

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

CM No. 20029-CII of 2017 in/and
FAO No. 6219 of 2017

DATE OF DECISION : 07.12.2017

Smt. Ram Rati and another

.... APPELLANTS

Versus

Heera Lal and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sandeep Verma, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J. (Oral)

This appeal has been filed against the award dated 28.10.2010 passed by the Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal').

Pinki, aged 16 years, lost her life in a motor vehicular accident that occurred on 05.09.2009. She was struck by a rashly and negligently driven truck bearing registration No. HR-47-6575. As a result of the accident, she lost her life.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was instituted by the legal heirs of the deceased on 16.10.2009.

The Tribunal, vide award dated 28.10.2010, awarded a sum of ₹ 3,05,000/- along with interest at the rate of 6% per annum.

Aggrieved of the said award, the present appeal has been filed for enhancement of compensation. The appeal is accompanied by an application (CM No. 20029-CII of 2017) for condoning the delay of 2247 days.

The explanation put forth for condonation of delay is that the applicants received certified copy of the award on 09.11.2010 but they never knew that they can file further appeal. Moreover, they were in shock due to death of Pinki. It is further stated that the applicants are poor and illiterate persons, therefore, they did not know further recourse. It was only in the first week of March, 2017 that the applicants' counsel gave them advise regarding filing of the appeal.

The explanation given is not worth acceptance. Firstly, it is to be noticed that Pinki lost her life on 05.09.2009. The claim petition was filed on 16.10.2009, i.e. within one and half months of the accident. The said claim petition was duly pursued and evidence was adduced. Certified copy of the award dated 28.10.2010 was provided to the applicants on 09.11.2010. The claim petition was filed and was pursued, during the said period, approximately one year had passed. The explanation that the applicants were in shock and hence could not file the appeal cannot be accepted. There is no doubt that the mother who had lost her young child will remain in shock and would be suffering for rest of her life but the fact remains that inspite of all these events, the claim petition was filed within one and half months of the death and one year thereafter, it is stated that

because of shock of death of the girl, further appeal was not filed.

It has further been stated that the applicants are poor and illiterate people and did not know the further recourse. This explanation can also not be accepted. They had engaged a lawyer who had filed the claim petition. The certified copy of the award was received by them. At that stage, neither it has been stated nor it is expected that the counsel will not advise them that the said award is further appealable.

There is no explanation coming that what was the the instance in March, 2017 that the applicants met the counsel after almost six and half years and sought advise regarding further course of action. It just appears to be a made up story to cover the inordinate delay.

The Hon'ble Apex Court 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."

In the above decision, it has been held that a liberal approach should be adopted, where the delay is of short period and a conscious decision is to be taken, where the delay is inordinate.

In the present case, there is delay of 2247 days in filing the appeal, which cannot be said to be of a short period. Hence, in view of the aforesaid decision, a conscious decision is to be taken for condoning the inordinate delay.

So far as the liberal approach in condonation of delay is concerned, it cannot be taken to the extent that where sufficient explanation is not coming forth, delay should be condoned.

A Division Bench of this Court in case of **Municipal Committee (now Municipal Corporation), Bathinda vs. Bachan Singh through his LRs and another**, 2017 (3) R.C.R. (Civil) 145 (P&H) (DB),

while refusing to condone the delay of 1760 days as the explanation was not satisfactory, held 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 **P.K. Ramachandran Vs. State of Kerala and another**, 1997

(4) RCR (Civil) 242, the Hon'ble Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under :-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

In the above decisions, it has been held that explanation of sufficient cause will depend upon the facts of the case. If no satisfactory explanation is coming forth, delay should not be condoned. As discussed above, the explanation furnished by the applicants cannot be said to be satisfactory.

Similarly, the Hon'ble Apex Court in **Pundlim Jalam Patil (D) by LRs Vs. Exe. Eng. Jalgaon Medium Project and another, 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 claim on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.’”

Further, in **Amalendu Kumar Bera and others v. The State of West Bengal 2013(2) RCR (Civil) 534**, the Hon'ble Apex Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned. In case of serious negligence, the delay should not be condoned.

For the reasons mentioned above and the decisions cited above, the explanation put forth by the applicants cannot be accepted and the inordinate delay of 2247 days cannot be condoned.

The net result is that the application for condonation of delay is dismissed. Consequently, the appeal is also dismissed being time barred.

December 07, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes