

(2007) 11 J&K CK 0010
In the Jammu And Kashmir High Court

Union of India (UOI) and Another

APPELLANT

Vs

Fatima Bibi and Others

RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 1 JKJ 99

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Singh, J.—Aggrieved by interim award dated 07-05-2005 of Motor Accidents Claims Tribunal, Doda, awarding an amount of Rs.

50,000/- as compensation in favour of the respondents-claimants on the principle of "no fault liability", Union of India has preferred this appeal

questioning the award on the solitary ground that no army vehicle of 17/ Rashitray Rifles was involved in the accident and without there being any

prima facie proof as to the involvement of the army vehicle, the Tribunal had erred in issuing the interim award of Rs. 50,000/-, along with an

application seeking condonation of 107 days delay in filing the appeal.

2. It has been stated by the Union of India that the certified copy of the interim award dated 07-05-2005 was received by it on 05-08-2005. After

discussing the matter at various levels, the case was sent to the Command Headquarters on 01-09-2005 when a decision was taken to file an

appeal against the interim award. It is further stated by the Union that sanction was accorded for filing the appeal only on 05-10-2005 and the

sanction letter was received on 10-10-2005 whereafter the Union counsel was

contacted on 15-10-2005 for his advice. Great deal of Inter se correspondence is stated to have taken place between 16 Corps, Northern Command and the Army Head Quarters which process consumed much time rendering the appeal time barred.

3. Delay in filing the appeal has thus been sought to be condoned on the ground that it was neither intentional nor deliberate.

4. Mr. Magoo, Learned Assistant Solicitor General of India, appearing for the applicants-appellants submitted that delay in filing the appeal was unavoidable and should be condoned for deciding the case on merits.

5. Mr. S.A. Salaria, learned Senior Counsel appearing for the claimants submitted that the deceased Ghulam Rasool, who had been knocked

down by an army vehicle, had left behind a widow, besides seven dependants, three of whom were minors at the time of the accident which took

place in November, 1996. These persons had been clamoring for justice since the date of accident, but till date, they had not received any amount

by way of compensation.

6. On merits of the plea raised by Union of India seeking condonation of delay in filing the appeal, learned Counsel submitted that Union of India

had taken usual pleas which it takes in every case with scant regard to the rigors of the law of limitation. He submitted that there does not exist any

valid ground on which delay in filing the appeal may be condoned. He submitted that the appeal was without any merit as there was sufficient

evidence on records showing the involvement of the army vehicle in the accident in which the sole bread winner of the respondents had breathed

his last.

7. I have considered the submissions of learned Counsel for the parties and gone through the interim award issued by the Tribunal.

8. The interim award has been issued by the Tribunal after recording satisfaction that the mention of the army vehicle's involvement stood recorded

in the post-mortem report and in that view of the matter, there was prima facie evidence on records justifying issuance of interim award of Rs.

50,000/- on the basis of "no fault liability".

9. Union of India seeks condonation of delay mainly on the ground that its impersonal machinery was busy in correspondence with its various

functionaries, including obtaining of sanction for filing of appeal which is stated to have contributed in causing delay in filing the appeal.

10. Delay in filing an appeal within the prescribed period of limitation, cannot be condoned as a matter of course. Sufficient reasons/grounds, which

had disabled a party, interested to prosecute the remedy of appeal, are required to be spelt out in the application seeking condonation of delay.

11. The ground urged by Union of India to seek condonation of delay does not indicate about it's awareness that the appeal had to be filed within

the prescribed period of limitation and it's impersonal machinery had to be in sincere efforts to ensure that no delay was caused in filing the appeal

within the prescribed period of limitation.

12. Union of India has not placed any material on records either, on the basis whereof, it may be said that engagement of it's various functionaries

in inter se correspondence was a necessary requirement for filing the appeal.

13. It further appears that the functionaries of the Union concerned with the process of filing the appeal had taken their own time in entering into

un-necessary inter se correspondence and been waiting for receiving sanction for filing appeal which was not at all necessary and had thus allowed

the limitation period to expire without taking any steps to ensure that appeal was filed within the prescribed period of limitation. Learned Counsel

appearing for Union of India has not referred to any provisions of Rule or Law which may indicate that grant of formal sanction by the Central

Government was necessary for filing of an appeal under the Motor Vehicles Act, 1988. In the absence of any statutory requirement of obtaining

sanction for filing appeal against the award of the Tribunal, un-necessary engagement of the impersonal machinery of the Union of India in inter se

correspondence without taking any steps to ensure filing of appeal within the prescribed period of limitation, cannot be said to be Union of India's

genuine difficulty and accordingly a sufficient cause which had disabled it in filing the appeal. It is only when some genuine difficulty is faced by the

impersonal machinery of the State, Union or any other authority in filing the appeal within the prescribed period of limitation, that such authorities

may be heard on such projected difficulty to seek consideration for grant of it's request for Condonation of delay in filing the appeal.

