IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

263 FAO No.6624 of 2012 (O&M)

Date of decision: 23.10.2019

ISHWAR SINGH ... Appellant

Versus

NARESH KUMAR AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep K. Yadav, Advocate for the appellant.
Mr. JS Chatrath, Advocate for the insurance company.
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REKHA MITTAL, J. (Oral)

CM No.32206-CII of 2012

Prayer in this application is for condoning delay of 1012 days in filing the appeal.

Affidavit of Sh. SK Yadav, Advocate in support of the application filed in the Court, is taken on record.

Counsel for the applicant-appellant, in view of averments raised in the application, has submitted that initially the appeal was filed on 26.02.2010 vide dairy No.476516, within limitation. There were certain objections raised by the Registry of the Court from time to time and in view of objections of 23.09.2010, original file was collected by previous clerk of counsel but the papers were misplaced. The appeal was allowed to be withdrawn with liberty to file an appeal subject to period of limitation vide order dated 05.10.2012 passed by this Court. It is submitted that delay in filing the appeal is neither intentional nor malafide but due to the reasons detailed in the application. It is further argued that in case the delay is condoned, no prejudice shall be caused to a third person as no third party interest has been created during the intervening period. In addition, it is argued that the appellant has already satisfied the award passed in favour of claimants and controversy involved in the appeal is inter se the appellant and the insurance company.

Counsel representing the insurance company, on the contrary, has resisted plea of the applicant for condonation of delay of 1012 days in filing the appeal. It is argued that applicant has not produced any document to support his contention that appeal was initially filed with dairy No.476516.

In view of averments made in the application supported by an affidavit of applicant Ishwar Singh and Sh. Sandeep Kumar Yadav, Advocate, counsel for the applicant-appellant coupled with the settled position in law that the Court should adopt a liberal and non-pedantic approach while dealing with the question of condonation of delay along with the fact that neither the applicant has gained in any manner by filing the appeal at a belated stage nor any prejudice has been caused to the insurance company on account of delay in filing the appeal when claim of the victim family already stands satisfied, there are sufficient grounds for condoning delay in filing the appeal. Accordingly the application is allowed and delay of 1012 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 28.11.2009 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation has been assessed on account of death of Vijay Singh in a motor vehicular accident that took place on 14.02.2004.

The Tribunal awarded Rs.50,000/- under No Fault Liability, payable by the appellant registered owner of motorcycle No.HR-35-6138 on which deceased was travelling as a pillion rider but insurance company has been exonerated of liability to pay compensation.

The sole submission made by counsel for the appellant is that as the policy issued by the insurance company is a package policy, the insurance company cannot escape liability to pay compensation even with regard to death of gratuitous passenger on motorcycle in question. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Balakrishnan and another, 2013 (1) RCR (Civil) 762.**

Counsel representing the insurance company, on the contrary, has supported the award.

Be that as it may, it is undisputed position of the case that policy of insurance is package policy as the insured paid premium for own damage,TP claim in addition to premium for PA cover. Hon'ble the Supreme

Court in **Balakrishnan and another's case (supra)** has held that if the policy is a comprehensive/package policy, the insurer shall be liable for injury or death of a gratuitous passenger travelling in the insured vehicle. In this view of the matter, the Tribunal has seriously faulted by exonerating the insurance company of liability to pay compensation by way of indemnification of the insured in discharge of obligation under the contract of insurance. As a natural corollary, the appellant and insurance company shall be jointly and severally liable to pay compensation.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

23.10.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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