

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

FAO No.7133 of 2017 (O&M)

Date of Decision: 16.08.2018

Dushyant Kumar

... Appellant

Versus

National Insurance Co. Ltd. and others

... Respondents

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

Present:- Mr. Shiv Kumar, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

CM No.22841-CII of 2018

In view of the averments made in the application, the delay of 07 days in re-filing the appeal is condoned.

Application is allowed.

Main Appeal and CM No.22842-CII of 2017

The instant appeal is directed against the award dated 15.05.2010 passed by the Motor Accident Claims Tribunal, Hisar and in terms of which recovery rights regarding the compensation amount have been granted to the Insurance Company and against the owner and driver of the offending vehicle.

Appellant herein, namely, Dushyant Kumar is stated to be the driver of the offending car bearing registration No. HR-51-X-1139.

Brief factual matrix may be noticed at the outset.

Smt. Fimo Devi was stated to be standing at the bus stand of

Village Sorkhi along with her son Jai Bhagwan waiting for a bus on 18.01.2008. At about 3.30 p.m., an Alto car bearing registration No. HR-51-X-1139 being driven by the appellant herein in a rash and negligent manner is stated to have hit Smt. Fimo Devi and who succumbed to the injuries suffered.

Claim petition was filed under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.10 lakhs. Claimants were the husband and two sons of the deceased.

Findings were returned by the Tribunal that the accident had taken place on 18.01.2008 on account of rash and negligent driving of the offending vehicle at the hands of the appellant herein and which in turn has resulted in the death of Smt. Fimo Devi.

Insofar as quantum of compensation is concerned, the claimants have been awarded a compensation amount of Rs.3,84,400/-. It has been directed by the Tribunal that the amount of compensation is to be paid at the first instance by the Insurance Company and recovery rights had been granted to recover the same from the owner and driver of the offending vehicle.

Instant appeal is accompanied by an application i.e. CM No.22842-CII of 2017 filed under Sections 5 and 14 of the Limitation Act seeking condonation of delay of 2468 days in filing the accompanying appeal.

Counsel for the applicant/appellant has advanced submissions and seeks condonation of delay of 2468 days that has occurred in filing the appeal in terms of averments made in the

application. It is submitted that the appellant was a poor person and was not properly guided by counsel representing him before the Tribunal. Further submitted that the appellant under the bonafide belief was pursuing the execution proceedings and it was only at a subsequent stage that he became aware that he had a right to challenge the award as also recovery rights that have been granted to the Insurance Company. Further urged that some delay took place on account of arranging of funds from relatives and friends for purpose of filing the appeal.

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 basis and justification for condonation of the inordinate delay of 2468 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.”

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 petition and had even contested the same by filing written statements along with owner of the offending vehicle.

Even though a plea is sought to be projected that the counsel representing the appellant before the Tribunal had not guided him properly, appellant has chosen not to even disclose the name of such counsel. It is the case of the applicant/appellant himself that he was pursuing the execution proceedings. In other words, he was aware of the passing of the impugned award.

It clearly emerges that the applicant/appellant has

been remiss and remained inactive over a prolonged period of time and which has resulted in inordinate delay of 2468 days.

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 2468 days in filing the accompanying appeal cannot be accepted.

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

Consequently, the appeal is dismissed being time barred.

16.08.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No