
(2003) 03 AHC CK 0033
In the Allahabad High Court

State of Uttar Pradesh

APPELLANT

Vs

Raj Kumari and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Citation : (2005) 3 ACC 873

Hon'ble Judges : Pradeep Kant, J;G.K. Gupta, J

Bench : Division Bench

Judgement

Pradeep Kant, J.—Heard learned Counsel for the appellant Mr. R.S. Tripathi and learned Counsel for the respondents Mr. Rajendra Jaiswal.

2. This is first appeal from order arising out of proceedings under the Motor Vehicles Act awarding compensation to the respondent-claimants because of death of the husband of Smt. Raj Kumari, as a result of an accident, which had taken place between the jeep of the State and the motor cycle of the deceased. The appeal is barred by limitation, and therefore, the application for condonation of delay in filing the appeal has also been moved. Against the aforesaid application, the objections duly supported by an affidavit, have been filed by the respondents.

3. Admittedly, the limitation in filing the appeal was upto 29.8.2001. The appeal has been filed on 19.9.2002. In the application for condonation of delay, it has been stated that the impugned order was applied for on 6.7.2001, which was received by the State on 11.7.2001. On 19.7.2001, a letter was written from the office of the District Magistrate, Unnao to the State Government asking for permission to file appeal. Reminders are also said to have been Sent on 7.9.2001, 5.12.2001, 27.3.2001 and 11.4.2002. The Joint Legal Remembrancer, Government of Uttar Pradesh granted permission on 17.4.2002. On 22.4.2002, the District Magistrate, Unnao requested the Chief Standing Counsel for filing the appeal for which the official/officer also contacted the office of the Chief Standing Counsel on 26.4.2002. The Chief Standing Counsel marked the case on that very date to one of the Standing Counsel, but the official/officer contacted the

Standing Counsel on 30.4.2002. Thereafter as per averments made in the affidavit certain documents were asked for, were provided on 6.5.2002, but the complete record was provided to the Standing Counsel on 10.5.2002. It has again been stated that since the financial approval was not forthcoming, which matter was in progress, the official/officer was asked to file the appeal, which had already been prepared at the earliest along with an application for grant of time to comply with Section 173(1) proviso (i) of the Motor Vehicles Act, 1988 to avoid any further delay as the Court was going to be closed due to the Summer Vacation. The official was authorised to swear the affidavit. However, the official/officer contacted the Standing Counsel on 24.5.2002 cui which date, affidavit was sworn. The appeal was however filed on 19.9.2002. In the objection filed by the respondents, certain copies of the application and affidavits have been annexed, filed by the District authorities. In an application dated 30.5.2002, it has been stated that no appeal has been filed by the State Government against the award and one month's time as asked for making deposit under the award. This application was duly supported by an affidavit of the Naib Tehsildar. Again on 16.7.2002, one moth's further time was asked for by the State for making deposit. Again on 16.8.2002, one more opportunity was asked for, for making the payment.

4. Against the objection filed by the respondents, copy of which was served upon the Standing Counsel on 2.12.2002, no rejoinder affidavit has been filed by the State.

5. The matter was listed lastly on 25.2.2002, on which date, an urgency was mentioned on behalf of the respondents that they are not getting money under the award though the husband of the respondent No. 1 and the father of the three small children and the son of the aged parents has died and they are having no means to survive. On that date, the learned Standing Counsel, Mr. R.S. Tripathi got the case adjourned by making a mention that the file was not traceable. On the request made by the learned Standing Counsel, the matter was again ordered to be listed on 28.2.2003, but on that date, the matter was not taken up, as Mr. R.S. Tripathi, learned Standing Counsel was busy else where, therefore, the matter was ordered to be listed on 3.3.2003 i.e., today.

6. The explanation about the delay in filing the appeal given in the affidavit accompanying the application for condonation of delay is wholly unconvincing and cannot make any ground in either case to condone the delay. Learned Counsel for the appellant has strenuously urged that the State machinery works very slowly and, therefore, in view of the various decisions of the Apex Court, liberal view should be taken, if the State Government is the litigant in the matter of condoning the delay.

7. It would be relevant to observe that the period of limitation prescribed under the Indian Limitation Act or under any Special Act is applicable to the State as well as to the ordinary litigant unless where a different period of limitation is prescribed for the State. The State cannot be permitted to say that because of its

reference or slow machinery or delay in disposal and taking a decision, an advantage should be given to the State for approaching the Court beyond the time prescribed. It is no doubt true that the State at times is shown indulgence because of the fact that its machinery, which works under the State is not so prompt/but this cannot be taken to mean that the State is having any right to take advantage of his own default or indifference.

8. In the instant case, it is a case of death caused by an accident by the vehicle of the U.P. State, leaving entire family without a penny. If the State in such matters also adopts the same attitude of slowly pursuing the matter in the Court, perhaps right, which accrues in favour of the parties because of limitation would be defeated, if for no valid reason, liberal view is taken and that too on the grounds, which do not at all call for condonation of delay in filing the appeal.

