

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

107

**CWP-17012-2023 (O&M)
Date of decision: 02.04.2024**

ANUP AND ANOTHER

.....Petitioners

VERSUS

SULTAN SINGH AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. S.K. Tripathi, Advocate
for the petitioners.

VINOD S. BHARDWAJ , J. (Oral)

CM-4980-CWP-2024

The instant application under Section 5 of the Limitation Act has been filed seeking condonation of delay of 62 days in filing the application for restoration of the writ petition, which was dismissed for non-prosecution.

For the reasons stated in the application, the same is allowed. Delay of 62 days in filing the application under Order 9 Rule 9 read with Section 151 C.P.C. is condoned.

CM-4981-CWP-2024

The instant application under Order 9 Rule 9 read with Section 151 C.P.C. has been filed for recalling of the order dated 12.12.2023 vide

which the writ petition was dismissed for non-prosecution.

Learned counsel appearing on behalf of the applicant contends that the petitioner was out of station and a pass over could not be sought, and, therefore, the matter was dismissed in default.

For the reasons stated in the said application, which is supported by an affidavit of the petitioner, the same is allowed. The main writ petition is restored to its original number.

CWP-17012-2023

Challenge in the present writ petition is to the award dated 11.03.2023 (Annexure P-4) passed by the National Lok Adalat, Rewari in favour of respondent No.3.

2. Learned counsel appearing on behalf of the petitioners vehemently argues that on 02.10.2016, the petitioners along with Yogita @ Sushila (since deceased) were coming in car bearing registration No. HR-26AL 8880 on NH-15 at around 05.30 AM. The car was being driven by petitioner No.1 at moderate speed and when they reached near village Khaira, one Bharmal Ram son of Ramu Ram, who was taking his cows to field from his home, petitioner No.1 turned the car to save cows coming in front and respondent No.1 came driving his car on a very high speed, in a rash and negligent manner and there was a direct hit of his car with the car of the petitioners, resulting in death of Yogita @ Sushila on the spot and the petitioners also sustained several injuries. An FIR No. 376 dated 02.10.2016 was registered under Sections 279, 337, 338, 304-A IPC against respondent No.1.

3. A claim petition under the Motor Vehicles Act, 1988 was filed

by the petitioners before the Motor Accident Claims Tribunal, Rewari claiming compensation to the tune of Rs. 60 Lakhs as the deceased was about 31 years at the time of her death and she was drawing a monthly income of Rs. 18,000/- from private sector and was also earning a further sum of Rs.22,000/- per month from tuition. It is submitted that during the pendency of the petition before the Tribunal, the counsel for the petitioners got the same settled after getting his statement recorded that he is ready and willing to settle the matter for an amount of Rs. 15,50,000/- as a lump sum compensation.

4. Learned counsel for the petitioners argues that the petitioners had not been taken into confidence by the counsel before getting his statement recorded and that the settlement has been arrived at on a very paltry compensation, which is insufficient.

5. Learned counsel for the petitioners was directed to place on record the power of attorney that was executed by the petitioners in favour of their counsel, however, despite availing five opportunities, the power of attorney has not been placed on record. A pointed query was also raised to the counsel for the petitioners, as to whether the said power of attorney authorises the Advocate to enter into a settlement on their behalf or not, to which he fairly concedes. Further, counsel was also asked to respond as to whether any proceedings of deficiency of service, or complaint against their Advocate before the respective Bar Council has been initiated by the petitioners against the lawyer, who purportedly entered into a settlement without the consent of the petitioners and/ or as to whether any specific instruction by the petitioners was issued to their counsel not to enter into

any settlement. He responds that no such proceedings have been initiated by the petitioners against their counsel representing them before the Motor Accident Claims Tribunal as well as before the National Lok Adalat, Rewari.

6. He, however, argues that the said settlement has been arrived at for a meager compensation of Rs. 15,50,000/-, whereas the compensation of Rs. 60,00,000/- has been prayed for by the petitioners.

7. There is, however, no evidence on the record, on the basis whereof the computation of income as has been claimed by the petitioners to be earned by the deceased Yogita @ Sushila, was at par, what has been claimed by the petitioners. The income as claimed by the petitioners to the tune of Rs. 40,000/- per month, which would work out to be Rs. 4,80,000/- per annum, however, there is no permanent account number/ details of the income tax returns that had ever been placed by the petitioners, either before the Motor Accident Claims Tribunal or before this Court on the basis whereof it may be construed that the income as claimed by the petitioners was the actual income earned by the deceased.

8. Be that as it may, the controversy revolves around the authority vested in an Advocate appearing on behalf of the petitioners and its extent as per The Powers of Attorney Act, 1882 . This Court had already dealt with such a matter in **CWP No. 6419 of 2018** titled '**Suraj Kali Vs. Bimonthly Lok Adalat and others**', decided on 23.01.2024.

9. For the foregoing reasons and by placing reliance on the judgment in the matter of '**Suraj Kali**' (supra), I find that there is no evidence placed by the petitioners on the Court file, on the basis whereof, it

can be held that the said settlement had arrived at by the counsel for the petitioners for and on behalf of the petitioners, was not authorised or was an act of fraud. Consequently, the present writ petition is dismissed.

(VINOD S. BHARDWAJ)
JUDGE

02.04.2024
Satyawar

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No