

**C.M. No. 27604-CII of 2017 in/and
FAO No. 8480 of 2017 (O&M)**

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

**C.M. No. 27604-CII of 2017 in/and
FAO No. 8480 of 2017 (O&M)**

Date of Decision: 22.12.2017

Krishan Kumar

.....Appellant

Versus

Prem Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. J.P. Sharma, Advocate
for the applicant-appellant.**

AVNEESH JHINGAN, J.

The appeal has been filed against the award dated 16.11.2015 passed by the Motor Accidents Claims Tribunal, Rewari (for short 'the Tribunal').

In a motor vehicular accident that occurred on 21.3.2014 the offending vehicle was TATA Ace bearing registration No.HR-47-B-8941.

As a result of the accident Bhawani Singh lost his life. FIR No. 62 was registered at Police Station Bawal.

Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the legal heirs of the deceased. The Tribunal awarded a sum of Rs.2,96,000/- alongwith interest at the rate of 7.5% per annum. Since, there was no permit, route permit or valid driving licence and fitness certificate, the Insurance Company was not liable to identify the insurer, driver and owner were jointly and severally held liable to pay compensation .

Aggrieved of the said award, the driver of the offending vehicle has filed the present appeal, which is accompanied by an application under

Section 5 of the Limitation Act, for condoning the delay of 669 days in filing the appeal.

The reason mentioned in the application for condonation of delay is that the applicant was under the impression that he was liable to pay only 50% of the liability and he deposited the same on 15.9.2017 before the Executing Court. In spite of his deposit of 50% of the amount, arrest warrants were issued. It was thereafter that the appeal along with the application was filed.

The application filed gives no detail that on whose advice the applicant was under impression that he was only liable to pay 50% of the liability. The words used in the award were plain and simple that respondents No. 1 and 2 would be jointly and severally liable. It appears that the driver and owner were trying to stall/delay the proceedings. As per the averments in the application, the owner has not even filed the appeal. It is only when the arrest warrants were issued, the present appeal has been filed which is delayed by 669 days.

No doubt a liberal view should be taken for condoning the delay but the present is a case where the applicant was negligent in pursuing his remedy of appeal. The delay has made the claimants who have lost their bread earner to run from pillar to post in order to get the award executed. It is at the fag end of the execution proceedings when he feared that now he would be behind the bars, that the present appeal has been filed.

There is another aspect of the matter i.e. the owner and driver were proceeded ex parte before the Tribunal in the claim petition. Even in the execution filed they were proceeded ex-parte. This talks volume about the conduct of the appellant that how seriously he was taking the litigation.

The driver at belated stage had deposited 50% of the amount in Executing proceedings.

Section 5 of the Limitation Act, cannot be relied upon by such persons who were negligent in pursuing their remedy and are not giving sufficient explanation for condonation of delay.

Reliance in this regard is placed upon the decision of 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 explanation of sufficient cause will depend upon the facts of the case. If no satisfactory

explanation is coming forth, delay should not be condoned.

Further, Division Bench judgment 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."

From the perusal of the above decision, it is evident that there has to be a satisfactory explanation put forth for condonation of delay.

In the present case, there is no explanation much less satisfactory explanation for condonation of delay.

The Hon'ble Apex Court in **Pundlik Jalam Patil (D) by Lrs. Versus 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 claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights.'”

It was held that when applicants' conduct suggest neglect stale claim should not be re-opened.

In the present case, the explanation put forth itself establishes

negligence on part of the applicant. He was proceeded ex-parte in claim petition as well as in execution proceedings. Only on issuance of arrest warrants the appeal was filed. In such circumstance, delay cannot be condoned mechanically .

In case *Amalendu Kumar Bera and others Versus 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, the application for condonation of delay is dismissed.

As a result, the appeal is also dismissed as time barred.

22.12.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No