

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-3691-CII-2014 in/and
FAO-1117-2014 (O&M)
Date of Decision:15.01.2018

M/s D.J. Sarfactants and another

.....Appellants

Versus

Bajaj Allianz General Insurance Company
Limited and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Sudhir Makkar, Advocate,
for the appellants.**

**Mr. M.B. Jain, Advocate,
for respondent No.1.**

**Mr. Sushil Saini, Advocate for
Mr. A.S. Sandhu, Advocate,
for respondent Nos.3 to 10.**

HARI PAL VERMA, J.(Oral)

The present appeal challenging the award dated 04.05.2011 passed by the Motor Accidents Claims Tribunal, Amritsar (for short “the MACT”) has been filed by the owner of the offending vehicle truck tanker bearing registration No.HR-68-4826.

Briefly stated that the claimants had filed a claim-petition under Section 166 of the Motor Vehicles Act for grant of compensation. As per claim-petition on 03.11.2008, deceased Amarjit Kaur along with her husband Piara Singh, her son-in-law Amarbeer Singh and son Surjit Singh were coming back to their village Chhajalwadi from Amritsar, after taking medicines on a motorcycle bearing registration No.PB-17-A-2430 driven by

Amarbeer Singh with Amarjit Kaur as a pillion rider. Piara Singh

and Surjit Singh were following them on their separate motorcycle. However, when they reached near G.T. Road, Tangra, the offending vehicle came from the side of Amritsar and struck against their motorcycle. The truck tanker was being driven by Ajay Kumar, driver in a rash and negligent manner. The driver brought the truck from the wrong side and struck the same against the motorcycle of Amarbeer Singh. As a result of this accident, Amarjit Kaur fell down on the road. The truck tanker ran over the body of Amarjit Kaur. She died at the spot whereas Amarbeer Singh, who was driving the motorcycle also received injuries. An FIR No.216 dated 03.11.2008 was registered with the Police Station Jandiala under Sections 304-A, 279, 337 and 427 IPC against the accused.

Learned MACT has partly allowed the claim-petition and respondent No.3-Piara Singh (claimant No.1 in the claim-petition) was held entitled for compensation of ₹2,30,000/- on account of death of his wife Amarjit Kaur in the road side accident along with interest @ 7.5% per annum from the date of filing the claim-petition till realization.

The present appeal has been filed after a delay of 932 days, which is accompanied by an application under Section 5 of the Limitation Act read with Section 151 CPC.

The appeal has been filed by the owner of the offending vehicle, is not in dispute. However, learned counsel for the appellants has argued that after the testimony of the appellants having been recorded, insurance company is liable to compensate the claimants as the offending vehicle was comprehensively insured at

the time of accident. The appellants were never intimated about the impugned award dated 04.05.2011 and it was only on 10.12.2013 when they received notice of the execution of the award, the very factum of passing of the award came to their notice. Thus, they have filed the present appeal along with an application seeking condonation of delay.

The only plea that has been raised by learned counsel for the appellants seeking condonation of delay is that the appellants were never informed by the conducting counsel. However, from the averment made in the application and considering the fact that the appellants were party before the MACT, the plea that they had not been informed, cannot be accepted. Moreover, delay in filing the appeal is inordinate i.e. 932 days.

Learned counsel for respondent No.1 has placed reliance upon the judgment of the Hon'ble Supreme Court in case **Parkash and another Versus Managing Director, K.S.R.T.C. and others**, AIR (SC) 3419 and judgment of this Court in FAO No.10299 of 2014, titled as **Manvir Singh Dhillon Versus The Oriental Insurance Company and another**, decided on 15.11.2016.

I have heard the learned counsel for the parties.

In case **Basawaraj and another Versus Special Land Acquisition Officer**, 2014(1) RCR (Civil) 603, the Hon'ble Supreme Court has held as under:-

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute

so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

The very purpose of prescribed limitation is based on public policy and its aim is to secure peace in the community. An unlimited limitation would lead to a sense of insecurity and uncertainty.

Hon'ble Apex court in case **Basawaraj's case (supra)**, while dealing with the scope of "sufficient cause" has held as under:-

"9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained

*inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: **Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v. Veena @ Bharti AIR 2011 SC 1150; and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629.**)"*

Taking into consideration the averment made in the application, whereby a delay of 932 days is sought to be condoned and in the light of ratio of law laid down by Hon'ble Apex Court in **Basawaraj's case (supra)**, this Court find that the appellants have not been able to show sufficient cause so as to condone the inordinate delay of 932 days in filing the appeal. The very plea that they were not informed by the counsel, cannot be accepted, particularly when they remained party throughout and have appeared before the MACT. Therefore, this Court does not find any merit in the present application and the same is hereby dismissed.

Consequently, the appeal also stands dismissed.

January 15, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No