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**(2022) 04 SHI CK 0010**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Miscellaneous Petition (Main) No. 346 Of 2018**

Shyam Lal

APPELLANT

Vs

Shriram General Insurance Company Ltd And Others

RESPONDENT

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**Date of Decision : 02-04-2022**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation : (2022) 04 SHI CK 0010**

**Hon'ble Judges : Tarlok Singh Chauhan, J**

**Bench : Single Bench**

**Advocate : B. S. Chauhan, Munish Dhatwalia, Jagdish Thakur, Sanket Sankhyan**

**Final Decision : Dismissed**

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## **Judgement**

Tarlok Singh Chauhan, J

1. The applicant/appellant is the owner upon whom the entire liability to pay compensation alongwith interest has been fastened upon by the learned Motor Accident Claims Tribunal and aggrieved thereby he has filed an appeal, which is time barred

2. By medium of this application, the applicant has sought condonation of 1 year and 16 days delay that has crept up in filing of the appeal. It is averred that the award under challenge was passed by the learned Tribunal on 06.12.2016 and a copy thereof was promptly applied on 08.12.2016 by the counsel, who accordingly informed the applicant on 22.12.2016 and asked him to meet in his office. However, on account of family problems, the applicant could not contact his counsel and when he contacted him in the last week of February, 2018, he was informed that the learned Tribunal below has fastened the entire liability of compensation on him. He further informed that he has even lost the period of limitation to file the appeal. On coming to know this, the applicant did not initiate any further action in this behalf.

3. In the month of February, 2018, the applicant/respondent No. 1 received a

notice from the learned Motor Accident Claims Tribunal, Bilaspur, whereby he came to know with regard to the execution of the impugned award dated 06.12.2016. Thereafter, he collected the papers from the office and promptly filed the appeal on 06.04.2018.

4. The respondent-Insurance Company has contested the application by filing reply wherein preliminary submission with regard to the appeal being hopelessly time barred has been made. It is further averred that the explanation offered by the applicant does not inspire confidence and the same, in fact, is a cooked up in order to condone the delay. Further, it is averred that once the applicant knew about the passing of the impugned award, then he was duty bound to have assailed the same promptly. It is lastly averred that valuable right has since accrued in favour of the replying respondents and, therefore, the delay should not be condoned. On merit, the preliminary submissions have been elaborated and, therefore, need not be referred to.

5. As regards, the respondents No. 2 to 4, they have contested the application by filing a separate reply wherein it is specifically stated that he application deserves to be dismissed as the applicant has failed to render any explanation or carve out sufficient cause, which prevented him to file the application within a prescribed period of limitation.

6. In addition thereto, it is averred that the application has been filed only to harass the claimants/respondents. On merit, it is stated that on an earlier occasion, the appellant in these very proceedings had not appeared and thus, was proceeded ex parte on 27.02.2012. After recording material witnesses and evidence on record, the petition was allowed on 01.07.2014 and the entire liability of Rs. 8,83,000/- alongwith interest has been fastened upon the applicant. He has assailed the award by filing FAO(MVA) No. 135 of 2015, which was allowed vide order dated 27.07.2016 and the matter was sent back to the learned Tribunal by permitting the petitioner to place on record certain documents, however, it is made clear that only the findings regarding the liability to pay the award amount would be re-determined and all other issues including the quantum of compensation, already determined in favour of the claimants/respondents would not be disturbed.

7. On 21.12.2018, the Court framed the following issues:-

1) Whether good and sufficient reason stands meted, for condoning the delay for instituting the appeal?OPA

2) Relief.

8. The applicant in support of his claim examined himself as AW-2 and thereafter closed his evidence. However, respondents despite repeated opportunities did not choose to lead evidence. Accordingly, vide order dated 25.03.2022, the right to lead evidence was closed by the orders of the Court.

I have heard learned counsel for the parties and have gone through the records

of the case.

#### Issue No. 1

9. As regards the pleadings regarding sufficiency of cause, the crux thereof has already been set out here-in-above. Therefore, I need not to reiterate the same.

