

(1987) 11 AHC CK 0069
In the Allahabad High Court

Sri Prakash and Others

APPELLANT

Vs

Om Prakash and Another

RESPONDENT

Date of Decision : 02-11-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D
Motor Vehicles Act, 1988 — Section 110D
Motor Vehicles Act, 1988 — Section 110D

Citation : (1988) 1 ACC 313

Hon'ble Judges : R.K. Gulati, J;K.C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This is an application u/s 5 of the Limitation Act filed for condonation of delay in filing the appeal, which has been preferred beyond the prescribed time of limitation, u/s 110-D of the Motor Vehicles Act against the judgment of the Motor Accidents Claims Tribunal/District Judge, Jaunpur, dated 17-5-1980.

2. This appeal was presented for reporting on 5-4-1983. It was accompanied with the certified copy of the judgment of the Claims Tribunal, which was applied for on 5-1-83 and was made available on 26-3-83. The appellants obtained the certified copy on 2-4-83, and thereafter, as stated above, presented the memorandum of appeal in this Court on 5- 4-83 for reporting.

3. For condonation of delay of 963 days the appellants have filed the aforesaid application supported by an affidavit. The appellants have stated in the affidavit that Om Prakash (arrayed as respondent No. 1 in the appeal), who was their own brother, was given money and papers for the purpose of filing the appeal in this Court, but the said Om Prakash did not do so. Subsequently Lalji, the guardian of the minor appellants, learnt that the appeal has not been filed by Om Prakash.

4. We are of opinion that the averments made in the affidavit are false. Om

Prakash was a joint beneficiary of the award along with the appellants. It could not be said he had any ulterior motive in not filing the appeal within time. Even the Certified Copies of the award as well as that of the decree obtained for the purpose of filing the appeal have not been filed before us. Counsel urged that those papers had been handed over to Om Prakash and, as such the appellants are unable to produce the same before the Court.

5. In order to establish their claim the appellants could produce other evidence to show that the copies were applied in and obtained in 1980. But such evidence is wanting. In the facts and circumstances the appellants have concocted a false case for purposes of getting the delay condoned. It is submitted that the Court should be liberal in the matter of condonation of delay. But it is unable to accept the submission made at the Bar by the Counsel for the appellants. If a false story set up for condonation of delay it accepted, it will encourage litigants to file applications for condonation of delay by setting up false story.

6. In the instant case we are firmly of the opinion that if the delay in filing the appeal is condoned on the ground set forth, it will be encouragement to false affidavit.

7. The appellants have not filed any affidavit of their own, neither of Om Prakash nor any evidence to show what steps were taken by them against Om Prakash for purposes of committing breach of confidence reposed on him by the appellants. In other appeals, the same ground for condonation of appeal has been taken. In those case Om Prakash was not the claimant, but the story that all the papers were given to him for the purpose of filing the appeal is too good to be believed. The appeal accordingly, it appears, should have been filed in 1980 and the enquiry about the filing of the same was not made before 1983. What was the reason for the appellants of those cases to sit silently and not to enquiry about the filing of the appeal from High Court or some body else till 1983. This has not been disclosed and has been kept a guarded secret. In view of this, the appellants are not entitled to any condonation of delay. Condonation of delay is a matter of discretion. Discretion can be exercised in favour of a person if he comes with clean hand. The appellants have approached this Court with a false case. We are, therefore, unable to condone the delay.

8. Counsel for the appellants has cited two Supreme Court Cases before us. One of which is reported in Wadhya Mal Vs. Prem Chand Jain and Another, . The facts of those cases were altogether different. In that case the Supreme Court was satisfied that there was justification for condonation of delay. That is not so in this case and, therefore, the proposition laid down by the Supreme Court in that decision will not apply.

9. The application u/s 5 Limitation Act is rejected.