

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 16151 of 2018 (O&M)

Date of Decision: 31.05.2019

Smt. Nijri and another

.....Appellants

Versus

Safat Khan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Brijender Singh, Advocate for
Mr. Ashish Gupta, Advocate
for the applicants-appellants.

AVNEESH JHINGAN, J.(oral)

Aggrieved of the award dated 7.1.2008 passed by the Motor Accident Claims Tribunal, Gurgaon, (hereinafter referred to as 'the Tribunal'), the present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), seeking enhancement of compensation awarded under Section 166 of the Act.

The appeal is accompanied by an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 3855 days in filing the appeal. The explanation put forth for condonation of delay is that the documents were handed over to Sh. Vipul Aggarwal, Advocate, for filing the appeal and thereafter, the applicants-appellants tried to contact the counsel to know the fate of their appeal but failed to contact.

The explanation put forth is not sufficient to condone the delay of more than ten years. It is highly improbable that for ten years, the applicants-appellants will sit home without contacting their advocate. No effort was

made even otherwise to check whether the appeal was filed or not. Such unsatisfactory explanation cannot be accepted. It clearly emerges that there was negligence on the part of the applicants-appellants to pursue their appeal.

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.”

The Supreme Court held that where delay is of short duration, liberal view is to be taken but where there is inordinate delay, strict view is to be taken. A delay of ten years can by no stretch be considered as short.

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.

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."

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."

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

31.05.2019

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable:

Yes