

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

FAO No. 5059 of 2017 (O&M)

Date of Decision: September 22, 2017

Bharti Axa General Insurance Co. Ltd.

..Appellant

Versus

Karan Kumar and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Sanjeev Goyal, Advocate and
Mr. Rajbir Singh, Advocate
for the applicant/appellant.

REKHA MITTAL, J.

CM-15509-CII-2017

Prayer in this application is for condoning delay of 111 days in filing the appeal to assail the award dated 13.12.2016 passed by the Motor Accidents Claims Tribunal, Fazilka (hereinafter to be referred as the Tribunal) whereby compensation has been awarded in regard to death of Gagan son of Bhanwar Lal in a motor vehicular accident that took place on the intervening night of 13/14.11.2012. The Tribunal has awarded compensation to the tune of Rs.9,34,600/-, payable with interest @ 9% per annum from the date of petition till payment.

The application under Section 5 of the Limitation Act (in short 'the Act) for condonation of delay of 111 days has been filed in view of the

allegations raised in para 2 thereof, which read as follows:

“That after passing the award dated 13.12.2016 the certified copy of the same was applied by the Counsel before the Ld. Tribunal, the same was prepared on 06.01.2017. After receipt the certified copy of the same was sent to the Divisional Office of the appellant-insurance company by the Ld. Counsel before the MACT, which was received in the office. Thereafter, the Divisional Office sent the same to Regional Office at Bangalore. In the month of January/February, 2017, the process to shift the partially legal office pertaining to the Punjab & Haryana Region to Chandigarh is started and the files pertaining to the Chandigarh office were sent in January 2017. The file of the present case is pertaining to the legal office at Chandigarh (Punjab Region), but inadvertently the same was left in Benglore office. In the first week of May 2017, this file was located in the Bangalore office and the same was sent back to Chandigarh office and thereafter inadvertent mistake was pointed out and the approval for filing the appeal was conveyed to the legal team by the regional office. Thereafter the DD of statutory amount was prepared on 08.05.2017 and after completing all the documents along with the statutory amount the file of the present case was sent to the undersigned counsel through courier, which was received on 04.07.2017. In this way, the delay in filing the appeal has occurred. Hence the appeal is being filed without any further delay.”

The application is supported by an affidavit of Shambu Kumar, Executive Legal Claims Bharti Axa General Insurance Co. Ltd.

Counsel for the applicant/appellant has submitted that delay in filing the appeal is not intentional but due to the time consumed in

processing the case and file pertaining to the legal office at Chandigarh being inadvertently left in Bangalore Office. Counsel has further submitted that law regarding condonation of delay under Section 5 of the Act is quite liberal. It has been consistently held by the Courts that a Court should not adopt a pedantic approach while dealing with an application for condonation of delay so that contesting claims of the parties are not rejected at the threshold without providing an opportunity of being heard on merits. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others* 2013(4) RCR (Civil) 785, *Central Bank of India Vs. Jagbir Singh* 2015(14) SCC 788 and *Chandan Singh Vs. National Insurance Co. Ltd. & Another* 2015(1 RCR (Civil) 920.

I have heard counsel for the applicants/appellant, perused the paper book particularly the averments raised in para 2 of the application.

Several appeals preferred by the insurance company FAO No. 4740 of 2016 and connected appeals were dismissed by this Court vide judgment dated 17.10.2016 as applications for condonation of delay of different days were dismissed and resultantly the appeals were dismissed being barred by the limitation. Counsel for the appellant, on a query, has fairly informed that challenge to the aforesaid order dated 17.10.2016 was rejected by Hon'ble the Supreme Court. The controversy raised in the application for condonation of delay is squarely covered by the judgment of this Court passed in the aforesaid appeals decided on 17.10.2016. As a

consequence, application for condonation of delay is dismissed. As a natural corollary, the appeal is dismissed being barred of limitation. No order as to costs.

(REKHA MITTAL)
JUDGE

September 22, 2017
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No