

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

**CM No.9910CII of 2016 in/and
FAO No.2690 of 2016 (O&M)
Date of Decision: 08.10.2018**

Prem Kumar

... Appellant

Versus

New India Assurance Co. Ltd. and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sudhir Paruthi, Advocate,
for the appellant.

Mr. Vinod Gupta, Advocate,
for respondent No.1-Insurance Company.

TEJINDER SINGH DHINDSA, J.

The instant appeal has been preferred by Prem Kumar i.e. owner of the offending vehicle i.e. Truck bearing registration No. PB-03-C-4522 assailing the award dated 03.06.2009 passed by the Motor Accident Claims Tribunal, Gurdaspur and in terms of which a compensation amount of Rs.2,13,000/- has been granted to the claimants along with interest @ 6% per annum from the date of filing of the claim petition till realization.

Suffice it to notice that the Tribunal has directed that the Insurance Company in question i.e. New India Assurance Company Limited would pay the amount in the first instance and recovery rights have been granted to recover the compensation amount from the owner and driver.

The appeal is accompanied by an application i.e. CM

No.9910-CII of 2016 seeking condonation of delay of 2053 days that has occurred in filing the main appeal.

Notice was issued in the application filed under Section 5 of the Limitation Act seeking condonation of delay.

Mr. Vinod Gupta, Advocate has appeared for contesting respondent No.1 Insurance Company and has vehemently opposed the prayer even though no reply has been filed.

Counsel for the applicant-appellant has advanced submissions and seeks condonation of delay of 2053 days that has occurred in filing the appeal in terms of the averments made in the application. It is submitted that the applicant had engaged one Mr. Satish Saini, Advocate to appear and defend his case before the Motor Accident Claims Tribunal. Further averred that even the requisite fee had been paid to the lawyer concerned. Assertion made in the application is that the afore-noticed counsel did not appear and consequently applicant/appellant was proceeded ex parte and ultimately an ex parte award dated 03.06.2009 was rendered by the MACT, Gurdaspur. Further submitted that the counsel never informed the applicant with regard to the award passed by the Tribunal. It is only upon receipt of summons in execution proceedings in the month of December, 2015 that the applicant/appellant became aware of the passing of the award dated 03.06.2009 and thereafter some time was consumed in obtaining certified copy of the award and for making arrangements for deposit of the statutory amount of Rs.25000/- for

purpose of filing the appeal.

Counsel contends that delay that has occurred is neither intentional nor wilful.

Mr. Vinod Gupta learned counsel representing the Insurance Company even though has not filed reply to the application but has argued that the application moved under Section 5 of the Limitation Act does not disclose any sufficient cause/reason to justify the prayer seeking condonation of delay.

Having heard counsel for the parties, this Court is of the considered view that there would be no justification for condoning the inordinate delay of 2053 days.

In ***Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another, 2010 (2) RCR (Civil) 284***, it was held that a liberal approach should be adopted in condonation where the delay is of short period and a strict approach where the delay is inordinate. Relevant observations made by the Apex Court is as under:-

“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 present case, condonation of delay of 2053 days is sought on the ground that counsel representing the applicant/appellant in the MACT proceedings had not duly appeared before the Tribunal and thereby resulting in the passing of an ex-parte award and thereafter the counsel did not inform the applicant as regards the impugned award.

Such stand taken on behalf of the applicant/appellant does not inspire confidence.

The contents of the application do not disclose any action/complaint lodged against the counsel concerned on account of non-appearance in spite of the requisite fee having been paid. Still further even though it has been asserted that the counsel did not inform the applicant/appellant with regard to passing of the award, yet it cannot be believed that the counsel

having been engaged by the applicant and the requisite fee having already been paid, the applicant did not make attempt to establish contact with his counsel.

This Court would be constrained to observe that applicant/appellant has not acted diligently in the matter and the reasons furnished seeking condonation are not bonafide.

The expression “sufficient cause” to condone delay would arise only if adequate/cogent and credible reasons are set forth.

Facts and circumstances of the present case clearly show that the applicant/appellant has remained totally inactive and which has resulted the inordinate delay of 2053 days in filing the accompanying appeal.

As per dictum laid down in ***Oriental Aroma Chemicals Industries Limited (supra)***, a strict approach ought to be adopted in dealing with the application where delay is inordinate.

In view of the above, the justification put forth at the hands of the applicant/appellant seeking condonation of delay of 2053 days in filing the accompanying appeal cannot be accepted.

As a result, the application for condonation of delay is dismissed.

Consequently, even accompanying appeal is dismissed being time barred.

08.10.2018

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes