

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-15891-CII-2018 in/and
FAO-4755-2018 (O&M)
Date of Decision: February 08, 2024

Jyoti and others
...Appellants

VERSUS

Naresh Kumar and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Amit Singla, Advocate
for the applicants-appellants.

Mr.B.S.Walia, Advocate
for respondent No.3.

ARCHANA PURI, J.

Along with the appeal filed to seek enhancement of the compensation, as granted by learned Tribunal, on account of death of Shiv Raj @ Kala, in a motor vehicular accident, an application bearing No.CM-15891-CII-2018 has been filed seeking condonation of delay of 2354 days, in filing the appeal.

It is averred in the application that the applicants-appellants came to know that they have been awarded compensation on the lower side by learned Tribunal and they contacted the counsel. Learned counsel, thereupon, told the applicants that the amount of compensation awarded by learned Tribunal is on lower side and Award of learned Tribunal could be

modified, if an appeal is filed in the High Court.

Furthermore, it is asserted in the application that the requisite documents were handed over to a counsel for filing the appeal in the High Court, but unfortunately, the same was not filed. On enquiry, no satisfactory reply was not given and now, applicants-appellants have come to know that the appeal has not been filed till date. Now, after arranging necessary expenses and after getting the requisite documents, the appeal has been filed, which also resulted into delay of 2354 days, in filing the same.

In reply, learned counsel for the insurance company has resisted the claim of the applicants-appellants. It has been averred that the applicants had not given any date, on which, they came to know about the passing of the Award by learned Tribunal. Rather, it has come out that the applicants immediately came to know about the passing of the Award by learned Tribunal. No case is made out for condoning the delay of 2354 days in filing the appeal. As such, a prayer was made for dismissal of the application as well as the appeal.

The essential facts, as culled out, from the paperbook, are as follows:-

That, initially, Jyoti and others had filed a claim petition titled 'Smt.Jyoti and others vs. Naresh Kumar and others', bearing Claim petition No.47-MACT/Date of institution 29.11.2010. This claim petition was filed to seek compensation, on account of death of Shiv Raj @ Kala, in a motor vehicular accident, which took place on 11.10.2010. However, after culmination of the proceedings, the said claim petition was dismissed qua applicant-claimant No.3, whereas, it was allowed qua applicants-claimants

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No.1, 2 and 4, vide Award dated 29.07.2011 and compensation was granted to them to the extent of Rs.6,01,000/-. Besides the same, terms of apportionment/disbursement were also detailed in the Award.

The Award, as such, was passed on 29.07.2011. However, appeal together with the application for seeking condonation of delay was filed in the year 2018. No doubt, there is inordinate delay in filing of the appeal.

Each case for condonation of delay, based on existence or absence of sufficient cause, has to be decided on its own facts. Exercise of this discretion, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided, if the circumstances, so called for. However, condonation of delay, being a discretionary power, available to the Court, do not mean that the Courts are not required to consider the existence of sufficient cause. Exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of the acceptability of the explanation, the length of delay, being immaterial. Sometimes, due to want to sufficient cause, being shown or an acceptable explanation, being proffered, the delay of the shortest range may not be condoned, whereas, in certain other cases, delay of long period can be condoned, if the explanation is satisfactory and acceptable.

However, adverting to the case in the hand, as already observed aforesaid, it should be noted that it was after a couple of years, after passing of the Award, the present appeal along with the application for seeking condonation of delay has been filed. Firstly, coming to the application, the detail whereof has already been reproduced in the earlier portion, it is

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evident that no such date has been given, as to when, after passing of the Award, applicants-appellants had knowledge about the Award having passed and felt about the same to be on lower side. No date, as such, has been given, as to when applicants-appellants contacted their counsel, who also apprised them about the amount of compensation awarded to be on lower side and that it could be modified, if an appeal is filed. Not only this, furthermore, no date, as such, has been given, as to when the requisite documents were handed over to the counsel and no name of the counsel, as such, has also been given, to whom the same were handed over. Further, even though, it is stated that they kept on enquiring, but no satisfactory reply was given, but no particulars, as such, as to when this enquiry was made and when the response was received, has been mentioned. Not only this, further, the applicants-appellants state that they came to know that the appeal has not been filed. No particulars or the details, that on which date they came to know about the appeal having not been filed, has been given. Also, it is stated that the present appeal has been filed, after getting the requisite documents and arranging the necessary expenses, the detail thereof, has also not been given.

To sum up, the contents of the application are quite vague. It is a sweeping assertion given, but no explanation for the delay, as such, has been given. As already observed aforesaid, no doubt, each day's delay is not to be considered in a technical manner, but however, the same can be taken into consideration as the sufficient cause is elastic enough for the Courts to do substantial justice. However, no case is made out in favour of the applicants-appellants, on the said touchstone.

In this regard, learned counsel for respondent No.3 has brought to the notice of the Court, by placing on record copy of the order dated 20.07.2013, passed in the Execution filed at the instance of the present applicants-appellants, vis-a-vis, the impugned Award. Perusal of this order reveals that it is bearing Execution No.94 of 07.01.2012, meaning thereby, latest by this date i.e. 07.01.2012, the applicants-appellants came to know about the passing of the Award dated 29.07.2011. This order also shows that the execution has been filed through counsel. As such, there was availability of seeking legal advice, vis-a-vis, filing of the appeal to challenge the Award and seek enhancement, but there was long silence, on the part of the applicants-appellants and it was only in 2018, that the application for condonation of delay together with appeal has been filed.

Considering the fact situation from the circumstances as spelt out, there is delay and laches. This delay automatically is not to be condoned. However, as observed aforesaid, no sufficient cause is made out for condoning this delay, despite having justice-oriented approach. Also, it is significant to mention that the impugned Award was passed on 29.07.2011. For a sufficiently long period, as observed aforesaid, which was for a number of years, there was long silence. The execution was filed to seek grant of awarded amount. It was in 2018, the applicants-appellants woke up from slumber and filed the application. However, during the interregnum period, there are several judgments passed by the Hon'ble Supreme Court, which changed the scenario of the grant of compensation, in a motor vehicular accident, while having broad based approach. Seemingly, on account of seeking benefit of the prevalent law, now the present appeal

has been filed. Precisely, on this account, malafide, on the part of applicants-appellants, is writ large.

As such, no case is made out for condoning the delay, in filing the appeal. Hence, the application i.e. CM-15891-CII-2018, for seeking condonation of delay, is dismissed and consequently, FAO-4755-2018 also stands dismissed.

February 08, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No