14. Spelling out of the difficulty or the purported genuine cause which had

disabled an authority who acts through its impersonal machinery to file an appeal within the prescribed period of limitation in the application seeking condonation of delay itself or discernment of such cause from any other material on records thus becomes absolutely necessary because in its absence, the Court may be disabled to find out as to whether the difficulty or cause projected was a genuine cause justifying condonation of delay, or was a self invited or mis-conceived cause which may not, in the facts and circumstances of the case, warrant consideration for allowing condonation of delay and deprivation of a party of its right which had accrued to it because of the omission of the opposite party to file the appeal within the prescribed period of limitation.

15. Union of India has neither projected nor spelled out any such cause or genuine difficulty in the present case which had disabled it from filing its appeal within the prescribed period of limitation. Its indulgence in unnecessary inter se correspondence amongst its officers without showing that such correspondence was necessary, cannot be accepted as a genuine/sufficient cause which had disabled it from filing the appeal within the prescribed period of limitation justifying condonation of delay.

16. I am supported in taking this view by a Division Bench judgment of this Court in *Condonation of Delay (C) 205/05 c/w LPA(C) 67/05*,

National Insurance Co. v. Sep. Bhagirath Singh and Ors. decided on 13.12.2005, where, the Bench observed as follows:

Grounds raised by the appellants do not exhibit any cause much less sufficient, which appears to have prevented the Company in filing the appeals within prescribed time of limitation. On the other hand, the grounds only show the route, which the files appear to have taken before the appeals, came to be filed in this Court. The appellant, it appears, has multipolar legal hierarchy, which the appellant urges that a file has to travel before a final decision, as to the filing or otherwise of an appeal, is taken by the Company. In other words it suggests that the Company has devised its own procedure for taking a decision as to whether or not an appeal be filed against a decision of the Court. If this practice, which has been adopted by the Company, has to be accepted, then one has to do that at the cost of the prevailing law of the land which does not contemplate providing more than three months' time to a litigant to consider as to whether or not, it wanted

to file an appeal against the judgment of a Court. The Company cannot, in our opinion, be permitted to have a separate period of limitation for its appeals. The Insurance Company cannot be treated differently from an ordinary litigant. The appellant Company possessed of the requisite legal expertise knows fully well that if an appeal is to be filed, it is required to be so filed within the prescribed period of limitation.

Proviso appended to Section 173 of the Motor Vehicles Act, 1988, does not contemplate the condonation of delay on such self invited, disabling grounds to seek condonation of delay. What is contemplated by second proviso of Section 173 of the Motor Vehicles Act, 1988, is the "sufficient cause", which prevents a litigant from filing an appeal. This sufficient cause cannot be countenanced as cause invited by a litigant on his own.

Sufficient cause contemplated by proviso to Section 173, is an unforeseen act or event because of which a litigant is prevented in filing appeal within the statutory period of limitation. Appellants-Company has failed to project any such cause unexpected or unforeseen as is contemplated by Section 173 of the Motor Vehicles Act, 1988. Applications filed by the applicants, appellants, were, thus, misconceived. We have examined the reasoning given by the learned Single Judge. We are satisfied with the order passed by the learned Single Judge. The order impugned in the appeals, thus, does not call for any interference. The appeals are, accordingly, rejected.

17. That apart, keeping in view the social purpose for which provision for awarding interim compensation to the victims of accident, was incorporated in the Motor Vehicles Act coupled with the fact that the Motor Accidents Claims Tribunal had awarded interim compensation relying on the F.I.R. and the postmortem report where mention had been made that the deceased had died because of a road traffic accident by army truck of 17/RR, I am not inclined to accept the explanation given by Union of India as sufficient cause for condoning the delay in filing the appeal.

18. I would, therefore, dismiss this application and as a consequence thereof the appeal too. Registrar Judicial to release the deposited amount in favour of the claimants on their proper identification in terms of the award.