

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

**FAO No.2562 of 2018 (O&M)
Date of Decision: 13.02.2019**

Suman and another

Appellant

Versus

Shamsher and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Kuldeep Sheoran, Advocate
for the appellants.

AVNEESH JHINGAN, J (Oral):

The award dated 12.07.2013 passed by the Motor Accident Claims Tribunal, Hissar [for brevity 'the Tribunal'] has been assailed by parents of Rahul, seeking enhancement of compensation awarded 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 1584 days in filing the appeal. The only reason given in the application explaining the delay is that applicants are not educated and they were not aware about the right to file appeal and it was only in January, 2018 when one of the relative enquired about filing an appeal in the High Court, they contacted their counsel for filing the

appeal.

The explanation given for condonation of delay is not satisfactory.

A claim petition was instituted in July, 2012 and vide award dated 12.07.2013, an amount of Rs.5,06,800/- alongwith interest @ 7.5% per annum was awarded by the Tribunal as compensation. The amount was ordered to be kept in FDR in any nationalized bank for a period of three years. The said period of three years also expired in July, 2016. The applicants/appellants must have been in touch with their counsel during the pendency of the proceedings before the Tribunal and even on passing of the award, in order to get the amount awarded. Once the applicants/appellants were in touch with their counsel for filing of the claim petition and thereafter for realization of the amount, it cannot be expected that they were not aware about legal provision to file the appeal. More so, when the claim petition was filed within a short period i.e. after two months of the accident.

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."

In the above decision, 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 case of **Amalendu Kumar Bera and others Versus The State of West Bengal 2013 (2) RCR (Civil) 534,** the Supreme Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned. In case of serious negligence, the delay should not be condoned.

The Supreme Court in **State of Nagaland v. Lipok Ao, 2012 (3) RCR (Civil) 73: 2012 (2) Recent Apex Judgments (RAJ) 482: 2012 (5) SCC 157,** in paragraph 24 has held as under:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a

legitimate exercise of discretion not to condone the delay."

The Supreme Court in case **Basawaraj and another v. Special Land Acquisition Officer 2017(3) PLR 299**, while dealing with the scope of "sufficient cause" has laid down as under:

".....The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

In **P.K. Ramachandran v. State of Kerala & Anr., 1997(4) R.C.R.(Civil) 242 : AIR 1998 SC 2276**, the Supreme Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

From the perusal of the above decision, it is evident that there has to be a satisfactory explanation put forth for condonation of delay.

In the present case, there is no explanation or much less satisfactory explanation for condonation of delay.

In view of the facts noted above and law discussed, no ground is made out for condoning the delay.

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

February 13, 2019
pankaj baweja

[AVNEESH JHINGAN]
JUDGE

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

Yes