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

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FAO-5464-2013 (O&M)**Date of Decision : 20.04.2024**

Madan Lal

....Appellant

VERSUS

HDFC EGRO General Insurance Co. Ltd and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. B.K.Bagri, Advocate for the appellant.

Mr. Pradeep Kumar, Advocate for respondent No.1.

None for respondents No.3 and 4.

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NIDHI GUPTA, J.**CM-23110-CII-2013**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 329 days in filing the accompanying appeal.

2. It is submitted by the learned counsel for the applicant-appellant/owner of the offending vehicle, that the delay of 329 days in filing the present appeal has been occasioned on account of the fact that the appellant was not aware that recovery rights had been granted to respondent No.1/Insurance Company against the applicant. It is submitted that it is only when the applicant received notice of the execution petition filed by respondent No.1 for attachment of the offending truck that the applicant discovered that the recovery rights had been granted against him. It is submitted that the applicant immediately applied for certified copy of the Award dated 26.10.2013, which was prepared on 29.10.2013,



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delivered on 02.11.2013. Thereafter, due to Diwali holidays, the Courts remained closed and reopened only on 06.11.2013. The applicant, then arranged the money for filing the present appeal; whereafter the appeal was filed on 14.11.2013. It is accordingly prayed that the present application be allowed and the inadvertent delay caused in filing the appeal on account of the above said factors be condoned.

3. Ld. counsel for respondent No.1/Insurance Company vehemently opposes submissions advanced on behalf of the applicant and submits that a perusal of the record of the case shows that applicant has not been diligent in his pursuit of the present matter. It is accordingly prayed that the present application be dismissed.

4. Heard.

5. The abovesaid reasons cited by the applicant do not constitute 'sufficient cause' to condone extraordinary and inordinate delay of 329 days in filing the present appeal. From the above, it would appear that the applicant/appellant was not serious in pursuing the appeal.

6. Duty lies upon the appellant to be vigilant towards his rights to pursue litigation diligently. The appellant cannot totally sleep upon the matter after allegedly entrusting the same to his counsel. In this situation, it would be apposite to refer to judgment of the Delhi High Court in **Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi): Law Finder Doc Id # 887148** holding that:

"11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and

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wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted.”

7. Furthermore, it is cardinal principle of law that delay of each day has to be explained. In this regard, reference is made to judgment of the ***Hon’ble Supreme Court in Civil Appeal No. 11794 of 2025 titled as Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others, 2025 INSC 1104 decided on 12.09.2025, Law Finder Doc Id # 2777666***, wherein it is held that each day’s delay has to be explained in a mathematical manner which has not been done by the applicant. No cogent reason or plausible explanation has been furnished by the applicant for condonation of such an inordinate delay in filing the accompanying appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification.

8. As such, no ground is made out for condoning inordinate delay of 329 days. Present application accordingly stands **dismissed**.

CM-23111-CII-2013

The present application has been filed by the applicant/appellant under Order 41 Rule 27 read with section 151 CPC for additional evidence Annexure A-1 i.e. Certificate of payment of composite fees/taxes; and Annexure A-2 i.e. National Permit for truck bearing registration No.HR-47-8324.

2. The learned counsel for the applicant/appellant refers to the averments made in paras 2 and 3 of the instant application to submit that: -

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2. *The appellant is owner of the truck bearing registration No. HR-47-8324. On dated 13.01.2012 the truck was driven by respondent No.2 driver Babu Lal having valid driving licence as well as valid permit vide authorization No. 447/MP/02 for the truck bearing registration No. HR-47-8324 from 04.04.2011 to 03.04.2012 issued by the Secretary, Regional Transport Authority, Rewari. The appellant vide challan No. 6146612 dated 30.03.2011 paid Rs. 15,000/- taxed in State Bank of India, Rewari branch for National permit account, the validity of the authorization was from 04.04.2011 to 03.04.2012, the copy of the certificate of the payment of composite of fees/taxes is enclosed herewith as Annexure A-1 and the National Permit for public carrier issued in favour of the applicant for his truck was valid upto 03.04.2012, the copy of the permit i.e. part A and B are enclosed herewith as Annexure A-2.*

