

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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2025:PHHC:097241



**C.M. No.26954-CII of 2018 in/and
FAO No. 7383 of 2018
DECIDED ON: 31st July, 2025**

Shri Ram

.....Appellant

VERSUS

Mahender Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA.

Present: None for applicant/appellant.

Mr. Jayant Singh Chauhan, Advocate and
Mr. Rajesh Verma, Advocate for respondent No.3
Insurance Company.

NIDHI GUPTA., J (ORAL)

The present appeal is of the year 2018. Order sheets reveal that since 2018, the matter has been adjourned primarily due to non-appearance of or at request of learned counsel for appellant. As such, the matter is being heard and decided in his absence.

C.M. No.26954-CII of 2018

Prayer in the present application is for condonation of delay of 773 days in filing the present appeal. Reasons given by the applicant-appellant in seeking condonation of delay of 773 days are contained in para-3 of the above application, which reads as follows:

“3. That appellant is a senior Citizen and in old age he got disability to the extent of 36 %. Therefore, he was under an extreme circumstance and he is not able to take any decision at that time. Thereafter, after passing of some time, than he contacted his counsel for taking further action and inquired about whether he can file an appeal for set-aside the

impugned award. Thereafter, he was advised that he has a right to file an appeal. Therefore, he immediately filed the present appeal without losing further time. However, a delay of 773 days has already taken place which is due to the aforesaid facts and the same is not intentional.”

2. A perusal of the above shows that vague and general reasons have been given. No details are given by the applicant-appellant about date or manner in which applicant discovered about passing of the Award. The same do not constitute sufficient cause for condoning extraordinary and inordinate delay of 773 days in filing the appeal.

3. The Hon'ble Supreme Court in **Pathapati Subba Reddy (Died) by LRs and others vs. The Special Deputy Collector (LA)**, Law Finder Doc Id # 2542600, has recently held as under:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in

Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay;

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

(Emphasis added)

4. It is my considered view that keeping in mind the totality of the facts and circumstances of the case, no ground is made out for condoning the delay of 773 days in filing the present appeal.

5. In view of the above, the present application stands **dismissed**.

Main Case

The present appeal has been filed by the injured-claimant seeking setting aside of Award dated 06.05.2016 passed by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as ‘the Tribunal’) whereby the claim petition bearing MACT No. 76 dated 19.09.2014 filed under Section 166 of Motor Vehicles Act (hereinafter referred to as ‘the Act’) has been dismissed.

2. Brief facts of the case are that upon appraisal of pleadings, oral and documentary evidence adduced by the parties the learned Tribunal concluded that the appellant had failed to prove that he has suffered injuries in a motor vehicular accident that took place on 05.02.2014 due to rash and negligent driving of Hero Scooty bearing registration No. HR-36U-5526 (here in after referred to as ‘the offending vehicle’).

3. As per the grounds of appeal, it has been pleaded that Tribunal was in error in dismissing the claim petition as it failed to appreciate that the appellant had led both oral and documentary evidence to prove that the accident had taken place due to the rash and negligent driving of the offending vehicle by respondent no.1.

4. It is submitted by learned counsel for respondent No.3- Insurance Company that the impugned Award suffers from no error as no negligence was made out. The claimant himself is the owner of the offending vehicle. Moreover, it was his own pleaded case that the accident has taken place as a stray animal has come suddenly in front of the offending vehicle. It is accordingly prayed that the present appeal be dismissed.

5. Heard.

6. The case as pleaded by the claimant in the claim petition is as follows:

“2. The facts in brief leading to the filing of the present petition as made out from the records are that it is alleged by the claimant that on 5.2.2014, the claimant along with his nephew, Mahender was going from village Dahina to Rewari on scooty Hero No.HR-36U-5526 as pillion rider. When at about 10.30 a.m. they reached near Siha Phatak on Rewari-Mahendergarh road, in the meanwhile, suddenly a Neelgai (a stray animal) came from the field in front of his scooty. In order to avoid Neelgai the driver of the scooty applied brakes due to which both the occupants fell down on the road and the claimant sustained injuries on his right hip and thigh. His nephew also sustained simple injuries. After the accident the claimant was medico-legally examined at Dr. Amandeep Hospital and Trauma centre Rewari. It has been further averred by the claimant that the accident took place out of the use of the scooty. The matter was reported to the police by the claimant and on the bias of his statement, DDR

No.9 dated 10.2.2014 was recorded at Police Post Dahina. It has been further averred that the claimant has spent 2 lacs on his treatment, medicines, special diet and attendant.”

7. It is admitted fact on record that the offending vehicle was owned by the claimant. Thus, the claimant being owner of the offending vehicle cannot seek compensation from his own Insurance Company when he was driving his own vehicle by alleging himself to be as third party. It is established position in law that claimant cannot be both, owner of the offending vehicle, as well as claimant. In this regard reference may be made to landmark judgment of the Hon'ble Supreme Court in **“Ningamma & Another Vs. United India Insurance Company Limited” 2009(3) RCR (Civil) 435**. Reference may also be made to judgments of this Court in **“National Insurance Company Limited Vs. Sukhdev Singh & Another” FAO-2570-2009 decided on 26.07.2010; “Oriental Insurance Co. Ltd. Vs. Darshani Devi & Others” FAO-7007-2011 decided on 18.03.2014 # Law finder DOC id 576652; “M/s Reliance General Insurance Company Vs. Ranjit & Another” FAO-6704-2011 decided on 24.03.2015 # Law Finder DOC id 595491; “Cholamandlam MS General Insurance Company Limited Vs. Smt. Rajesh and Others” FAO-3764-2010 decided on 14.05.2014; and “United India Insurance Co. Ltd. Vs. Angrej Singh & Another” FAO-1200-2008 decided on 20.05.2010**, wherein the above said judgment of the Hon'ble Supreme Court in **Ningamma (supra)** has been followed.

8. In this view of the matter, ld. Tribunal has correctly held as under:

“21. Applying the above said proposition of law to the facts in hand and after considering the contentions of both the parties and the evidence, it comes out that although the

claimant tried to allege in this case that the accident took place due to rash and negligent driving of respondent No.1 as per his affidavit, Ex.PW-6/1 but in para No.3 of the affidavit itself he admitted that the accident in question took place when suddenly a neelgai came from the nearby field, in front of the scooty in question and despite the fact that the brake was applied by respondent No.1 it lost balance and fell down. Thus, this fact itself says that there is no evidence on record to show that respondent No.1 was rash and negligent when this accident took place only and only because of rash and negligent driving of respondent No.1 and admittedly no criminal case whatsoever was lodged against respondent No.1.”

10. In view of above facts, the present appeal is **dismissed** on merits as well as on ground of delay.

11. Pending application(s), if any, shall stands disposed of.

31st July, 2025

reema

Whether speaking/reasoned Yes
Whether reportable No

(NIDHI GUPTA)
JUDGE