

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

**CM-2075-CII-2021
in FAO-177-2021 (O&M)
Date of Decision: 25.02.2021**

**UNITED INDIA INSURANCE CO LTD
V/S**

...Appellant

SHAKUNTALA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Suri, Advocate,
For the applicant/appellant.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

CM-2075-CII-2021

Applicant seeks condonation of delay of 115 days in filing the accompanied appeal. For the reasons stated hereinafter, this is not a fit case where discretion to condone the delay ought to be exercised.

2. The explanation for seeking condonation is totally mechanical and there seems to be no application of mind. The delay is sought to be justified on the ground that file was pending from one desk to another in the office of applicant-insurance company. No specific details have been given as to why it was pending and why it took so many days to take the decision.

3. For ready reference paras 2-4 of the application are as below:-

“2. That in this case, the certified copy of the order dated 07.08.2019 passed by the Ld. Tribunal was applied on 08.08.2019 and prepared on 26.08.2019. The counsel before the Ld. Tribunal sent the certificate copy of the aforesaid order dated 07.08.2019 along with his letter dated 27.08.2019 to the concerned Divisional Officer at Gurugram which was received on 10.09.2019 at the said office. The said case file was processed at the said Divisional Office and the case file was sent vide their claim Note signed on 10.02.2020 to Regional Office-II, New Delhi. The Delhi Regional Office-II received this

case file on 13.02.2020 and processed the case file. After that the said Delhi Regional Office-II sought an opinion of the Advocate, the said advocate submitted his opinion dated 2.3.2020 and this opinion was received by the Delhi Regional Office-II on 03.03.2020. The case file was further processed by the said office. The said Delhi Regional Office-II, vide their claim Note signed on 15.03.2020 sent the case file to the Regional Office, Chandigarh recommending this case for filing the appeal before the Hon'ble High Court. The case file of this case was received at the Regional Office, Chandigarh on 16.03.2020.

3. The case file of this case was further processed at concerned section of Regional Office at Chandigarh and the counsel was deputed for filing of appeal before the Hon'ble High Court on 17.03.2020.

4. The counsel prepared the appeal and filed the appeal accordingly before this Hon'ble High Court on 18.03.2019. Thus, a delay of 115 days had occurred in filing the present appeal. Since the matter was dealt with at various channels and passed through various hands and so the appeal could not be filed in time and the delay of 115 days has occurred in filing the appeal."

4. Perusal of the aforesaid would reveal that not only the application has been filed in a mechanical manner, but even the mandate of law, which envisages each day's delay has to be explained, is completely amiss in the averments of the application.

5. While it is obvious that once learned counsel was engaged on 17.03.2020, he very diligently, realising the importance of even having to explain even one day's delay, filed the appeal the very next day i.e. on 18.3.2020. Such is the alacrity, expected also from a vigilant and perpetual litigant, in fact, with a stronger vigour. Not to forget, Insurance Company herein has the professional expertise to handle litigation. Applicant is pan India company with complete legal set up at its disposal, having both in house team of legal professionals on its pay roll, as well as, out sourced team of learned counsels on its panel, and yet it should falter, is rather a matter to ponder for the Insurance Company/appellant.

6. An appeal which has become time barred generates vested right in favour of decree holder, who has got a favourable order in his favour from the Court below. It would, therefore, be improper to condone the delay on whimsical grounds as resorted by the Applicant-Insurance Company herein. Particularly, when the claimants are unable to even afford the litigation expenses, given their financial condition, as is reflected from the award itself.

7. Qua the issue in hand with regard to condonation of delay, reference may be had to Apex Court judgment in **Ajit Singh Thakur Singh v. State of Gujarat, reported in AIR 1981 SC 733**, wherein it is observed thus-

".....it is true that a party is entitled to wait until the last day of limitation for filing an appeal, but when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal, but that the limitations has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay."

8. Reference may also be had to Apex Court judgment in **Ramlal and others Vs. Rewa Coalfields Ltd.** reported as **1962 AIR (SC) 361**.

Relevant extract of the same is reproduced hereinbelow:

"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which

has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in trial behalf should be exercised to advance substantial justice”.

9. The claimants herein are poor and unemployed, being widow of deceased victim, his 3 minor children and his ailing old unemployed parents. The victim died in a road accident after being hit by an offending vehicle (Alto Car), while he was walking alongside the road. Victim was the only bread winner of the family.

10. Given that a compensation of only Rs.25,27,000/- has been awarded, to my mind, if the case is heard on merits, possibility of enhancement of the award cannot be ruled out in the facts and circumstances of the case.

11. Be that as it may, since the application is being dismissed on limitation, I would refrain from going into that aspect of the matter, it would be in the interest of justice and equity to simply dismiss the appeal on limitation.

12. Since the appeal is not maintainable on the ground of delay, no ground to hear the main case on merits is made out.

Pending application, if any, shall also stand disposed of.

February 25, 2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No