

**(2013) 04 AHC CK 0110**  
**In the Allahabad High Court**  
**Case No : F.A.F.O. (D) No. 483 of 2013**

Darshan Academy

APPELLANT

Vs

Smt. Kanak Lata Garg and Another

RESPONDENT

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**Date of Decision :** 09-04-2013

**Acts Referred:**

Limitation Act, 1963 — Section 5  
Motor Vehicles Act, 1988 — Section 173

**Citation :** (2013) 3 AWC 2381

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Advocate :** S.D. Ojha, for the Appellant;

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## Judgement

Rajes Kumar, J.—This appeal has been filed beyond time by 824 days alongwith an application u/s 5 of the Limitation Act, supported by an affidavit. In the affidavit, the delay has been explained as follows: The Claims Tribunal had passed the award against the insurance company giving the right of recovery to the insurance company to pay the amount off 4,60,447 alongwith 9% interest as compensation to the claimant and then recover the same from the appellant being owner of the bus on account of non-filing of driving licence, vide judgment dated 1.10.2010.

When the insurance company had initiated the proceeding for recovery of the amount from the owner/appellant, an objection was filed by the owner/appellant, which is paper No. 15 Ga and had also annexed the photocopy of the driving licence of driver Islam Uddin, which was valid on the date of accident but the objection was arbitrarily rejected by order dated 24.8.2011.

The appellant thereafter had filed review application on 4.10.2011 but the same was also rejected by the Claims Tribunal by order dated 15.10.2011.

Thereafter the appellant had approached to this Hon''ble Court by filing Civil Misc. Writ Petition No. 39345 of 2012 challenging the order dated 1.10.2010 and

order dated 15.10.2011 and the writ petition was also dismissed by this Hon''ble Court at the admission stage itself vide judgment dated 13.8.2012 only on the ground that the appellant had appropriate remedy u/s 173 of Motor Vehicles Act, 1988. A true photostat copy of judgment of this Hon''ble Court dated 13.8.2012 in Civil Misc. Writ Petition No. 39345 of 2012 is being filed herewith and are marked as Annexure-1 to this affidavit.

Thereafter the appellant had managed the expenses and counsel fees as well as bank draft of Rs. 25,000, which is mandatory u/s 173 of Motor Vehicles Act, 1988 for filing the appeal and the same is being filed without any further delay.

Since the appellant had filed objection as well as review application before the Claims Tribunal and thereafter writ petition before this Hon''ble Court and as such there was some delay in filing the present appeal and the delay is bona fide and deserves to be condoned by this Hon''ble Court.

The delay in filing the present appeal is bona fide and there was no deliberate negligence on the part of the appellant and as such the delay in filing the appeal is liable to be condoned.

In my view, the delay has not been properly explained. It is a clear case of laches and negligence. The impugned order is dated 1.10.2010. The review application, according to own admission, has been filed on 4.10.2011 after one year. The review application has been rejected on 15.10.2011 and the writ petition was filed on 13.8.2012 after almost 10 months. There is no explanation of such delay. The writ petition has been dismissed on 13.8.2012 and now appeal has been filed on 5.4.2013 after 7 months. There is no proper explanation for such delay. In my opinion, the delay has not been properly explained.

In the facts and circumstances, I decline to condone the delay. The application is rejected.