IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6938 of 2018(O&M)

Date of decision: 14.11.2018

Naresh Kumar …..Appellant

VERSUS

ICICI Lombard General Insurance Co. and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Dheeraj Narula, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 11.08.2011 passed by the Motor Accidents Claims Tribunal, Sirsa (in short 'the Tribunal') whereby compensation has been assessed in regard to death of Surjeet Singh, driver of Canter No.HR-61/4372 in a motor vehicular accident on the fateful day of 18.11.2008. Along with the appeal, an application has been filed for condonation of delay of 2531 days in filing the appeal.

Counsel for the applicant-appellant, in line, with the averments raised in paras 2 and 3 of the application would urge that as the applicant was not impleaded as a party in his individual capacity but had been sued through his General Power of Attorney executed in favour of respondent No.2 on 09.09.2008, he came to know about decision of MACT case on 29.01.2018 and filed objections in the execution proceedings. It is argued with vehemence that in case the award is executed against the appellant, a serious prejudice shall be caused to him as he would be condemned unheard and fastened with liability of more than Rs.5,00,000/-.

I have heard counsel for the applicant-appellant and perused the paper-book particularly the award.

A relevant extract from paras 2, 3 and 4 of the application for condonation of inordinate delay of 2531 days, reads as follows:-

> "2. That Ld. MACT vide award dated 11.08.2011 has passed the award against the present appellant and held him liable to pay the amount of compensation to the claimants. It is pertinent to mention here that appellant had already sold out the vehicle to respondent No.2 on 01.09.2008 much prior to the date of accident and also handed over the possession of the vehicle to respondent no.2. The said vehicle was sold out to the respondent No.2 against a total sum of Rs.5,75,000/- and out of that Rs.3,75,000/- was paid to the appellant and the remaining amount was to be paid towards the loan installment by the respondent no.2. In this regard, General power of attorney was also executed in favour of the respondent no.2 by the appellant on 09.09.2018 duly attested by the Notary Public so as to enable respondent No.2 to deposit the loan amount.
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> 3. That the appellant who was the registered owner in the records of registering authority was not made as a party to the claim petition in his individual capacity rather all the times summons were sent to Sachin Kumar i.e. respondent no.2 who appeared as GPA of appellant but the said GPA was executed

for limited purposes and he was not given any authority to pursue the case on his behalf in case of any accident claims. The respondent no.2 kept on fighting in his own capacity and the present appellant was not aware about the proceedings of the Ld. Tribunal nor he was informed by the respondent no.2 regarding the proceedings before the Ld. MACT.

4. That appellant came to know about the decision of Ld. MACT on 29.01.2018 when the execution proceedings initiated against him and he appeared on 30.01.2018 before the Executing court, Sirsa and filed his objections to the execution proceedings. The appellant who has been held liable was not at fault as neither he was aware about the accident in question nor was he aware about the court proceedings, thus, the appellant seeks indulgence of this Hon'ble Court to allow his application and condone the delay in filing the appeal."

As per averments raised in the application, the applicant/appellant has already sold the vehicle to Sachin Kumar – respondent No.2 on 01.09.2008 and General Power of Attorney was executed in favour of Sachin Kumar on 09.09.2008. The present appellant was impleaded as respondent No.1 but he was sued through his General Power of Attorney Sachin Kumar. During the course of hearing, counsel for the applicant/appellant has supplied photocopy of General Power of Attorney dated 09.09.2008 for perusal and appreciation. A plain reading of the recitals in the General Power of Attorney leaves no manner of doubt that all the rights have been bestowed upon the Attorney which owner of the vehicle in question can have pertaining to the vehicle in dispute. Nothing has been mentioned in the application that this power of attorney was ever revoked or cancelled by the appellant. Even this is not the plea of appellant that Sachin Kumar had any interest adverse against the applicant/appellant when on the contrary Sachin Kumar has also been held jointly and severally liable to pay compensation. Both respondents No.1 and 2 before the Tribunal were represented by a counsel and contested the proceedings. In the given scenario, contention of the applicant that either he was not impleaded as a party in the claim application or not duly represented in those proceedings is misconceived and liable to be rejected. That being so, the applicant cannot be heard to say that he has been condemned unheard or without providing an opportunity of being heard in the matter.

This apart, in view of averments raised in para 4 of the application, the applicant came to know about passing of the award when he appeared in the execution proceedings on 30.01.2018. Nothing has been stated in the application as to why he waited till October 2018 to file the present appeal despite his having knowledge of the award in January 2018. When the facts and circumstances of the present case are examined in the light of judgment of this Court in **FAO No.4740 of 2016 titled Bharti Axa General Insurance Company Limited vs. Ram Parshad and others and connected cases, decided on 17.10.2016**, it can safely be held that the applicant has miserably failed to make out a case much less sufficient ground for condoning huge delay of more than 7 years in filing the appeal. If contention as has been sought to be raised by the applicant is accepted, the provisions of the Limitation Act, 1963 may be rendered nugatory particularly in the circumstances that the claimants despite getting award from the Court in the year 2011 have not been paid a single penny by the present applicant-appellant.

In view of what has been discussed hereinabove, application for condoning delay sans merit and liable to be dismissed. As a natural corollary, the appeal is dismissed being barred by limitation.

NOVEMBER 14, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no