

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

Date of decision 29.10.2018

FAO 6731 of 2018 (O&M)

1. *Shri Ram General Insurance Co Limited*Appellant

versus

Khem Chand and others*Respondents*

FAO No. 6737 of 2018 (O&M)

2. *Shri Ram General Insurance Co Limited*Appellant

versus

Vijay Kumar Sharma and others*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr.Rajbir Singh, Advocate
for the appellant

—

Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of award dated 07.04.2015 passed by the Motor Accidents Claims Tribunal, Panchkula (hereinafter to be referred as 'the Tribunal') whereby compensation has been assessed on account of death of Rajesh Kumari in a motor vehicular accident that took place on 03.05.2014.

There were two separate claim applications filed by different sets of claimants with regard to death of Rajesh Kumari that came to be disposed of vide common award dated 07.04.2015. For facility of reference, facts are taken from FAO No. 6731 of 2018. Along with the appeal, applications under Section 5 of the Limitation Act for condoning delay of 1122 days in filing the appeal and 42 days in re-filing the appeal

have been filed.

Counsel for the applicant/appellant would urge that the present appeal has been preferred after order dated 27.03.2018 has been passed by this Court whereby appeals (FAOs 3860, 3892 and 5012 of 2015) were disposed of being not pressed by the appellants/claimants who filed separate appeals seeking enhancement of compensation. It is further argued that delay in filing the appeal should not be allowed to stand in the way of substantial justice on technical consideration.

Indisputably, the appellant-insurance company did not prefer the appeal against award dated 07.04.2015 passed by the Tribunal. Counsel for the applicant/appellant has failed to advance any convincing and meaningful arguments as to how disposal of the appeals preferred by the claimants has given a fresh cause of grievance to the insurance company.

A relevant extract from paras 2 and 3 of application (CM 23522 CII of 2018), reads as follows:-

“2. That after the award dated 07.04.2015 passed by the Motor Accidents Claims Tribunal, Panchkula. Against the same award respondent No. 1 to 3/claimants filed FAO No. 3860 of 2015 and FAO No. 5012 of 2015 and another FAO No. 3892 of 2015 filed by Khem Chand and another Smt. Champa Devi was also arising out of the same award, but from the different claim petition were listed before this Hon'ble Court on 27.03.2018 for final disposal and all the appeals for seeking enhancement of compensation and apportionment of compensation were withdrawn on the ground of enhancement. This Hon'ble Court granted the liberty to the claimants to seek their revival in case

of insurance company prefers an appeal at some later stage. Since the appeals of claimants were not adjudicated on merits, therefore, the appellant insurance company on the basis of the liberty granted by this Hon'ble Court filing the present appeal challenging the award dated 07.04.2015.

3. *That after the receipt of order dated 27.03.2018, the appellant insurance company with regard to the withdrawal of appeals filed by the claimants and liberty granted by this Hon'ble Court, thereafter, the Divisional office traced the original claimed file of the present case and send the same to the Head Office for approval of filing the appeal, the approval of the same was granted by the head Office on 25.07.2018 and the documents were sent to the undersigned counsel through courier, which were received on 31.07.2018 and thereafter, the immediately appeal is filed without any further delay. If the delay from the order dated 27.03.2018 is to be calculated, then it is only 36 days however, from the date of 07.04.2015 the delay in filing the appeal had occurred 1122 days. For the ready reference of this Hon'ble Court order dated 27.03.2018 is reproduced herein below:-*

“This order will dispose of FAO Nos.3860, 3892 and 5012 of 2015 as these have emerged out of award dated 07.04.2015 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been awarded on account of death of Rajesh Kumari in a motor vehicular accident that took place on 03.05.2014. All these appeals have been preferred by different sets of claimants seeking enhancement of compensation. Counsel for the appellants are ad idem that they do not press the appeals seeking enhancement of compensation at this stage. They have further agreed that compensation paid to Vijay Kumar, husband of the deceased to the extent of Rs.8,40,400/-, Khem Chand, father of the

deceased Rs.8,50,000/- and Champa Devi, mother of the deceased Rs.8,50,000/- be paid to Megha Sharma, daughter of the deceased by way of modification of the award. They have further prayed that the appeals may be disposed of but without prejudice to right of the appellants to seek their revival in case the insurance company prefers an appeal at some later stage. In view of the above, the appeals stand disposed of. The award passed by the Tribunal is modified to the limited extent that amount of compensation held to be payable to the husband and parents of deceased, as per para 43 of the award, shall be payable to Megha Sharma, daughter of the deceased in addition to Rs.20,00,000/- ordered to be paid to her. In case the insurance company prefers an appeal, the appellants would be at liberty to seek their revival (appeals) by filing an appropriate application.”

When the case is examined in the light of judgement of this Court **Bharti Axa General Insurance Co. Limited vs Ram Parshad and others** (FAO No. 4740 of 2016 and connected cases, decided on 17.10.2016), it can safely be held that the applicant/appellant has failed to make out a case that there is sufficient cause much less justifiable reason to condone a colossal delay of 1122 days in filing the appeals.

For the foregoing reasons, applications for condoning delay of 1122 days in filing the appeals are dismissed. As a natural corollary, the appeals fail and are dismissed being barred by limitation. In the given scenario, applications for condoning delay of 42 days in refiling the appeal are of academic relevance only.

(Rekha Mittal)
Judge

29.10.2018
mohan bimbira