

(2018) 08 RAJ CK 0056

In the Rajasthan High Court

Case No : Cross Objection Civil No. 9, 5, 6, 20, 8, 10 of 2016, Civil Misc. Appeal No. 982, 984, 2556, 3796, 3798, 1039, 1472 of 2011, 609, 494, 611, 493 of 2015

Manohar Lal Bhati @APPELLANT@Hash Chhagna Ram And Ors.

Date of Decision : 09-08-2018

Acts Referred:

Limitation Act, 1963 — Section 5
Code of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2018) 08 RAJ CK 0056

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Suresh Shrimali, Anil Bhandari, D.K. Joshi, Anil Bachhawat, H.R. Vishnoi

Final Decision : Allowed

Judgement

These appeals and cross-objections, arise out of an accident, which occurred on 16.06.2006 between a Pickup and a Truck, regarding which, 19 claim

petitions were filed seeking compensation either by the injured or by the legal representatives of the deceased.

The claim petitions were decided by judgments and awards dated 04.09.2010. While 17 claim petitions were decided by a consolidated judgment, 2 claim petitions were decided by two separate judgments.

While deciding the claim petitions, the Tribunal came to the conclusion that both the driver of the Truck as well as Pickup were guilty to the extent of

50%, which resulted in the accident. While the Truck was insured with the Oriental Insurance Company, the Pickup was insured with the New

India Assurance Company. The Tribunal on account of violation of policy condition, exonerated the insurer of the Pickup and that of the Truck,

however, in case of the Truck the order to pay and recover was passed.

Feeling aggrieved by the award, the claimants filed ten appeals alongwith ten applications under Section 5 of the Limitation Act, which were barred by limitation and after condonation of delay, except for S.B.C.M.A. No. 2556/2011 all other appeals have been admitted.

In the appeals, the claimants have, inter alia, questioned the exoneration of both the Insurance Companies on various grounds.

The matters remained pending, thereafter the owner of the Truck Manohar Lal Bhati filed cross-objections in the appeals filed by the claimants and in cases where the appeals were not filed by the claimants, filed appeals.

Obviously, all the cross-objections and appeals were barred by limitation. Applications seeking condonation of delay have been filed in all the cross-objections as well as the appeals.

Cross-objection No. 20/2016 filed in S.B.C.M.A. No. 3789/2011 though is within limitation.

In the applications filed under Section 5 of the Limitation Act, the reason, indicated seeking condonation of delay, reads as under:-

1. That in the aforesaid appeal, the cross-objector/applicant has filed the cross objection and for the reasons mentioned in the affidavit, the

cross objection could not be filed within the period of limitation. It is also relevant to note here that in the memo of appeal filed by the appellant-

claimants, the grounds raised by the crossobjector/applicant have been raised and as such there are sufficient reasons for not filing the cross objection

within the period of limitation.

It is, therefore, respectfully prayed that this application under section 5 of the Limitation Act may kindly be allowed and the delay in filing the cross objection may kindly be condoned.

Time was granted to the insurer of the Truck " Oriental Insurance Company, as the cross-objections and appeals filed by Manohar Lal Bhati were

directed against the said Insurance Company, to file reply on 26.08.2017, 18.09.2017, 09.10.2017, 25.10.2017 and 27.11.2017 and repeatedly it was

indicted that last opportunity is being granted. However, the Insurance Company has chosen not to file reply to the applications seeking condonation of delay.

Learned counsel for the appellant/cross-objector owner of the vehicle submitted that as the appeals filed by the claimants are already pending,

wherein, the issue pertaining to the liability of the Insurance Company has already been raised, the delay in filing the appeals deserves to be condoned.

Reliance has been placed on judgment of Honâ??ble Supreme Court in Wadhya Mal v. Prem Chand Jain & Anr. : AIR 1982 SC 18.

Learned counsel appearing for Oriental Insurance Company vehemently opposed the submissions. It was submitted that the application is cursory.Â

No reasons have been indicated.Â The matter proceeded ex parte against the appellants-cross-objectors before the trial court and even after service

of notices in the appeals after admission, no steps were taken in time to challenge the finding recorded by the Tribunal and, therefore, the appellants

are not entitled for condonation of delay.

Reliance was placed on State of Rajasthan & Ors. v. Nara & Anr. : 2015 (1) ACTC (Raj.) 277, Pooran Singh & Anr. v. Bhoor Singh & Ors. : 2015

(1) ACTC (Raj.) 397, Mahaveer &Â Anr. v. Saroj & Ors. : 2016 (1) ACTC (Raj.) 13 and Laxman Singh & Anr. v. Bhanwar Singh & Ors. : 2016

(2) ACTC (Raj.) 1165.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

As already noticed hereinbefore, the Tribunal while passing the award impugned came to the conclusion that there was violation of policy condition

and exonerated the Oriental Insurance Company from making payment of amount of compensation. However, it ordered for pay and recover.

The claimants filed appeals and besides seeking enhancement of compensation also questioned the validity of the findings recorded by the Tribunal

exonerating the Insurance Companies of both the vehicles. The issue as to whether the Tribunal was justified in exonerating the Insurance Companies

remains live before this Court in the appeals filed by the claimants.Â The averments made in the application filed by the appellants apparently are

most cursory and do not explain the delay.Â However, the apparent reason for the said nature of averments is the judgment relied on by the appellant

in the case of Wadhya Mal (supra), wherein, Honâ??ble Supreme Court in a similar nature case, where appeals against the award were filed by the

claimants and the Insurance Company and the owner filed the appeal after expiry of limitation and so also the proceedings were ex parte against the

owner, Honâ??ble Supreme Court came to the conclusion that when other

appeals on the same subject matter are pending, the appeals by the owner should also be adjudicated on merits and ordered for condonation of delay.

So far as the judgments cited by Learned counsel for the respondents Insurance Company are concerned, the principles laid down therein are well

settled wherein if the Court comes to the conclusion that there is negligence on part of the appellants/crossobjectors in filing the appeal in time and/or

the reason indicated is without any justification, the appellant/cross-objector cannot seek condonation as of right.

However, as noticed in the present case, the issue raised by the cross-objectors/ appellants is already live in the appeals as filed by the claimants and,

therefore, even otherwise the said aspect has to be adjudicated in the pending appeals and, therefore, the delay in filing the cross-objections cannot be

said to be fatal in so far as the appeals filed by the claimants are concerned and once the said aspect is to be adjudicated by the Court, pertaining to

the same accident, the delay in filing the appeal by the appellants also deserves to be condoned.

In view of the above discussion, the applications filed by owner Manohar Lal Bhati under Section 5 of the Limitation Act seeking condonation of delay

in filing the cross-objections as well as appeals are allowed.Â The delay is condoned.

As the cross appeals filed by the claimants have already been admitted, the appeals being S.B.C.M.A. Nos. 492/2015, 493/2015, 494/2015, 495/2015,

496/2015, 497/2015, 609/2015, 610/2015 611/2015 filed by appellant Manohar Lal Bhati are also admitted.Â Cross-objections are also admitted, which

would be adjudicated at the time of hearing of the appeals filed by the claimants. The requirement of service on the claimants is dispensed with.Â

Copies of memo of appeals have already been supplied to learned counsel for the respondents.

The applications filed by the appellants cross-objectors under Order XLI, Rule 27 CPC in all the cross-objections and appeals shall be adjudicated at

the time of final hearing of the appeals.

Reply, if any, to the said applications may be filed in the meanwhile.

List all the appeals for hearing on 13.11.2018.