

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CONC No. 133/2018

Naik Shamsheer Singh Applicant(s)

Through:- Mr. Dhiraj Chowdhary, Advocate

V/s

Major Singh & ors.Respondent(s)

Through:- Mr. Baldev Singh, Advocate

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

01. The applicant has filed the above titled appeal against the award dated 10.02.2016 passed by the Presiding Officer, Motor Accident Claims Tribunal, Udhampur and since the appeal is beyond the period of limitation by 782 days, he thus seeks condonation of delay in filing the appeal.

02. Applicant was injured in an accident on 28.07.2002. This accident has resulted in permanent loss of vision, as a result, he has become blind as his visual handicap is 100%. Due to his visual impairment, he is dependent on others for his daily routine as well as his movement and travel. He has been discharged from service due to his disability.

03. Applicant had engaged a counsel, who filed and contested claim petition under Motor Vehicles Act for grant of compensation on his behalf. As a result of his disability, he was unable to travel and attend his case on each and every date, and would enquire about the same telephonically from his counsel. It is submitted that his counsel did not inform him about the passing of final award dated 10.02.2016 by the MACT Udhampur. It was only when the applicant travelled to Udhampur on his own to enquire about his case in September, 2017, that he was informed that claim petition has been

decided on 10.02.2016 and the awarded amount has been deposited, he received the same only in September, 2017.

04. Applicant after his return, was advised to file the appeal against the award. He, therefore, engaged a lawyer in Jammu for filing the appeal but unfortunately, the said Advocate suffered an accident and was confined to bed, therefore, the appeal could not be filed. He then was advised him to engage another counsel and subsequently, the applicant approached another counsel who has filed this appeal. Thus, it is submitted that the delay which has occurred is due to the circumstances beyond his control and he prays that the same be condoned. As the compensation has not been assessed in accordance with the provisions of the Motor Vehicles Act, therefore, there being merit in the appeal and it is submitted that the same should be heard and decided on merits.

05. Respondent No.3/Insurance Company has vehemently opposed the condonation of delay application, as according to it, the applicant has not attached any record to show that he was not informed of the judgment. It is submitted that he has been careless in pursuing his remedy and he has filed the appeal after accepting the amount as an afterthought.

06. The applicant has already suffered a visual impairment of 100%, he is dependent on others for all his daily requirement. His visual disability has also resulted in his discharge from service. This apart, Motor Vehicles Act is beneficial legislation and it intends to place the claimants at the same position, as that he was before the accident and also to compensate the claimants for his loss. Applicant has a right to seek enhancement of compensation, if according to him, compensation awarded was not just compensation. Therefore, merely by accepting the compensation right to file

appeal is not lost. Since right to file appeal is not lost, so the only question is whether he has shown sufficient cause to the condone the delay.

07. This Court in **Gurcharan Singh vs. Kuldeep Singh, 1990 Sri.L.J. 275**, in which the Court has held that *“in case of the negligence of the counsel, the petitioner cannot be held responsible for the same.”*

Similarly, in **Hiren Singha Roy vs. Howrah Improvement Trust & ors, AIR 2001 SCW 2332**, it has been held as under:-

“It is respectfully submitted that if only lawyer's ailment, even though known to the client is a ground for condonation of delay in any application for restoration of cases, dismissed in default, for such a long period then the argument of delay, negligence and laches of the petitioners available to the respondents would no more be available.

Having regard to the fact set out above, we think that the High Court should have condoned the delay in filing the application for restoration and should not have dismissed the application summarily. We allow the appeal set aside the impugned judgment of the High Court, condone the delay in filing the restoration application and restore the FMAT No. 1413/1987 on the file of the High Court. The High court is requested to dispose of the writ appeal on merits. No order as to costs.”

08. Similarly, this Court in **Union of India & ors. Vs. Gogrej Agrovet Limited, 2015 (1) JKJ 581**, while referring the judgment in **Secretary Department of Horticulture, Chandigarh vs. Raghu Raj, (2008) 13 SCC 395** has held that *“.....when a party engaged an advocate who is expected to appear at the time of hearing but fails to so appear, normally, a party should not suffer on account of default or non-appearance of the advocate”*.

Thus, the applicant should not suffer, if he was not informed by his counsel or if the appeal was not prepared and filed in time.

09. Considering the facts that the applicant has already suffered disability due to the circumstances beyond his control and has a right to file the appeal

under the Motor Vehicles Act, therefore, the applicant has shown sufficient cause for condoning the delay. Accordingly, the delay of 782 days in filing the appeal is condoned, subject to deposit of cost of Rs.3,000/- to be deposited in the Advocates' Welfare Fund.

10. Application stands **disposed of**.

11. Registry to diarize the appeal and list the same as and when appropriate Bench is available

(Sindhu Sharma)
Judge

JAMMU
29.01.2020
Ram Murti

Whether the order is reportable : Yes/No
Whether the order is speaking : Yes/No

