

Pawan Kumar Vs. Shiv Chaudhary and ors

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Court : Delhi

Decided On : Mar-05-2014

Judge : Suresh Kait

Appellant : Pawan Kumar

Respondent : Shiv Chaudhary and ors

Judgement :

\$~1 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

5. h March, 2014 % + MAC.APP. No.728/2013 & CM No.12234/2013 PAWAN KUMAR Represented by: Appellant Mr. K.K. Dubey, Advocate. Versus SHIV CHAUDHARY & ORS Represented by: Respondents Mr. Amit Gaur, Advocate for Respondent No.3/Insurance Company. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. This appeal is directed against the impugned award dated 14.08.2012, whereby the learned Tribunal has awarded compensation for a sum of Rs.3,96,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the amount in favour of the appellant for the injuries received in the accident.

2. Vide the present appeal, the appellant is seeking enhancement of compensation amount noted above.

3. The Appeal is accompanied by an application under consideration which is for condonation of delay of 252 days in filing the appeal.
4. Before considering the merits of the grounds raised in the appeal, the appellant is required to cross over the main hurdle of delay in approaching this Court. The circumstance in which delay in filing appeals under the Motor Vehicles Act, 1988, is provided in the second proviso to Section 173 (1) of the Act. The same is reproduced for convenience:

173. Appeals-(1)....Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.
5. From the above, it is manifest that an appeal filed after the expiry of period of 90 days may be entertained by the High Court only if it is satisfied that the appellant was prevented by sufficient cause from preferring it within the prescribed period. It is thus obvious that discretion in condoning delay may be exercised by the High Court only if the appellant is successful in showing that he was prevented by sufficient cause from preferring the appeal in time.
6. Keeping in view this principle, let us examine as to whether in the present case the appellant has been successful in satisfying the aforesaid requirement.
7. The grounds for condonation of delay have been mentioned in paras-2 to 7, which are reproduced as under:

2. That after receiving the compensation amount from the Ld. Tribunal, the appellant was under depression and was undergoing her (sic. his) treatment. 8.

3. That the appellant was not aware of appeal proceedings and on an occasion one of the relatives of the appellant who is an Advocate asked the appellant that the compensation amount was on lower side and advised him to file an appeal for enhancement of compensation.

4. That on 15.07.2013 the appellant came into contact with his counsel for enhancement of compensation and hence this appeal.

5. That in the above noted case, the Ld. Tribunal has awarded a sum of Rs.1,37,000/- (sic as compensation of Rs.3,96,000/- has been granted) vide judgment dt.14.08.2012.

6. That the present appeal is barred by days due to the reason stated above.

7. That the delay in filing the present appeal is neither intentional nor deliberate but to the above said reason.

On a perusal of the pleadings as set out above, it is evident that it is a case of gross negligence and laches. Moreover, counsel appearing on behalf of the appellant has also failed to give any plausible explanation for this inordinate delay.

9. In view of the above discussion, the application for condonation of delay is liable to be rejected for the following reasons: (I) It is clear from paragraphs 2 to 4 that although one of the relatives of the appellant, being an Advocate, had advised him to file an appeal and thereafter, on 15.07.2013, he had contacted his counsel for filing an appeal for enhancement of compensation, however, the instant appeal was filed only on 07.08.2013. There is no explanation at all as to when he was advised for filing the appeal and even what had prevented him from filing the appeal in time. It is also not explained as to why it took 22 days in filing this appeal even after contacting the counsel on 15.07.2013. (II) A litigant cannot take advantage of his own misdeeds in prosecution of the case. (III) The delay of about 252 days in this case is not bona fide and in the peculiar facts and circumstances of this case is not liable to be condoned. (IV) The application is bereft of any cause, let alone sufficient cause, which prevented him from filing the appeal within time and the pleadings are absolutely vague, nebulous and devoid of any material particulars in order to satisfy the second proviso to Section 173 (1) of the Motor Vehicles Act, 1988, reproduced above in order to enable this Court to exercise its discretion in condoning the inordinate delay in filing the appeal.

10. For the aforesaid reasons, I have no hesitation in holding that the appellant has failed to show that he was prevented by sufficient cause in preferring the appeal so belatedly. The application for condonation of delay is accordingly rejected.

11. In the result, the MAC Appeal is dismissed.

12. No order as to costs. SURESH KAIT, J.

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