

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

FAO-1456-2021(O&M)

Date of decision:-6.10.2021

Dharamveer Singh and another

...Appellants

Versus

The Oriental Insurance Company Ltd. and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sunil Kumar Bhardwaj, Advocate
for the applicant/appellant.

H.S. MADAAN, J.

Petitioner/claimant Vijay @ Foji had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Subhash Gautam – driver, Dharamveer Singh – owner and Oriental Insurance Company Ltd. - insurer of the truck bearing registration No.HR69A-5494 (hereinafter referred to as the offending vehicle), claiming compensation on account of suffering injuries in the motor vehicular accident, which took place on 27.4.2013 at about 7:00 p.m. in the area of Sarbhanga Chowk, Sohna, Tauru Road at Sohna statedly on account of rash and negligent driving of the offending vehicle by respondent No.1.

Notice of the claim petition bearing MACP Case No.37 of 2013 was given to respondents, who put in appearance and contested the

claim petition. However, vide Award dated 2.3.2015, the said claim petition was accepted and compensation of Rs.1,68,200/- with interest @ 6% per annum from the institution of the petition till payment, from respondents No.1 and 2 was awarded to the petitioner/claimant with a direction that respondent No.3 – insurance company would satisfy the award and then could get recover the said amount from respondent No.2 for the reason that the terms and conditions of the insurance policy had been violated.

Respondents No.1 and 2 aggrieved by the said award have approached this Court by way of filing the present appeal. The appeal has been filed belatedly by 1749 days and an application bearing CM No.9924-CII of 2021 under Section 5 of the Limitation Act read with Section 151 CPC for condonation of such delay has been filed contending that the appeal could not be filed within period of limitation since the present applicant/appellants came to know about the recovery rights granted to insurance company quite belatedly when execution application was filed before the Tribunal in the year 2020 i.e. after a gap of five years. As such, the delay in filing the appeal was not intentional or wilful. Therefore, the same be condoned.

I have heard the learned counsel for the applicant/appellants besides going through the record.

The purpose of enacting Limitation Act was to specify the period during which an aggrieved person could seek his remedy by approaching the Court of law. The purpose of such enactment was to ensure that an aggrieved person approaches the Court at the earliest and

does not sleep over his rights for a long time and damoclean sword of litigation should not hang over heads of the opposite party.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Here I do not see any justifiable reason to condone such huge delay of more than five years in filing of the appeal. The applicant/appellants, who are respondents No.1 and 2 before the Tribunal were duly represented by counsel Sh.S.K. Yadav, Advocate, who had contested the case on behalf of such respondents. Therefore, it is not open to the applicant/appellants that they were not aware of the award. It does not sound convincing that such applicant/appellants were ignorant of the award especially with regard to the recovery rights granted to the insurance company. No cogent and convincing reason has been given in the application, which might have spurred this Court to condone huge delay in filing of the appeal.

It may be noticed that the amount of compensation awarded to the claimant in this case is not very high. Therefore, it cannot be said by the applicant/appellants that they would be greatly affected financially in case the award remains as such.

As regards the judgment i.e. **Mohinder Singh Versus Lakhwinder Kaur and others, 2016(2) PLR 165** by a Single Judge of this Court referred to by learned counsel for the applicant/appellants, wherein delay of 1933 days in filing of the appeal had been condoned, that judgment is not helpful to the applicant/appellants due to different facts and circumstances and the context in which such observations had been made.

There is absolutely no reason to condone such huge delay in filing of the appeal. Therefore, the application bearing CM No.9924-CII of 2021 seeking condonation of delay stands dismissed. Consequently, the appeal, which is time barred is also dismissed.

6.10.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No