

(2013) 07 P&H CK 0800
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 2926 of 2011 (O and M)

Mahandev Singh	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 07 P&H CK 0800

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Advocate : H.P.S. Ghuman, for the Appellant;

Final Decision : Dismissed

Judgement

Vijender Singh Malik, J.—This is claimant's appeal for enhancement of compensation. However, the appeal being barred by limitation, an application has been filed by the claimant u/s 5 of the Limitation Act for condonation of delay of 3549 days in filing the appeal. Learned counsel for the appellant has contended that the appellant is an Advocate by profession. According to him, his wife died in a roadside accident. He has further submitted that after decision of the claim petition by learned Motor Accidents Claims Tribunal, Patiala the appellant engaged Mr. Mukesh Gandhi, Advocate who told the appellant that the appeal stands admitted. According to him, now he verified the fact and came to know that the appeal could not be filed due to change of address. It is argued that the appellant has a very strong case and he stood to no gain by bringing the appeal with a delay.

2. The delay in the case in hand is of about 10 years. Mr. Mukesh Gandhi, Advocate through whom it is said that the appeal was filed has filed his affidavit in support of the application. He has stated that the appellant engaged him to file the above said appeal and at that time, he was working in the office of Mr. Manjit Singh Khaira, Senior Advocate. According to him, he left the office of the Senior Advocate in the last of 2001 and remained under the impression that the appeal

has been filed. According to him, due to change of office, it could not be filed.

3. The first thing that can be noticed here is that the appellant claims that he engaged Mr. Mukesh Gandhi, Advocate and not Mr. Manjit Singh Khaira, Senior Advocate. The affidavit on the part of Mr. Mukesh Gandhi, Advocate does not contain true facts. He cannot say that he remained under the impression that the appeal has been filed. It was he, who was to file the appeal and no difference was there with the change of office. So, this affidavit of Mr. Mukesh Gandhi, Advocate does not help the appellant in any way.

4. The appellant does not say as to from where he made enquiry about his appeal and came to know that the appeal was not filed. If it was Mr. Mukesh Gandhi, Advocate then the fact should have been conveyed by Mr. Mukesh Gandhi, Advocate to the appellant very early. At least, the appellant should have enquired about his appeal early. Who told the appellant that the appeal was admitted is also a mystery. Mr. Mukesh Gandhi, Advocate does not say that he told him in this regard.

5. The decisions brought to the notice of the court by learned counsel for the appellant in FAO No. 4548 of 2005 titled as Pawan Kumar Vs. Surjit Kaur and others, decided on 13.08.2007, FAO No. 5871 of 2011 titled as The Patiala Central Cooperative Bank Ltd. Vs. Mohan Singh, decided on 16.11.2012 and FAO No. 1150 of 2011 titled as Pushpa Rani Vs. Gurbant Singh decided on 7.5.2013 do not help the appellant because the delay sought to be condoned in those cases is of comparatively shorter period. Here, the delay is of about 10 years and the same can be said to be thoroughly inordinate. Even the submissions and pleas advanced in this regard are also not found to be correct on the record. In these circumstances, I do not find there to be any sufficient cause for condonation of delay of 3549 days in bringing this appeal. Consequently, the application for condonation of delay is dismissed. Since application seeking condonation of delay in filing the appeal has been dismissed, FAO No. 2926 of 2011 being time barred fails and is dismissed.