

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

CONC No. 212/2018

Suraj Chand

.... Appellant(s)/ Petitioner(s)

Through :- Mr. A K Shan, Advocate

V/s

Bajaj Allianz Insurance Co. Ltd. and  
Others

....Respondent(s)

Through :- Mr. Sunny Mahajan, Advocate for R-1  
None for R-2 & 3

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**17.05.2023**

**(ORAL)**

1. Through the medium of instant application, applicant seeks condonation of 1538 days delay in filing the appeal against award dated 30.04.2014 passed by Motor Accidents Claims Tribunal Udhampur (*herein, for short 'tribunal'*) in case titled "*Bansi Lal vs. Ashok Kumar & Ors.*"
2. The facts giving rise to the filing of the instant application emerging from the record would reveal that the Respondent No. 2 herein filed a claim petition under Motor Vehicles Act 1988 against the applicant herein for the injuries sustained by him on account of vehicular accident dated 30.10.2008. The applicant herein having been impleaded as Respondent in the said claim petition, being the owner of the vehicle came to be summoned by the tribunal upon entertaining the claim petition on 03.06.2010 and again afresh on 31.07.2010.
3. It is stated in the application that the applicant upon receipt of notice(s) from the tribunal in the claim petition, engaged a counsel for contesting the claim petition, who is stated to have promised the applicant herein to

represent him before the tribunal and inform him about the progress of the case and that on account of such promise and assurance, the applicant remained satisfied and waited for the information from his engaged counsel in the matter, who however, did not provide any information to the applicant about the case.

4. It is stated that it was only in the month of July 2018, the applicant received a notice from the tribunal whereupon, he engaged one Ms. Shalu Khajuria, Advocate, who appeared before the tribunal on 10.08.2018 and upon receipt of the copy of the execution application instructed the applicant to file objections to the application and that being not satisfied with the advice of the said counsel, the applicant herein engaged a senior counsel and upon his advice, the applicant obtained the copies of the award and interim orders passed in the execution application, whereupon, the applicant came to know that the counsel engaged earlier in the matter had failed to appear before the tribunal, resulting into passing of an exparte award, whereby, the Insurance Company/Non Applicant 1 herein had been saddled with the liability with a liberty to recover the awarded amount from the owner of the vehicle/applicant herein and that the applicant intended to challenge the said exparte award in an appeal before this Court and that since, it was time barred, as such, has filed the instant application for condonation of delay.

5. The grounds urged in the application for seeking condonation of delay in the instant application is that, the applicant was not informed by his counsel about the progress of his case as promised by him and that it was only upon receipt of a notice from the execution court, that the applicant came to know about the passing of exparte award. It is also urged in the

application that only after obtaining the copy of the award, the applicant came to know about the delay having occasioned in the matter, and as such, filed the instant application accompanied with the appeal against the impugned award. It is being also urged in the application that the delay in filing the appeal is required to be condoned as a substantial right of the applicant to pay compensation to the claimant is involved on the ground that the applicant allegedly violated the route permit of the offending vehicle.

6. **Objections** to the application have been filed by non applicant 1 whereas, other non applicants have chosen not to appear or else to file objections to the application.

In the objections, it is being stated that the applicant has not approached this Court with clean hands and that in fact that the applicant did appear before the tribunal and had been represented by a counsel and also had been aware about the passing of the award and despite that, applicant did not make any serious efforts to file appeal, well within time and that the appeal is filed in the year 2018, when the award have had been passed in 2014, without there being any plausible explanation in the application. It is being further stated that the grounds raised in the application therein, are vague and based on surmises and conjectures.

**Heard learned counsel for the parties and perused the record.**

7. It is established that the law of limitation has to be applied with all its rigor prescribed by a statute and although Section 5 of the J & K Limitation Act Samvat, 1995 provides for extension of the period of limitation in certain cases, however, applicant seeking such extension is required to satisfy the

court that there has been a “sufficient cause” for not preferring the appeal or making the application within the prescribed period.

The Apex Court in case titled as **Perumon Bhagvathy Devaswam vs. Bhargavi Amma, 2008 (8) SCC 321**, at Para 13 (iii) enunciated besides others the following principle *qua* an application under Section 5 of the Limitation Act:

*“(iii) The decisive factor in condonation of delay is not the length of delay, but sufficiency of a satisfactory explanation.”*

A reference to a judgment of the Apex Court reported in **AIR 1998 SC 2276, titled as P.K Ramachadran vs. State of Kerala**” would also be appropriate and advantageous wherein, at Para 6 following is noticed:

*“Law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as bared by time. No costs.”*

8. Keeping in mind the provision of law (supra) and the principles laid down by the Apex Court (supra) and reverting back to the application, the same fundamentally is based on the ground that there has been negligence of the counsel engaged by the applicant in defending the claim petition filed by the Non Applicant 2 herein, and as such, the applicant on account of such negligence of the counsel cannot be made to suffer.

Perusal of the record of the tribunal, however, would reveal and suggests that the counsel engaged by the applicant before the tribunal have had

been appearing in the matter and contested the claim petition. It is nowhere coming forth from the instant application as to whether the applicant herein made any efforts or attempts to contact his counsel engaged in the tribunal, as the negligence attributed to the counsel for the applicant cannot be taken to be as gospel truth unless, the applicant would have shown that he made any serious efforts to have some information from the counsel contesting the case on his behalf before the tribunal and that no such information was furnished to him by the counsel.

Seemingly, there is no plausible reason constituting sufficient cause warranting condonation of delay in the application for filing the appeal accompanying the application in hand and the application appears to have been filed with an impression that in seeking condonation of delay expression "sufficient cause" would receive a liberal construction in favour of the applicant, however, as has been noticed in the preceding paras, the explanation offered in the application by the applicant is cryptic and casual and cannot by any sense of imagination said to be sufficient/plausible or cogent. Furthermore, in so far as, the ground urged in the application that the delay in filing the appeal is required to be condoned as the applicant has substantial right involved in the matter cannot be accepted in view of the fact that in filing of an appeal under the provisions of Motor Vehicles Act against an award in law is aimed at or providing a cheap and speedy remedy and justice by way of compensation to a claimant. A justice-oriented approach thus, in such matters is possible if the courts lean against the casual and non-diligent approach and unbecoming conduct of the applicants seeking condonation of delay in filing the appeals against such awards, unless, a sufficient cause is shown

in tune and line with the principles and propositions laid down by the Apex Court. The said principle of sufficient cause, however, as noticed above is missing in the instant application.

9. Viewed thus, **the application is accordingly dismissed**, as a consequence whereof, **the accompanying appeal shall also stand dismissed** along with connected application(s), if any.

**(Javed Iqbal Wani)**  
**Judge**

Jammu:  
17.05.2023  
Manan

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**

