

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

FAO-6193-2014(O&M)

Reserved on:-21.4.2023

Date of Pronouncement:-1.5.2023

Pahlad and another

...Appellants

Versus

Jagatpal and others

...Respondents

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

Present: Mr.Raman Chawla, Advocate
for the appellants.

Mr.Vinod Chaudhary, Advocate
for respondent No.4.

H.S. MADAAN, J.

1. Finding the compensation awarded by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as the Tribunal) on account of death of Rajesh Kumar in a motor vehicular accident to be inadequate, the petitioners No.1 and 2, namely, Pahlad and Krishna Devi have preferred an appeal before this Court seeking enhancement of compensation so awarded by the Tribunal.

2. The appeal had been filed quite belatedly, as such an application under Section 5 of the Limitation Act was brought for

condonation of delay of 1087 days in filing of the appeal. Notice of that application was given to respondents. Initially, respondents No.1 &2 and 4 had put in appearance through counsel, however, later on only respondent No.4 had appeared through counsel.

3. Article 116 of the Limitation Act, 1963 provides limitation of 90 days for filing an appeal to High Court from an order passed by the Court/Tribunal below.

4. 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.

5. In the present case, in the application i.e. CM-16846-CII-2014 under Section 5 of the Limitation Act brought by the appellants/claimants, they have stated that earlier appeal was filed on 25.4.2011, which was ordinary filing; on 20.5.2011, Diary No.662016 was put against the appeal but registry had raised several objections, as such on 8.11.2011 Sh.Ayush, Clerk of counsel for the appellants had received back the appeal for re-filing after removal of objections; however in the meanwhile, said Clerk left the office of counsel for the appellants and new Clerk namely Sh.Ramesh was sent in the month of March, 2012 but the file was not traced out; meanwhile no phone call was received

from the appellants; when it was prepared for filing in the month of March, again an objection was raised; then it was ready to be re-filed but subsequently the case was not traced out; the counsel had changed his house from BSNL Society, Sector 50, Chandigarh to Flat No.242, Wellington Estate, Dhakoli, Zirakpur; counsel for the appellants came to know about the appeal on receipt of telephone call from the appellants on 1.4.2014, even then file could not be traced, therefore, the delay was not intentional or wilful.

6. The application is being resisted by the respondents vehemently.

7. I have heard learned counsel for the parties besides going through the record and I find that the appellants have failed to render any reasonable or plausible explanation for delay of 1087 days i.e. about 3 years in filing of the appeal. Rather it comes out to be a case of carelessness and negligence as well as a adoption of very casual approach in the matter. The law does come to rescue of a litigant in condoning the delay if the same had occurred due to the reasons beyond control of the litigant and was not intentional or wilful. However, a litigant, who is very casual in his approach and is negligent, lethargic and sluggish is not to be shown any leniency in the matter.

8. If the delay is condoned in a light and routine manner that would defeat the very purpose for which Limitation Act, 1963 had been enacted.

9. Learned counsel for the respondent No.4 – insurance company has referred to judgment **Basawaraj and another Versus**

Special Land Acquisition Officer, 2013(8) SCR 227, wherein the Apex Court while dealing with a case, which had been presented in the Court beyond limitation with delay of 5 ½ years and no sufficient cause having been shown for condoning delay, had observed that delay cannot be condoned on the ground that claimant would not be entitled for interest for the period of delay. The term sufficient cause was interpreted as under:

- (i) Sufficient cause is the cause for which defendant could not be blamed for his absence.*
- (ii) The party should not have acted in a negligent manner or there was a want of bona fide on its part.*
- (iii) The Court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.*

It was further observed that the law of limitation may harshly affect a particular party but was has to be applied with all its rigour when the statute so prescribes and the Court has no power to extend the period of limitation on equitable grounds.

10. Learned counsel for the respondent No.4 has further referred to an order passed by a Single Judge of this Court in case titled '*Parhlad and others Versus Jagatpal and others*', wherein referring to Rule 9, Chapter I, Part-A, Volume V of Punjab and Haryana High Court Rules and Orders, it was observed that the petition on which the objections had been raised by registered is to be taken by the counsel/party, who filed it, to be re-filed within a total period of 40 days and when it is not taken back for re-filing after removal of objections, the case is to be listed before the Court for orders.

11. Under the circumstances since no reasonable and plausible explanation for condonation of gross delay of about 3 years has been furnished by the appellants, I do not find any sufficient reason to condone the delay under Section 5 of the Limitation Act. The application is found to be without merit and the same is dismissed.

12. Resultantly, the appeal is also dismissed being time barred.

The miscellaneous application(s), if any, stand disposed of accordingly.

1.5.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No