

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

**RA-CR-13-CII of 2017 (O&M) in
FAO No. 5592 of 2015**

Date of decision : 17.02.2017

Nitin Kumar

.....Applicant

Versus

Rakesh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Alok Jagga, Advocate for applicant-appellant.

DARSHAN SINGH, J.

CM No.2959-CII-2017

The present application has been filed by the applicant-appellant under Section 5 of the Limitation Act for condonation of 330 days delay in filing the application for review of the order dated 12.02.2016 passed by this Court.

It is pleaded in the application that the delay in filing the application has occurred as the applicant-appellant was advised that until and unless the amount of ₹25,000/-, as required under Section 173 of the Motor Vehicles Act, 1988 (for short – the 'Act'), is arranged, it would not serve any useful purpose to file the application. He has filed the application immediately after he was in a position to arrange the aforesaid amount.

It is the settled principle of law that the sufficient cause to

condone the delay should receive liberal interpretation. The *lis* should be decided on merits rather than on technicalities.

Thus, keeping in view the reasons mentioned in the application, same is hereby allowed and the delay of 330 days in filing the accompanying review application is hereby condoned.

RA-CR-13-CII of 2017

This application has been moved by the applicant-appellant Nitin under Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (for short – the 'CPC') to review the order dated 12.02.2016 passed by this Court, vide which the appeal filed by the applicant-appellant was dismissed on the ground that he has not deposited the statutory amount of ₹25,000/- as required under Section 173 of the Act.

2. As per the averments in the application, the applicant is 27 years of age. On account of certain dispute in the family, he was disinherited by his parents since 21.12.2009. He had to leave the parental house at a young age and had no means of income. He was having qualification of 10+2 and even his qualification could not award him some reasonable means of employment. The applicant used to perform meagre jobs, at times even the daily wages, to earn the bread and butter for himself. The applicant did not have any kind of savings, which he could use to deposit ₹25,000/- as required under Section 173 of the Act.

3. It is further pleaded that the learned Tribunal has passed the award dated 30.08.2011 completely on the basis of conjectures and

surmises. The learned Tribunal has also exonerated the Insurance Company simply on the ground that the applicant was not having the driving licence. While arriving at the findings that applicant was driving the vehicle, the Tribunal has mainly relied upon the fact that the applicant was facing the criminal trial, but now the applicant has been acquitted in the criminal case by the learned Judicial Magistrate First Class, Sonipat vide judgment dated 29.04.2016. It is further pleaded that merely because the applicant was unable to pay the statutory amount at the initial stage and now he has been able to arrange the same by borrowing from his various friends, the door of justice should not be closed for him and the case must be tried on merits rather than foreclosing the rights on technicalities. The inability of the applicant to deposit the statutory amount of ₹25,000/- was on account of circumstances narrated above, which were completely beyond the control of the applicant. Hence, this application.

4. I have heard Mr. Alok Jagga, Advocate, learned counsel for the applicant and have gone through the record of the case carefully.

5. Learned counsel for the applicant contended that the applicant-appellant is a poor person. He was disinherited from the properties of his parents. He had qualification only up to 10+2 and was not in a position to have any good employment, so he had no source of income to deposit ₹25,000/- at the time of filing the appeal as required under Section 173 of the Act. He contended that now the applicant has been able to arrange the said amount and is ready to deposit the same.

6. Learned counsel for the applicant further contended that the findings of the learned Tribunal holding the applicant negligent for causing this accident was simply based on the fact that he was facing the criminal trial but now he has been acquitted of the said criminal charges by the learned Judicial Magistrate First Class, Sonipat vide judgment dated 29.04.2016. Thus, he contended that the applicant-appellant has a good *prima facie* case and the findings of the Tribunal were based on conjectures and surmises.

7. He further contended that the appellant should be allowed to contest the appeal on merits and he should not be non-suited on technicalities. Thus, he pleaded that the order dated 12.02.2016 passed by this Court may be reviewed.

