

**Sr. No. 118
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.4477 of 2018 (O&M)

And

FAO No.4479 of 2018 (O&M)

Date of Decision: 14.08.2018

Nirmal Singh

... Appellant

Versus

The New India Assurance Company Limited and others

... Respondents

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

Present:- Mr. S.P.Soi, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

This order shall dispose of ***FAO Nos.4477 of 2018 and
FAO No.4479 of 2018 both titled as Nirmal Singh Vs. The New
India Assurance Company Limited and others.***

The afore-noticed two appeals are directed against the award dated 19.04.2016 passed by the Motor Accident Claims Tribunal, Hoshiarpur and in terms of which recovery rights regarding the compensation amount have been granted to the Insurance Company and against the present appellant.

Brief factual matrix may be noticed at the outset. Two claim petitions came to be filed under Section 166 of the Motor Vehicles Act in relation to an accident that took place on 02.10.2013. A Toyota Qualis vehicle bearing registration No. PB-65-K-8948 driven by the present appellant is stated to have struck against the motorcycle bearing registration No. PB-07-V-6540 and

thereby causing the death of Rajinder Rajan and causing injuries to Barinder Kumar alias Ravinder Kumar. Consequently, the two claim petitions were filed i.e. one by the claimants seeking compensation on account of death of Rajinder Rajan and the second at the hands of Barinder Kumar @ Ravinder Kumar seeking compensation for the injuries suffered. Both the claim petitions were consolidated by the Tribunal and have been dealt with by common award dated 19.04.2016.

Findings have been returned that the accident had taken place on 02.10.2013 on account of rash and negligent driving of the offending vehicle at the hands of appellant herein and which has resulted in the death of Rajinder Rajan and multiple injuries having been sustained by Barinder Kumar @ Ravinder Kumar. Insofar as the quantum of compensation is concerned, the claimants have been awarded a compensation amount of Rs.21,56,000/- on account of death of Rajinder Rajan. Injured Barinder Kumar @ Ravinder Kumar has been awarded a compensation amount of Rs.1,77,626/-. In both the claim petitions, it has been directed that the amount of compensation is to be paid at the first instance by the Insurance Company and recovery rights have been granted to recover the same from the owner and driver of the offending vehicle i.e. the present appellant.

Both the appeals are accompanied by applications i.e. CM No.15186-CII of 2018 in FAO No.4479 of 2018 and CM No.15188-CII of 2018 in FAO No.4479 of 2018 seeking condonation of delay of 723 days in filing the respective appeals.

Counsel for the applicant/appellant has advanced submissions and seeks condonation of delay of 723 days that has occurred in filing the appeals in terms of the averments made in the applications. It is submitted that the applicant/appellant is a resident of District Patiala and the proceedings pertaining to the claim petitions were before the MACT, Hoshiarpur and the counsel at Hoshiarpur had assured the applicant that he is not to worry about the case as the Insurance Company would be responsible to pay the compensation amount to the claimants. Further submitted that the counsel at Hoshiarpur did not convey the decision of MACT, Hoshiarpur and he came in knowledge of the decision only upon notice of the execution proceedings pursuant to the recovery rights having been granted in favour of the Insurance Company. Further urged that thereafter copy of the award was applied on 27.04.2018 and it was prepared and supplied on 05.05.2018 and it is only after arranging expenses that the appeals were filed and which has resulted in the delay of 723 days. Counsel submits that the delay in filing the appeals was on account of circumstances beyond the control of the applicant/appellant and was not intentional. Further contended that in matters of condonation of delay a liberal approach should be adopted by the Court.

Having heard counsel for the applicant/appellant at length and having perused the pleadings on record, this Court is of the considered view that there would be no justification for condoning the inordinate delay of 723 days.

The Apex Court has dealt and examined the aspect of

delay in *Basawaraj and another Vs. Special Land Acquisition Officer, 2014 (1) R.C.R. (Civil) 603*, wherein it was observed as under:-

“The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

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 723 days is sought on the ground that counsel representing the applicant/appellant in the MACT proceedings, Hoshiarpur had assured him that the compensation amount, if any, would be paid by the Insurance Company and that he is not to worry about the

case. Further more, it has been asserted in the application that the counsel never informed him about the decision and award rendered by the Tribunal. Applicant/appellant is projecting a plea that he came in knowledge about the impugned award only after having received notice of execution proceedings.

The justification sought to be set forth in the application seeking condonation of delay does not inspire confidence. The applicant/appellant had been duly served in the claim petitions and had contested the same by filing written statements. It cannot be believed that the applicant/appellant did not establish contact with this counsel over such a long period so as to make himself aware of the proceedings before the Tribunal.

In both the applications seeking condonation of delay and which are identically worded, a finger is sought to be pointed at the counsel representing the appellant before the MACT, Hoshiarpur and yet he has chosen not to disclose even the name of the counsel.

During the course of hearing before this Court, a specific query was put to Mr. S.P.Soi, Advocate and who conceded that no complaint had been lodged by the applicant/appellant against the counsel at Hoshiarpur for the alleged misconduct and that has been portrayed in the applications seeking condonation of delay and supported by an affidavit.

This Court would be constrained to observe that the 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 had remained totally inactive and which has resulted in an inordinate delay of 723 days in filing the accompanying appeals. As per dictum laid down in ***Oriental Aroma Chemical Industries Limited (supra)*** a strict approach ought to be adopted in dealing with applications 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 723 days in filing the appeals cannot be accepted.

As a result, the applications of condonation of delay are dismissed.

Consequently, both the appeals are dismissed being time barred.

14.08.2018

vandana

Whether speaking/reasoned

Whether Reportable

(TEJINDER SINGH DHINDSA)

JUDGE

Yes

Yes