

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5074 of 2018 (O&M)

Date of Decision: 04.04.2019

Krishan Kumar and another

.....Appellants

Versus

Reliance General Insurance Company and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sunil Saharan, Advocate
for the appellants.

AVNEESH JHINGAN, J.(oral)

This is an appeal against the award dated 29.4.2010 passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') by driver and owner of truck bearing registration No. HR-46-B-4853 (for short 'the offending vehicle'). The appeal is accompanied by an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 2861 days in filing the appeal.

The facts with regard to accident are not in dispute that a motor vehicular accident took place on 28.3.2008. The accident was result of rash and negligent driving of offending vehicle. The accident proved fatal for Ram Niwas. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the legal heirs of the deceased. The Tribunal vide impugned award awarded a sum of ₹ 3,75,000/- alongwith interest at the rate of 7 % per annum to the claimants.

During the claim proceedings, the driving licence Ex.R2 was

exhibited before the Tribunal, which was valid from 28.6.2008 to 27.6.2011. The accident took place on 28.3.2008. The Tribunal considering the fact that the driver was not holding a valid licence on the date of accident, gave recovery rights to the insurer. Aggrieved of the recovery rights, the present appeal has been filed.

There is a delay of more than 7 ½ years in filing the appeal. The explanation put forth is as vague as it could be. It has been stated that the appellants are not very educated people and the counsel appearing before the Tribunal wrongly guided them that the Insurance Company will pay the entire amount. It is only when the notice in execution proceedings in 2018 was received that they have filed the appeal.

The explanation put forth is not satisfactory. From the perusal of the award it is clear that the recovery rights were given against respondents No.1 and 2. It was also held that the driving licence was valid from June 2008 whereas the accident was in March 2008. It would be pertinent to note that neither the name of the counsel who advised them has been mentioned nor the period when the applicant approached the counsel is mentioned in the application. The appellants are owner and driver of truck, they must have received the copy of the award from the counsel. No case is made out that they are totally illiterate. The cause pleaded is not sufficient enough to condone such a long delay.

No doubt that a liberal approach is to be adopted for condonation of delay, in cases where delay is of short period but a stricter approach is to be made where delay is long.

The Supreme Court in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459*, held as under :-

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."

The delay is not be condoned mechanically even in absence of any satisfactory explanation. While condoning the delay sufficient explanation should be there.

In **Basawaraj and another v. Special Land Acquisition Officer (2013) 14 SCC 81** held that:

9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in

view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. 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."

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 rightly applies: *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 applicant was not vigilant in pursuing its 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.

04.04.2019

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	Yes