10. Now, advertent to the evidence led by the applicant, it would be noticed that the entirely different version has been set-forth by the applicant when he stepped into the witness box on 19.07.2019. There he claimed that even though the petition was decided on 16.12.2016 and the counsel had informed him about the passing of the award and regarding the application made for the certified copy thereof, which was delivered to him on 22.12.2016, however, he stated that the counsel did not inform him about the liability vis-a-vis the compensation amount that have been fastened upon him. Subsequently, he had contacted his counsel, but he did not disclose the factum of fastening liability upon him. In the interregnum, since December, 2016 upto February, 2018, the counsel again did not inform him and it is only in February, 2018, when he was served in the proceedings drawn under Section 173 of the Motor Vehicles Act and then he rushed to Shimla and contacted his Counsel Shri B. S. Chauhan, Senior Advocate.

11. In cross-examination, the applicant stated that he was plus two and working as Junior Assistant in the office of PWD Department, however, he stated that the claim petition was filed against him before the Motor Accident Claims Tribunal, Bilaspur and further admitted that prior to instant appeal, he also filed another appeal, which was allowed and thereafter the MACT was directed to comply with the orders made by this Court. He further admitted that in between December, 2016 till February, 2018, after availing leave, he visited his home twice. In April, 2017, he again visited his home for 2-3 days during the above period, but he did not contact his counsel at Bilaspur. He further admitted that pursuant to award made by the learned Tribunal below, his salary has been attached in January, 2019.

12. At the outset, it needs to be noticed that there is a complete variance in the pleadings and the evidence led. In the pleadings, it has been specifically stated that the counsel after obtaining the copy of the award had asked him to meet in his office, however, it is on account of family problems, the he could not contact his counsel and when he contacted him in last week of February, 2018, he was informed that the learned Tribunal had fastened the liability on him whereas while appearing in witness box, the applicant has stated that his client did not inform him that the liability vis-a-vis compensation amount had been fastened upon him. It is further stated that the applicant had contacted his counsel and even at that time he did not disclose that the entire liability has been fastened upon the applicant.

13. The applicant at an earlier occasion, when he had been proceeded ex parte and thereafter the entire liability had been fastened upon him, had approached this Court by filing FAO (MVA) No. 135 of 2015, which was allowed by this Court

vide order dated 27.07.2016 and while remanding the matter it was absolutely made clear that only finding regarding liability to pay the award amount would be re-determined and all other issues including the quantum of compensation already determined in favour of the claimants, would not be disturbed, as is evidently clear from para-9 of the judgment, which reads as under:-

"9.However it is made clear that while taking into consideration these documents, only finding regarding liability to pay the award would be re-determined and all other issues including the quantum of compensation, already determined in favour of the claimants, would not be disturbed."

14. In such circumstances, once the applicant knew that the award had already been passed by the learned Tribunal below, the only question, then he would have to make every endeavour to find out as to whom the liability to pay the compensation had been fastened as this was the only question required to be determined by the claimant. That apart, it would be noticed that the instant appeal has been filed through Shri N. S. Chandel, Advocate, who had appeared on behalf of the applicant till the time the issues were framed i.e. 21.11.2018. In such circumstances, the version put-forth by the claimant in his statement that in February, 2018, he rushed to Shimla and contacted Shri B. S. Chauhan, Sr. Advocate, is palpably false and wrong as the said counsel had not been engaged by the applicant till the time but only engaged when his statement was recorded for the first time on 19.07.2019.

15. Once it is found and firmly established that a party has approached the court with a false stand, then it is the settled principle in law that such party is not entitled to the relief which is discretionary and equitable.

16. The Hon'ble Supreme Court in Pundlik Jalam Patil (Dead) by L.Rs. Vs. Executive Engineer, Jalgaon Medium Project & anr, (2008) 17 SCC 448, has refused to condone the delay mainly because of the reason that while seeking condonation of delay, a false plea was taken with incorrect statement made in the application. It is apt to reproduce para 12 of the judgment which reads thus:

"12 The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the

application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay.

17. In *Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation & anr*, (2010) 5 SCC 459, the Hon'ble Supreme Court held that if the explanation offered for condonation of delay appears to be incorrect, false or there being no sufficient cause, the delay should not be condoned.

18. Once it is established on record that the case set-up by the applicant is based on false and inconsistent statement, then no indulgence can be shown to such litigants. Once, it is found that the explanation offered for condonation of delay is incorrect, false, then the delay should not be condoned.

19. In view of the aforesaid discussion, I find there is no sufficient cause shown by the applicant for condonation of delay rather the explanation offered for condonation of delay appears to be incorrect and false, the application seeking condonation of delay deserves dismissal and is dismissed accordingly.