

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

F.A.O. No. 4734 of 2018(O&M)

Date of Decision: 02.08.2018

Jagdish

.....Appellant.

Versus

Smt. Saresh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Bhisham Kumar Majoka, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed by the appellant challenging award dated 09.03.2015 passed by the learned Motor Accident Claims Tribunal, Palwal, in a petition under Sections 166/140 of the Motor Vehicles Act, 1988, filed by the respondent-claimants seeking compensation on account of death of one Kailash in a motor vehicle accident which took place on 13.11.2013.

The appellant is the owner of the offending vehicle in question. Petition under Sections 166, 140 of the Motor Vehicles Act, 1988, as mentioned above was filed by the respondent-claimants. Learned tribunal held that Kailash (deceased) lost his life in the motor vehicle accident which took place on 13.11.2013 due to the rash and negligent driving of the offending vehicle by its driver respondent-Hari Chand. Claimants were the widow, four minor children and father of the deceased. Sum of ₹ 8,74,000/- was awarded as compensation to the claimants, the details of which are as under:-

1.	Loss of dependency (₹58,500/- x 14	₹8,19,000
2.	Funeral & last rites etc. expenses	₹25,000/-
3.	Loss of Estate	₹10,000/-
4.	Loss of love and Affection	₹10,000/-
5.	Loss of consortium to wife (petitioner no.1)	₹10,000
	Total	₹8,74,000/-

The present vehicle was not insured. Thus, the appellant along with respondent-driver was held liable jointly and severally.

Aggrieved therefrom, the present appeal has been filed.

The present appeal is barred by limitation there being a delay of one thousand one hundred and forty (1140) days in filing of this appeal.

It is submitted that the delay is not intentional or deliberate. The applicant-appellant was not informed by the counsel representing him before the learned tribunal regarding passing of the impugned award and it is only in the month of April 2018, he came to know about the passing of the impugned award. The applicant-appellant, it is further submitted is a poor illiterate person and should not be made to suffer due to no fault on his part.

Another application for exemption from depositing the statutory amount, has been filed.

I have heard learned counsel for the applicant-appellant and have carefully gone through the case file.

Learned counsel for the applicant-appellant has tried to raise arguments on merits of the case. I do not find any ground whatsoever to condone the colossal delay of 1140 days in filing of this appeal. The Hon'ble Supreme Court in case **H.Dohil Constructions Co. (P) Ltd. Vs. Nahar**

Exports Ltd. And another 2015 (1) SCC (Civil) 646 while referring to its earlier decision in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, 2013(4) R.C.R (Civil) 785**, quoted the following guidelines:-

- “iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- Viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.”

In the present case, there is no justification or any reason available on record to indicate that the applicant-appellant made any effort whatsoever to find out the fate of the proceedings before the learned tribunal. Relevant part of application under section 5 of the Limitation Act,

1963 reads as under:-

- “1. That the appellant is filing the accompanying appeal before this Hon'ble Court and is quite hopeful its success on the grounds mentioned therein which may kindly be read as part and parcel of the present application.
2. That impugned award dated 09.03.2015 was passed against appellant-applicant and Performa respondent. That the appellant-applicant was not informed by his counsel in lower court regarding the passing of impugned award and it was only when the appellant-applicant received summons of execution filed by respondent no.1 to 6 in the month of April 2018 then he came to know about the impugned award. The appellant-applicant who is poor and illiterate person, could not engage counsel to file an appeal within prescribed period of limitation before the Hon'ble Court. Now, immediately the applicant engaged counsel in Hon'ble High Court and the present appeal is filed without any further delay.
3. That in the process of delay of 1140 days has occurred in filing the said appeal which is neither intentional nor deliberate. The applicant will not gain anything out of the delay cause. It will be in the interest of justice that the delay may be condoned and the appeal be ordered to be heard on merits.

It is, therefore most respectfully prayed that delay of 1140 days in filing the appeal may kindly be condoned in the interest of justice. The appeal be ordered to be heard on merits.”

While being conscious of the fact that mere technicalities should not stand in the way of dispensation of substantial justice, applicant-appellant is unable to show that due diligence was exercised by him. It is clear that a casual approach was adopted and the present is clearly not a case

which calls for a liberal delineation. Similarly, I do not find any ground or justification in exempting the applicant-appellant from complying with the condition as provided under proviso to application 173 (1) of the Motor Vehicles Act, 1988.

In view of above, both the applications seeking condonation of delay of 1140 days in filing of this appeal and exemption from complying with condition as provided under proviso to Section 173 (1) of the Motor Vehicles Act, 1988, are dismissed. Consequently, the main appeal also stands dismissed with no order as to costs.

02.08.2018

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.