

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

**FAO No. 754 of 2018 (O&M)
DECISION ON: MAY 21, 2019**

SAHUN

.....APPELLANT

VERSUS

M/S RELIANCE GENERAL INSURANCE CO. LTD & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Munfaid Khan, Advocate
for the appellant.

Mr. Manmohan Singh, Advocate for
Mr. Suman Jain, Advocate
for respondent No.1.

AVNEESH JHINGAN, J (Oral)

The award dated 23.08.2013 passed by the Motor Accident Claims Tribunal, Faridabad (for brevity 'the Tribunal') has been assailed by the owner of three-wheeler bearing registration No. HR-38-K-9298 (hereinafter referred to as 'offending vehicle'), being aggrieved of the recovery rights granted to the insurer of the offending vehicle. The appeal is accompanied by an application under Section 5 of the Limitation Act, 1963 for condoning the delay of 1530 days in filing the appeal.

The facts of the case are summarised that a motor vehicular accident took place on 10.08.2010, the accident proved fatal for Mukesh. FIR No. 275, dated 12.08.2010 was registered at Police Station Hathin. The accident was result of rash and negligent driving of the offending vehicle. The Tribunal awarded compensation of ₹16,00,000/- alongwith interest @ 7.5% per annum.

The Tribunal came to the conclusion that the driver of the offending vehicle was not holding a valid and effective driving licence on the date of accident. The insurer of the offending vehicle was held liable to pay compensation but was granted rights to recover the awarded amount from the driver and owner of the offending vehicle.

In the application for condonation of delay, the explanation given is that on asking of the counsel of District Court, Faridabad, applicant/appellant engaged Mr. Hari Kumar Rana, Advocate to file an appeal before this Court in the year 2013 and whenever he asked about the fate of his appeal from the District Court counsel, he used to say that the appeal is admitted. It was only in January 2018 when an execution petition was filed by the insurer, he came to know that his appeal was not filed, thereafter, he engaged another lawyer in Chandigarh and filed the appeal.

Learned counsel for the applicant/appellant argues that the delay is a result of in-action on behalf of the earlier counsel. He submits that the party should not suffer for the conduct of an Advocate.

Learned counsel for the insurer argues that the explanation put forth by learned counsel for the applicant/appellant is not *bona-*

fide. The claimants had filed an appeal i.e. FAO No. 5213 of 2013 seeking enhancement of compensation in the year 2013. The applicant/appellant was respondent No.2 in the said appeal. The appeal was decided on 02.08.2016. Respondent No.2 (applicant/appellant) was duly represented by Mr. Munfaid Khan, Advocate.

There is a delay of more than 4 years in filing the present appeal. The explanation put-forth by the applicant/appellant is not sufficient, rather *bona-fide* is itself doubtful. The award was passed in August 2013 and as per the pleadings in the application, Mr. Hari Kumar Rana, Advocate was engaged to file the appeal. It has nowhere been stated that thereafter, the applicant/appellant ever asked for the status of the appeal from Mr. Hari Kumar Rana, Advocate. It may be a coincidence that in other appeal filed by the claimants another counsel was engaged. Neither the party nor the counsel verified the status of the appeal filed by the applicant. It is a reasonable expectation that atleast the party would check from the earlier counsel about the status of the appeal, as the matter with regard to enhancement of compensation was arising out of the same award. Not only this, even this Court was not apprised during proceedings of appeal filed by claimant that the appeal has been filed by the applicant/appellant against the award. The appeal filed by the claimants was decided in August 2016.

There is another aspect of the matter that the counsel who represented the applicant/appellant in FAO No. 5213 of 2013 is the one who has filed the present appeal and application. The fact with regard

to filing of the appeal by the claimants and appearance of the applicant/appellant in the said appeal has not been mentioned in the application seeking condonation of delay. It is only during the course of arguments that learned counsel for the insurer has produced the order passed in FAO No. 5213 of 2013 and thereafter the record of the said appeal was perused by this Court.

There is no doubt that a liberal approach is to be adopted for condonation of delay. But the Supreme Court has held that where delay is short, liberal approach be adopted but where delay is inordinate, strict view be adopted. 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.”

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

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**, 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."

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, no satisfactory explanation has been put forth for condonation of delay. It is evident that applicant was not vigilant in pursuing his remedies. No ground is made for condonation of delay.

The application is dismissed. Consequently, the appeal is also dismissed being time barred.

(AVNEESH JHINGAN)
JUDGE

MAY 21, 2019
sham

<i>Whether speaking/ reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>