IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3412 of 2019 (O&M)
Date of decision: 24.5.2019

Ishwar and another

.. Appellants

v.

National Insurance Company and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J. S. Saneta, Advocate for the appellants.

...

AVNEESH JHINGAN, J. (Oral)

This is an appeal preferred by the driver and owner of bus bearing registration No. HR-45A-7177 (hereinafter described as 'the offending vehicle') against the award dated 18.9.2015 passed by the Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal'). The appeal is accompanied by an application filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 1343 days in filing the present appeal.

The facts in brief are that a motor vehicular accident took place on 16.5.2012. The accident was result of rash and negligent driving of the offending vehicle. The offending vehicle struck against a buffalo, as a result it died at the spot. FIR No. 151 dated 16.5.2012 was registered at Police Station Indri. The offending vehicle was owned by Poswal Cooperative Transport Society.

A claim petition was filed seeking compensation for death of the buffalo. The Tribunal awarded a sum of ₹25,000/- along with interest

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@ 7.5% per annum. The insurer was held liable to pay the compensation but was granted recovery rights.

The appeal has been filed almost after more than 3-1/2 years of the passing of the award. The only explanation offered is that when summons in the execution proceedings were received in 2018, the relevant papers were collected and the appeal was filed. It has further been explained that the counsel never told the appellants about the recovery rights.

The explanation put forth is not satisfactory. It would be pertinent to note here that owner of the offending vehicle is a cooperative society, engaged in the business of transportation. The claim petition was duly contested by the driver and the owner of the offending vehicle. The applicant remained in slumber for 3-1/2 years. It cannot be expected from a cooperative society that it would not have taken copy of the award from its counsel. It has not been mentioned that even after passing of the award in September, 2015 when the owner and the driver approached the counsel. No details of the counsel have been mentioned.

A liberal view is to be taken where the period of delay is short but a strict view is to be taken where the delay is inordinate. 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*

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> *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."*

Further the Supreme Court in ***Pundlik Jalam Patil (D) by LRs. Versus Exe. Eng. Jalgaon Medium Project and another, 2008 (17) SCC 448,*** has held as under:

> *"..... It was its duty to prefer appeals before the Court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights."*

It has been held that explanation of "sufficient cause" will depend upon the facts of the case. If no satisfactory explanation is coming forth, delay should not be condoned.

In the present case, a maxim of roman law subsequently embraced by equity : *Vigilantibus Et Non Dormientibus Jura Subveniunt,* which says the law comes to the assistance of those who are vigilant with their rights, and not those who sleep on their rights applies.

The applicant was not vigilant in pursuing his remedies. No

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ground is made for condoning the delay

The application is dismissed and as a result, the appeal is also dismissed being time barred.

(AVNEESH JHINGAN)
JUDGE

24.5.2019
mk

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

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