

Sr. No. 106**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CM-7957-7958-CII-2021 in/and
FAO-880-2021****Date of decision: 11.10.2021**

HDFC ERGO General Insurance Co. Ltd.

...Applicant/Appellant

Versus

Surjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Sanjeev Kodan, Advocate,
for the applicant-appellant.

ARUN MONGA, J. (ORAL)

Applicant-Insurance Company seeks to set aside the impugned order dated 17.10.2017 passed by the learned MACT, Ludhiana, albeit only to the extent of grant of penal interest in the event of delay in disbursement of the awarded compensation.

2. There is a delay of 954 days in filing the appeal. Narrative of reasons pleaded in paras 2-8 of the accompanied condonation application under Section 5 of the Limitation Act, is as under: -

“2. That the impugned order was passed on 17.10.2017 passed by learned MACT, Ludhiana. In para No.24 of the award, the learned MACT awarded a sum of Rs.54, 64, 500/- in favour of claimants. The learned MACT, further observed that the above said amount shall be paid within a period of 2 months from today (i.e. 17.10.2017) along with interest @ 7% per annum from the date of accident till its realization, failing which the amount of compensation shall carry the interest @ 9% per annum.

3. That thereafter the appellant company prepared cheque/draft no.2873 dated 28.12.2017, an amount of Rs.68,56,226/- in the name of Learned MACT, Ludhiana. The said cheque/draft was not accepted by the learned MACT and

returned to the appellant. Thereafter, the appellant prepared four different cheques/drafts in favour of all the claimants.

<i>Cheque No.</i>	<i>Date</i>	<i>Name</i>	<i>Amount</i>
5604	21.02.2018	Surjit Kaur	Rs. 19,74,674/-
5605	21.02.2018	Jaswinder Kaur	Rs. 16,45,780/-
5606	21.02.2018	Jaspreet Singh	Rs.16,45,779/-
5607	21.02.2018	Mahinder Kaur	Rs.13,16,886/-

4. *The said cheques/drafts were en-cashed by the claimants. Thereafter, the claimants filed the execution for the penal interest awarded by the learned MACT and the same is still pending before the learned MACT, Ludhiana.*

5. *That the facts mentioned in above said para it is crystal clear that the appellant company satisfied the award along with 7% interest in the month of February 2018 and the same has been received by the claimants.*

6. *That now the claimants filed the execution for penal interest which is against the law laid down by the Hon'ble High court in case FAO No.4920 of 2018 titled as "New India Insurance Company Limited Vs. Bibi Tajpuriya and Ors." Decided on 07.08.2018. In the above said case, this Hon'ble Court relied upon the judgment of the Hon'ble Apex Court in case, "National Insurance Company Limited Vs. Keshav Bahadur" reported as 2004 (ACJ) 648 and set aside the penal interest imposed by the learned Tribunal.*

7. *That it is settled law that the learned MACT cannot imposed the penal interest despite that the learned MACT allowed the penal interest in present case. In the present appeal, the appellant only challenge the penal interest. Due to these reasons delay of 954 days has been occurred in filing the appeal.*

8. *That the delay in filing the accompanied appeal is neither intentional nor wilful but has occurred due to the reasons explained above."*

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. The explanation for seeking condonation is totally mechanical and there seems to be no application of mind. No specific details have been given as to why filing of appeal was pending and why it took 954 days to take the decision, whereas, MACT had rendered its award way back on 17.10.2017 cautioning the Insurance Company that in case, it does not pay the compensation within 2 months, then interest @ 9% shall be payable instead of 7% and yet it is not stated when was the execution petition filed against the Insurance Company and/or when was notice served therein and/or appearance caused therein and/or reason of delay in preferring instant appeal despite knowledge of the execution proceedings, other than reliance on Supreme court judgment qua non entitlement of penal interest.

6. 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 worthy learned counsels on its panel, and yet it should falter, is rather a matter to ponder for the Insurance Company/appellant.

7. An appeal which has become time barred generates vested right in favour of claimants, who have got a favourable order in their 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.

8. 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."

9. 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".

10. The claimants herein are poor and unemployed, being widow of deceased victim, his 2 minor children and his ailing mother. The victim died in a road accident after being hit by an offending vehicle (Jeep Fortuner), while he was walking alongside the road. Victim was the only bread winner of the family. In the premise, on merits, possibility of enhancement of compensation to the claimants cannot be ruled out either.

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. For the reasons stated hereinabove, this is not a fit case where discretion to condone the delay ought not to be exercised.

13. 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.

11.10.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No