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

**FAO No.2726 of 2016 (O&M)
Date of Decision: 20.02.2019**

Ramesh Rani (through LRs)

Appellants

Versus

Jarnail Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Harjinder Singh, Advocate for
Mr. Avtar S. Khinda, Advocate
for the appellants.

AVNEESH JHINGAN, J (Oral):

This is an appeal against the award dated 07.05.1998 passed by the Motor Accident Claims Tribunal, Kapurthala [for brevity 'the Tribunal'] dismissing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The appeal is accompanied by an application filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 6273 days in filing the present appeal.

The bare facts necessary for adjudication of the present appeal are that a motor vehicular accident occurred on 09.11.1992. Satpal Sood lost his life in the said accident. A claim petition was filed by widow and three minor children of the deceased on 02.04.1993. Widow of Satpal Sood pursued the said claim petition and also

deposed as AW-1. The said claim petition was dismissed on 07.05.1998.

In the application seeking condonation of delay, applicants have stated that they were not aware of the outcome of claim petition and it was only when they received a *farzi* notice on 04.08.2015 in a civil revision petition filed by the Insurance Company against the interim order, they came to know about the dismissal of the claim petition.

Learned counsel for the applicants/appellants contends that their mother i.e. widow of the deceased died on 12.05.2004 and she only was pursuing the matter, hence delay has occurred.

The explanation put forth for condonation of delay is not satisfactory. The accident took place in November, 1992 and the claim petition was filed in April, 1993 wherein the claimants failed, as they were unable to prove that Satpal Sood died as a result of the accident. The said award was not challenged for almost seventeen years. The argument that widow died in May, 2004 does not enhance the case of the applicants as the award was passed in May, 1998 and till her death for almost six years, the said award was not challenged. The application filed for condonation of delay is silent about the age of the applicants at the time of accident and to the fact that as to when they attained majority. Even otherwise, the claim petition was duly pursued and the same was not challenged during the life time of widow.

There is no doubt that a liberal view is to be taken for condoning the delay where the period of delay is short but strict view is to be taken where 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 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.”

It has been held that a liberal approach is required where the delay is short. But, if no satisfactory explanation is coming forth, delay should not be condoned.

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.”

The Supreme Court in case of **Tribhuvanshankar Vs. Amrutlal, 2014 (1) RCR (Civil) 206,** has laid down that the fundamental policy behind the limitation is that if a person does not pursue his remedy within the stipulated time-frame, the right to sue gets extinguished.

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. It is evident that applicants were not vigilant in pursuing their remedies. No ground is made for condonation of delay.

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

[AVNEESH JHINGAN]
JUDGE

February 20, 2019
pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |