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

**FAO No.8648 of 2017 (O&M)
Date of Decision: 19.11.2018**

Mehmoodi and others

Appellants

Versus

Sandeep Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashish Gupta, Advocate
for the appellants.

AVNEESH JHINGAN, J (Oral):

The present appeal has been filed against award dated 15.03.2013 passed by the Motor Accident Claims Tribunal, Nuh (for brevity 'the Tribunal'). The appeal is accompanied by an application under Section 5 of The Limitation Act, 1963 for condonation of delay of 1598 days in filing the appeal.

The brief facts of the case are that a motor vehicular accident took place on 23.04.2011 and Sajid, aged 23 years, lost his life in the said accident. The vehicle involved in the accident was bearing registration No. HR-63A-5847. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') was instituted on 16.07.2011 by mother, major brother and four minor brothers/sisters of the deceased. The Tribunal vide award dated

15.03.2013, awarded a compensation of Rs.8,57,500/- alongwith interest @ 6% per annum. 50% of the amount awarded was ordered to be disbursed to mother of the deceased and 50% balance amount to four minor brothers/sisters in equal share. The amount was to be kept in Fixed Deposit Receipts (FDRs) in some nationalized bank till brother and sister attained the age of majority.

The present appeal was filed against the award in October, 2017 seeking enhancement of compensation. Alongwith the appeal, there is an application for condoning the delay of 1598 days.

The ground taken for condoning the delay in filing the appeal is that when mother of the deceased met the counsel for release of amount deposited in FDR, the counsel suggested her to file an appeal before this Court for enhancement of compensation.

The explanation given in the application is not acceptable. The application is silent about the fact that as to when 50% amount, which was to be paid to the mother of the deceased was disbursed. The mother of deceased would have met the counsel at that stage also and no explanation has been provided as to why an appeal was not preferred at that stage. After more than four and a half years, this appeal has been filed to revive a dead and stale issue.

The Supreme Court in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459**, held as under :-

“8. 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.”

It has been held that explanation of “sufficient cause” will depend upon the facts of the case and strict approach is to be adopted for inordinate delay.

Further, Division Bench judgment of this Court in case of ***Municipal Committee (now Municipal Corporation), Bathinda vs. Bachan Singh through his LRs and another, 2017 (3) R.C.R. (Civil) 145 (P&H) (DB)***, while refusing to condone the delay of 1760 days, as the explanation was not satisfactory, held as under :-

“10. Adverting to the factual matrix in this case

seeking condonation of inordinate delay of 1760 days in filing and 85 days in refiling the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The learned Single Judge decided the matter on 11.5.2011 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellant has filed the appeal on 5.4.2016 and refiled on 10.8.2016, after a colossal delay of 1760 days. The explanation of the appellant praying for condonation of delay in filing and refiling the appeal, as noticed hereinabove, is bereft of sufficient cause for delay caused in filing the appeal. Moreover, even after the judgment dated 26.11.2014 was passed accepting the appeal against the judgment on the basis of which order was passed in the present case, the Letter Patent Appeal was filed on 5.4.2016, i.e., after about one year and four months. There is no satisfactory explanation for this delay as well. The Government department is supposed to pursue its litigation with due diligence. A stale matter cannot be revived by approaching the Court belatedly.

11. In view of the above, finding no merit in the applications for condonation of 1760 days' delay in filing and 85 days' in refiling the appeal, the same are hereby dismissed and consequently, the appeal is dismissed as time barred."

There is no quarrel on the proposition that a liberal construction is to be given to the phrase "sufficient cause" mentioned in Section 5 of The Limitation Act, 1963. But liberal construction cannot be interpreted to mean that even a dead and stale claim can

be revived. In the present case, there is delay of 1598 days, i.e., more than 4 and a half years, same cannot be said to be a short period by any standards.

The other explanation given in the application that the applicants were arranging funds to approach the counsel, also cannot be accepted for the reason that an amount of Rs.4,28,750/- alongwith interest was disbursed to appellant No.1 in accordance with the award dated 15.03.2013.

No ground is made out for condoning the delay in filing the present appeal.

The application for condonation of delay is dismissed, consequently, the appeal is also dismissed being time barred.

[AVNEESH JHINGAN]
JUDGE

November 19, 2018

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |