

(2001) 10 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : LPA. No. 88 Of 2000

United India Insurance

APPELLANT

Vs

Sheetal Saini and Ors.

RESPONDENT

Date of Decision : 06-10-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 169

Citation : (2002) KashLJ 362

Hon'ble Judges : Nisar Ahmad Kakru, J and S.K.Gupta, J

Bench : Division Bench

Advocate : Vishnu Gupta, S.C.Sharma, A.K.Sharma, Advocates appearing for the Parties

Judgement

1. A teenager student having fallen victim to a motor vehicle accident sustained injuries on her person. Ultimate affect being loss of sight in her right

eye consequently a claim laid before the Motor Accident Claims Tribunal, Jammu (for short Tribunal) in the month of January, 1996 which

culminated in an award on 29/11/1997 in favour of Sheetal Saini, claimant before the Tribunal respondent No. 1 herein (for short claimant). A civil

1st, miscellaneous appeal was taken by the company on 20/03/1998 through its Assistant Divisional Manager Jammu (for short appellant) ex facie

after a delay of twenty one days The. appeal being barred by limitation delay was sought to be condoned through a motion which came to be

dismissed by learned single judge on 18/09/2000. This order is the subject matter of this letters patent appeal.

2. To succeed in the application of condonation for delay it was averred before the learned single judge that copy of award was applied for on

24/11/1997. Fact of the matter being that the award was passed on 29/11/1997,

there was no occasion for the appellant to make an application for a verified copy on 24th, five days ahead to the date of judgement. However without stretching the matter too far we proceed on the assumption of correctness of the assertion but still it is of no help to the appellant for the simple reason that the severity of law of limitation has to commence after the pronouncement of the judgement and not in its anticipation. Another aspect relevant to the issue is as to how quick the appellant was in depositing the copying charges thus reference to the note recorded on the verified copy of the award by copying section of the Tribunal becomes relevant which hints at the delay caused by the appellant in depositing the requisite stamps which has ostensibly contributed to the delay in preparation of the"" copy of award. Why delay in depositing the stamps of a meagre sum of Rs 21/ there is no explanation. In addition to that it is averred by the appellant in the application that verified copy of the award was issued and received by him on 11/12/1997 which was sent by him to Chandigarh on 02/02/1998. Again proceeding on the assumption that the sanction for institution of the appeal by company's Chandigarh office is a requirement but then why copy of the award was not forwarded to Chandigarh on 11/12/1997 or at the most the next day. Why award was held back till 02/02/1998 thereby a delay of one and half months. Still no end to the delay as is manifest from the fact that appeal was not filed till 20/03/1998 notwithstanding the averment made by the appellant himself in application for condonation of delay that the file was received back by him from Chandigarh on 11/03/1998. Why he chose not to file appeal between 11th to 20th March, 1998 no tenable reason is advanced excepting a feeble mention that the lawyer were on strike. May be it is so but the appeal was not to be drafted by the advocate while standing on his legs in the courtroom. It had to be prepared in the chamber by the advocate which is the prevalent practice. Moreso it is not the case of the appellant that the lawyers had abandoned their chambers. Why advocate was not approached in the chamber for drafting the appeal explanation is wanting, in backdrop of these circumstances conclusion available is that the appellant has miserably failed to explain the delay reasonably or satisfactorily which is a condition prerequisite as laid down by the apex court in P.K. Ramchandran versus State of Kerala AIR 1998 SC 227

Para 3 of the judgement may be extracted for facility of reference:

3. It would be noticed from a perusal of the impugned order (Supra) that the court has not recorded any satisfaction that the explanation for the

delay was either reasonable or satisfactory, which is essential prerequisite to condonation of delay"".

3. To escape the fall out of unexplained delay the LC for the appellant has placed reliance on judicial pronouncement handed down by the apex

court in State of Haryana versus Chandra Mani reported in AIR 1996 SC 1623. Although the judgement does not approve of separate standards

for determination of 'sufficient cause' in respect of matters pertaining to limitation qua the state, nonetheless the redtapism prevalent in the offices of

the Govt. run by impersonal machinery has persuaded the apex court to allow certain amount of latitude to the state. Without going into the

controversy as to whether procedure for institution of appeal is strictly the same let us see how has the appellant conducted itself in compliance

with the judgement because the appellant company claims latitude on the strength of the judgement. Since benefit of the judgement is claimed to

have flown therefore the appellant has to show obedience to the judgement in its letter and spirit with respect to the duty as well and cannot say

that it is alive to the rights which have arisen to it from the judgement but is oblivious to the duties enforceable under legal penalty. In this behalf it is

advantageous to notice one of the mandates of the judgement

The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by

the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In

the event of decision to file appeal needed prompt action would be pursued by the officer responsible to file the appeal and he should be made

personally responsible for lapses, if any

4. How far appellant company has complied with the judgement can be well assessed from an averment made by it in the application for

condonation of delay contending that the case file was sent to Chandigarh office for instructions/advice. The averment so made suggests that there

is no legal cell in its office at Jammu. It is also not indicated whether at all the appellant has examined the need of creation of the cell in compliance

with the direction of the Supreme Court despite lapse of half a decade as is evident from year of the judgement which dates back to 1996. All this

goes to show that applicability of judgement is acceptable to the appellants to the extent it creates rights in it but not in respect of duties. Obviously

such stance of blowing hot and cold leads appellant nowhere.

5. We now proceed to examine the case in light of the guidelines enshrined in Chandra Mani's case (Supra) which makes it obligatory upon this

court to deal with the matters of limitation with pragmatism and justice oriented approach than the technical detection of sufficient cause and in

order to be in line with the mandate of the judgement this court is bound to adopt an approach which can advance cause of justice and to achieve

the objective nature of the claim assumes significance which in the case on hand is claim for compensation of a school going girl belonging to a class

of have not who has lost a vital part of her body and is said to be short of expenses required for her treatment. She is aspiring for satisfaction of the

award passed way back in the year 1997 in her favour by the Tribunal by way of compensation for actionable negligence of someone other than

her. Yet another important factor to be borne in mind is that introduction of a special provision in the Motor Accident Claims Tribunal Act aims at

providing cheap and speedy remedy to a victim for enforcing liability of compensation. Thus pragmatism and justice oriented approach in the

matters of petitions for compensation arising out of Motor Accident Claims Tribunal Act is only possible if the courts lean against acceptance of the

applications of condonation of delay unless sufficient cause is shown on the touch stone of the judgement in P.K. Ramachandran's case mentioned

herein before which mandates application of law of limitation with its rigour. That apart in a case where court has refused to condone the delay

indulgence may be displayed if refusal to exercise the discretion is arbitrary or perverse but nothing like that has been brought to our notice which

would persuade us to take a view contrary to the one taken by the Learned Single Judge.

6. On consideration of the matter in its entirety we find no reason to interfere with the judgement of the learned single judge. Accordingly LPA is

dismissed along with CMP.

7. No order as to costs.