9. We will examine the reasons for not filing the appeal in time, date-wise. We find that undisputedly the certified copy of the impugned order was received in the office of the State Government/District Magistrate, Unnao on 11.7.2001. The District Magistrate, Unnao, immediately after one week i.e., on 19.7.2001 made a request to the State Government for grant of permission for filing the appeal. The State, however, did not take any action though four letters of reminders are also said to have been sent by the District Magistrate, Unnao to the State Government i.e., on 7.9.2001, 5.12.2001, 27.3.2003 and 11.4.2002. If the State Government was not willing to file the appeal, there is no compulsion to the State to grant sanction after the period of filing of appeal has expired i.e., on 17.4.2002. It is not on record, as to when the file reached the office of the State Legal Remembrancer. The State Government or any such authority, who is to grant sanction for filing of appeal, owes responsibility and has to bear in mind, the period of limitation and to take early decision so that the appeal is filed within time. When the District Magistrate has submitted the file for permission on 19.7.2001 i.e., within limitation and also sent several reminders upto 11.4.2002, why the matter was kept pending upto 17.4.2002 with the State Legal Remembrancer is not known, though the Legal Remembrancer was well conversant with the law of limitation. Not only this, the official contacted the learned Chief Standing Counsel on 26.4.2002, but the official contacted the learned Standing Counsel after four days i.e., on 30.4.2002. When the official for the purpose of filing the appeal met the learned Chief Standing Counsel, then for what reason, the official did respond after four days. In the office of the learned Standing Counsel, the delay has occurred right from 30.4.2002 to 19.9.2002. In the affidavit, explaining the own conduct of the Standing Counsel, it has been stated that when the official contacted on 30.4.2002 and produced the record available with him, it did not contain the legible copy of the judgment and the claim petition etc., therefore, the official was asked to provide the complete record and legible copy of the judgment for preparation of the appeal. Paragraphs 5 and 6 of the affidavit do not at all indicate as to what documents were required and certified copy of the judgment, which has been annexed with the memo of the appeal does not indicate that this is another copy, which has

been obtained when the official contacted the learned Standing Counsel for filing the appeal, but typed copy of the same has been filed along with the memo of the appeal. What documents were handed over on 6.5.2002 to the Standing Counsel and what were more documents for want of which documents the appeal could not have been filed, has not been disclosed. The consumption of time in the office of the learned Standing Counsel cannot be seen lightly or the arguments of the learned Standing Counsel that the State machinery works very slow cannot be compared with the work of the office of the Standing Counsel.

10. Even otherwise, in paragraphs 7 and 8 of the affidavit it is clear that appeal was directed to be filed, without depositing the statutory amount, along with an application for asking time from the Court, for the said purpose, but even then, the same was not filed before 19.9.2002. The official was asked to file the appeal, which had already been prepared along with an application seeking time to make the statutory deposit. In paragraph 10 of the affidavit, the date, on which the authorised official contacted the Standing Counsel for filing the appeal, has been filled in the affidavit by hand as the affidavit was prepared by leaving the date blank. This averment indicates that the authorised official contacted on 24.5.2002, on which date, the affidavit was also sworn. As per the averments made in the paragraphs 6, 7, 9 and 10 the appeal should have been filed much earlier as the appeal is said to have been prepared before 24.5.2002 or at least on 24.5.2002 when the affidavit was sworn. The appeal was not filed and it remained lying in the office of the learned Standing Counsel till 19.9.2002.

11. Learned Standing Counsel, Mr. R.S. Tripathi, faced with this situation asked for further time to file supplementary affidavit explaining the delay in filing the appeal after the affidavit was sworn i.e., 24.5.2002. We find that there is not ground for granting any time for filing the supplementary affidavit. This fact was well within the knowledge of the learned Chief Standing Counsel, Standing Counsel and also the State Department, who filed the appeal. The fact that the appeal has to be filed by 29.8.2001 was also within the knowledge of the State Government as well as the Legal Remembrancer. It was also well within the knowledge of the learned Standing Counsel as well as the State Department that the affidavit had been sworn on 24.5.2002 and the appeal should be filed immediately after swearing of the affidavit, it was also well within the knowledge of the learned Standing Counsel as well as the State that the objections were filed by the respondent-claimants on 2nd December, 2002, but despite the knowledge of the aforesaid facts, the State Government/Standing Counsel did not choose of his own to file any supplementary affidavit explaining the delay in filing the appeal nor any rejoinder affidavit has been filed.

12. We, therefore, find that the entire time consumed by the State in filing the appeal, which is right from 11.7.2001 till filing of the appeal reflects in different attitude of the State authorities and the State Law Officer including the Law Department of the Government. All these persons very well knew that there is limitation prescribed for filing the appeal, but none of them adhered to that

limitation and took their own time in pursuing the matter. This kind of attitude of the State or its Officers including the Law Officers cannot be a ground for showing any indulgence. If in a matter, delay occurs, for bona fide reason, where the delay cannot be attributed to the indifferent, casual and non-serious attitude of the State authorities, liberal view can be taken, but the facts, like the case in hand, cannot by any stretch of imagination be taken as bona fide and sincere approach in filing the appeal.

13. The application for condonation of delay in filing the appeal is rejected and consequently, the appeal also stands dismissed.

14. Since the appeal stands dismissed, therefore, we direct that the money, which is in deposit either in this Court or in the Tribunal, shall be allowed to be withdrawn by the claimant-respondents.

15. Let a copy of this order be sent to the Chief Secretary, Government of U.P. and the Legal Remembrancer, Government of U.P.