

In the High Court of Punjab and Haryana at Chandigarh

**CM No. 2341-CII of 2018 in/and
FAO-775 of 2018
Date of Decision: 5.2.2018**

IFFCO Tokio General Insurance Company

---Applicant-Appellant

versus

Simran and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjiv Kodan, Advocate for the appellant

Rekha Mittal, J.

The appellant-insurance company has filed the appeal to assail the award dated 17.7.2017 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short “the Tribunal”) whereby compensation has been awarded on account of death of Rinku Kumar in a motor vehicular accident that took place on 21.5.2016.

Alongwith the appeal, application CM No. 2341-CII of 2018 has been filed by invoking Section 5 of the Limitation Act for condonation of delay of 107 days in filing the appeal. The plea of the applicant-appellant raised in para 2 of the application reads as follows:-

“That the impugned order was passed on 17.7.2017 by the learned MACT, Kurukshetra. The Counsel for the appellant company before the learned MACT, Kurukshetra, applied on 19.7.2017 and received certified copy of impugned award on 24.7.2017. Thereafter, on 30.07.2017 the counsel before the learned MACT, Kurukshetra sent the complete file in the office

of IFFCO House, 3rd Floor, 34, Nehru Place, New Delhi-110019. The office of the appellant was shifted from Delhi to Chandigarh and a person from the maintenance staff kept the file in the brief of some other case file. Thereafter, during search it was found later, thereafter, DD No. 205733 dated 24.01.2018 was prepared for filing the appeal and the complete file along with abovesaid D.D. were handed over to clerk of the undersigned to file the appeal before the Hon'ble High Court, due to these reasons delay of 107 days has been occurred in filing the appeal.”

The application is supported by an affidavit of Sh.Arun Mehrotra, Vide President Authorized Signatory of IFFCO TOKIO General Insurance Company Limited.

Counsel for the applicant-appellant has submitted that delay in filing the appeal is not intentional but due to case having been kept in the brief of some other case. It is further submitted that law regarding condonation of delay is quite liberal and it has been repeatedly held that the court should not adopt a pendentic approach while dealing with an application for condonation of delay so that meritorious claims of the parties are not outrightly rejected at the threshold on technical considerations.

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

Perusal of the aforesaid extract would make it evident that plea of the applicant is that counsel for the insurance company before the Tribunal sent the complete file to the office of the company at New Delhi

on 30.7.2017. The office of the company was shifted from Delhi to Chandigarh and a member of the maintenance staff kept the file in the brief of some other case and later during search, it was found. The averments raised in the application are quite vague and create a doubt in the story propounded by the applicant-appellant that delay has occurred for the reasons brought forth in the application. It is pertinent to note that nothing has been mentioned in the application as to when the office of the company was shifted from Delhi to Chandigarh, when the file was found during search in order to constitute sufficient ground for condoning delay of more than three months. There is nothing on record suggestive of the fact that the appellant has paid any amount to the claimants in terms of the award passed by the Tribunal despite expiry of approximately six months since the award was passed in favour of widow, three minor children and parents of deceased Rinku, who died at the age of 25 years. When the facts and circumstances of the present case are examined in the light of judgment of this Court “**Bharti Axa General Insurance Company Limited vs. Ram Parshad and others**” FAO No. 4740 of 2016 alongwith connected cases decided on 17.10.2016, plea of the applicant-appellant for condoning delay of 107 days is devoid of merit and untenable.

For the foregoing reasons, application for condonation of delay is dismissed. As a natural corollary, the appeal is dismissed being barred by limitation. No order as to costs.

(Rekha Mittal)
Judge

5.2.2018

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