise of discretionary jurisdiction. Examined from another angle, in case the application for condoning delay of 362 days is allowed and the claimants are called upon to contest the appeal, it would be a serious setback to them who lost the bread winner of the family consisting of his widow aged 30 years and three minor children aged 8, 7 and 1 year and the parents. In this view of the matter, in my considered opinion, the applicant has failed to establish his plea that there are sufficient grounds for condoning delay of 362 days in filing the appeal.

For the foregoing reasons, the application for condonation of delay stands dismissed. As a natural corollary, the appeal preferred by the applicant is dismissed being barred by limitation.

JULY 31, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no