8. I have duly considered the aforesaid contentions.

9. Respondent Rakesh has filed the claim petition under Section 166 of the Act for grant of compensation on account of the injuries suffered by him in the motor vehicular accident, which took place on 09.10.2009. As per the averments in the claim petition, applicant-appellant Nitin Kumar who caused the accident was driving the offending vehicle Santro Car bearing registration No.DL-4CJ-3592 in a rash and negligent manner. The said claim petition was allowed by the learned Tribunal vide award dated 30.08.2011. A sum of ₹12,47,739/- was awarded as compensation to respondent-claimant Rakesh. The present applicant-appellant Nitin Kumar, the driver and Ms. Saveta Sharma, the subsequent

owner of the car, were held liable for payment of the amount of compensation. Applicant-appellant filed the appeal bearing FAO No.5592 of 2015 with a delay of 1337 days. Section 173 of the Act reads as under : -

“173. Appeals. – (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees of fifty per cent, of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.”

10. First proviso to Section 173 sub-section (1) provides that no appeal shall be entertained by the High Court unless the person who was required to pay the amount of compensation has deposited with it ₹25,000/- or 50% of the compensation amount which ever is less. So, the deposit of ₹25,000/- by the applicant-appellant was a condition precedent to get his appeal entertained by this Court.

11. The provisions of Section 173 (1) of the Act are mandatory in nature. Along with the appeal the applicant filed CM No.17653-CII-2015 for seeking exemption from depositing the said statutory amount of ₹25,000/-. Learned counsel for the applicant-appellant had withdrawn that

application on 17.11.2015 and following order was passed by the Coordinate Bench of this Court:-

“CM-17653-CII-2015

Learned counsel for the applicant-appellant submits that he may be permitted to withdraw the application filed under Section 151 CPC read with Section 173 of the Motor Vehicles Act, 1988, with liberty to file afresh with better particulars.

Dismissed as withdrawn, with liberty aforesaid.

MAIN CASE

Adjourned to 12.01.2016.”

12. The applicant-appellant again moved CM No.26731-CII-2015 for the same purpose *i.e.* for seeking exemption to deposit the statutory amount of ₹25,000/-. The said application was again dismissed as withdrawn on 12.01.2016 on the request of learned counsel for the applicant-appellant as he has sought time to deposit the statutory amount of ₹25,000/-. On that day, the following order was passed by this Court:-

“CM No.26731-CII of 2015.

Learned counsel for the applicant-appellant states that the appellant will deposit the amount of ₹25,000/- within a period of one month. The present application may be dismissed as withdrawn.

In view of above, the present application is hereby dismissed as withdrawn.

FAO No.5592 of 2015

On request of learned counsel for the appellant, the matter stands posted to 12.02.2016.

In the meanwhile, the appellant will deposit the statutory amount of ₹25,000/- with the Registry.”

13. But, even thereafter, the applicant-appellant did not complied with the mandatory provisions of Section 173 (1) of the Act and did not deposit the statutory amount of ₹25,000/- and his appeal was dismissed vide order dated 12.02.2016. The aforesaid orders show that both the applications moved by the applicant-appellant to seek exemption to deposit the statutory amount of ₹25,000/- were dismissed as withdrawn. On the second time *i.e.* 12.01.2016, learned counsel for the applicant-appellant had even sought one month's time to deposit the aforesaid amount, which was duly granted. But the said amount was not deposited by the applicant-appellant in spite of availing sufficient opportunity. Thus, his appeal was dismissed vide order dated 12.02.2016.

14. As per the provisions of Order 47 Rule 1 CPC, the application for review will be maintainable on discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the applicant; secondly, when such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order was made and thirdly, on account of some mistake or error apparent on the face of record or any other sufficient reason. In the instant case, learned counsel for the applicant-appellant could not point out as to which of the aforesaid condition is applicable to the case in hand. Admittedly, there is no mistake or error apparent on the face of record or any other sufficient reason for the review of the order dated 12.02.2016. It is also not the case of the applicant-appellant that he has

discovered any new or important matter or evidence which could not be produced despite exercise of due diligence at the time when the order dated 12.02.2016 was passed.

15. Thus, keeping in view my aforesaid discussion, present application for review of order dated 12.02.2016 has no merits and the same is hereby dismissed.

17.02.2017
sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No