
(2012) 08 AHC CK 0271
In the Allahabad High Court
Case No : F.A.F.O. (D) No. 707 of 2012

Delhi Transport Corporation	Vs	APPELLANT
Leelu and Others		RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2012) 6 AWC 6348

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Vishesh Kumar Gupta, for the Appellant; Dinesh Chandra Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari and Anil Kumar Sharma, JJ.—We have heard learned counsel for the appellant, learned counsel for respondent No. 1 on application u/s 5 of the Limitation Act and perused the impugned award. The Stamp Reporter vide report dated 3.5.2012 has noted that there is delay of 2 years and 263 days in filing this appeal challenging the award dated 11.5.2009 passed by the Motor Accident Claims Tribunal/IIIrd Additional District Judge, Gautam Buddh Nagar in Motor Accident Claim Petition No. 7 of 2005, Leelu and another v. Delhi Transport Corporation and others.

2. The appellant is the owner of the bus involved in the accident dated 21.8.2004, wherein Amit aged about 14 years suffered death on account of fatal injuries sustained by him.

3. Learned counsel for the appellant has argued that after the award the appellant filed an application for review of the award before the Tribunal on the ground that photocopy of the driving licence of their driver Ratan Singh was already on record as paper No. 11C, which was also corroborated by D.W. 1 but the learned Tribunal has not considered this aspect of the matter. The review

petition was dismissed by the Tribunal on 3.9.2011. This order has not been challenged on behalf of the appellant so far. It has been averred in the affidavit filed in support of the application for condonation of delay that after the order dated 3.9.2011 application for obtaining certified copy was moved on 10.1.2012 and the same was received by the counsel for the appellant on 13.1.2012. Their counsel sent the certified copy alongwith other relevant papers with the opinion to file appeal against the award and the order passed on the review application to the office of the appellant on 30.1.2012. The file was thereafter sent to Chairman for approval and the file was received in the legal cell of the appellant on 21.3.2012. Thereafter, the record was sent to the counsel of the appellant at Allahabad on 16.4.2012 and thereafter the appeal has been filed.

4. On perusal of the record we find that it is a case of gross negligence and laches on the part of the appellant. The appellant has not annexed copy of the review application filed on their behalf before the Tribunal for review of the award dated 11.5.2009. In finding on issue No. 2, the learned Tribunal held that the appellant has not filed driving licence of its driver so there was breach of terms of insurance contract. Reference was made to paper No. 11C, which according to the learned counsel for the appellant, is the photocopy of the driving licence of the driver of the appellant namely, Ratan Singh. It could not be shown that the same was filed by the appellant. In the award the learned Tribunal has noted that the appellant has only filed a photostat copy of the Insurance policy. It has also been mentioned in the award that the copy of the driving licence of the driver was filed on behalf of the claimants. No doubt, learned Tribunal in its order dated 3.9.2011 has observed that photocopy of the driving licence of the driver was filed on behalf of the appellant, which was also referred by D.W. 1 in his statement but the learned Tribunal has declined to review the order on the premise that being the photostat copy his predecessor might not have read the driving licence.

5. Learned counsel for the appellant has referred to the statement of D.W. 1, Bhu Deo Sharma, their conductor and after seeing paper No. 11C he has stated that this driving licence belonged to the driver who was driving the vehicle at the time of accident. It is pertinent to note here that this witness has not given registration number of the bus involved in the accident on which he was deputed as conductor on the day of accident, i.e., 21.8.2004 in his examination-in-chief. He has also not given the name of the driver. No doubt, he has given the name of the driver and the registration number of the bus in the cross-examination but on perusing his statement as a whole, we find that he has given casual statement but has not given the time and place of accident. He has simply stated that he left sector-62 at 7.15 a.m. but has not stated as to on which vehicle he was working as conductor.

6. In the case of R.B. Ramlingam Vs. R.B. Bhvaneswari, , the Hon"ble Supreme Court has held that filing of review petition is no impediment in filing SLP and as a proposition per se that the prosecution of review proceedings would not be a

sufficient ground at all for purposes of Section 5 of the Limitation Act. In each and every case the Court has to examine whether delay in filing the SLP stands properly explained. True guide is whether the petitioner has acted with reasonable diligence in prosecution of his appeal or petition.

7. In view of these guidelines we are of the view that filing of review petition was no Impediment for the appellant to prefer an appeal before this Court challenging the impugned award. If for the sake of argument it is assumed that the appellants were pursuing their review petition bona fide even then inordinate delay in challenging the award, i.e., after 3.9.2011 up to 7.5.2012 is not sufficiently explained. The explanation given by the appellant that the delay was caused in getting sanction/approval from the Chairman to prefer appeal before this Court, is no sufficient ground to condone the delay as per judgment dated 3.7.2010 rendered by this Court in Second Appeal (Defective) No. 250 of 2010, State of U. P. through Collector, Azamgarh v. Keshav Murari Rai. In view of the aforesaid reasons we find that the appellant has not been able to sufficiently explain the delay in filing the appeal. The cause shown is not sufficient to condone inordinate delay of 2 years and 263 days. Thus, the application u/s 5 of the Limitation Act is rejected.

As a consequence thereof the appeal stands dismissed.