3. *The award dated 21.09.2012 passed against the appellant and the respondent No.1 was given rights of recovery for the compensation amount to be paid to respondent No. 3 and 4. As per the provision of Motor Vehicle Act, 1988 Section 66 the liability of the insurance when the owner have valid permit for ply his vehicle but due to not placing on record the permit by the counsel for the appellant the liability is fastened upon the appellant inspite of the appellant's truck having valid National Permit from 04.04.2011 to 03.04.2012 issued by the competent authority i.e. Secretary, Regional Transport Authority, Rewari after payment of the taxes of Rs. 15,000/- vide challan No. 6146612 dated 30.03.2011, so the placing on record for additional evidence these Annexure A-1 and A-2 are quite necessary.*

3. It is accordingly submitted that the applicant shall suffer grave, irreparable loss, injury and harm as the liability to pay the compensation has been wrongly affixed upon the appellant/applicant. Whereas it was the counsel for the applicant who had not produced the Permit before the Id. Tribunal.



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4. *Per contra* learned counsel for respondent No.1/Insurance Company again opposes submissions of the applicant/appellant and refers to the Award to submit that it has been categorically recorded by the learned Tribunal that respondent No.1 had duly served a legal notice upon the applicant/appellant for supplying copy of the permit within 7 days. Yet, applicant had failed to produce the copy of the Route Permit. Consequentially, the recovery rights were granted to the respondent No.1. It is contented that no valid reasons have been given by the applicant for not producing the permit before the learned Tribunal. Provision of Order 41 Rule 27 CPC cannot be taken so lightly. Applicant is only seeking to lay the blame upon his counsel for every lack of due diligence on part of the applicant himself. It is accordingly prayed that the present application be dismissed.

5. I have heard learned counsel for the parties.

6. I find merit in the submissions made on behalf of the respondent No.1.

7. For leading additional evidence before the Appellate Court, Order 41 Rule 27 (1) CPC, mandates as follows:

“27. Production of additional evidence in Appellate Court.-(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or



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(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be exam med.

(2) Whenever additional evidence is allowed to the produced, by an Appellate Court, the court shall record the reason for its admission.”.

8. A perusal of the above provision shows that the scope of Order 41 Rule 27(1) of the CPC is very clear. No doubt, the provision enables the party to file additional evidence at the first and second appellate stages. However, Rule 27(1)(aa) stipulates that such additional evidence can be permitted only if the party requesting it is able to prove that, despite their best efforts, they were unable to introduce the additional evidence in the initial proceeding. Thus, the basic principle for admitting additional evidence is that the party appealing is able to establish that there was a valid reason for not submitting such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties to the lis.

9. In the present case however, a perusal of the application under Order 41 Rule 27 CPC shows that there is no averment whatsoever regarding ‘due diligence’ or ‘knowledge’ as required under Rule 27(1)(aa). All that has been stated is that the counsel for the appellant failed to place the permit on record. The applicant cannot be permitted to foist the entire blame upon the counsel. It is also the duty of the applicant to be vigilant and pursue the litigation diligently. In this regard, reference is once again made to judgment of the Delhi High Court in ***Moddus supra***.

10. In my view, the abovesaid averment does not satisfy the requirement of the provision, inasmuch as does not constitute ‘due diligence’ within the



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meaning of Rule 27(1)(aa). The Hon'ble Supreme Court in **CA 16899 of 1996 "Karnataka Board of Wakf Vs. Government of India"** has categorically held that parties to an appeal shall not be entitled to produce additional evidence, unless they have shown that despite due diligence, they were unable to produce such evidence. In the present case, applicant has admittedly, not shown due diligence.

11. Reference in this regard may also be made to judgment of the **Hon'ble Supreme Court in C.A. No.10195 of 2013 titled as "Govt. of Karnataka and Another Vs. K.C. Subramanya & Others"** wherein their Lordships have held that:-

"6. On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will."

12. It is established legal position that provision of Order 41 Rule 27 CPC cannot be used to fill up lacuna in case. In this regard, reference may be made to pronouncement of the Hon'ble Supreme Court in **N. Kamalam (dead) and another Vs. Ayyasamy and Another (2001) 7 SCC 503**, wherein it has been held that:

"The provisions of Order 41 Rule 27 has not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the Court of Appeal – It does not authorize any lacunae or

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gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the Appellate Court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.....”

13. It is thus, clear that the intent of the said provision is not to permit party/applicant to patch up weak parts of his case and to fill up omissions in appeal. It is also to be appreciated that with the passage of time, the rights of the parties get crystallised. In the present case, it is the clear attempt of the applicant to fill up gaps and lacunae in his evidence; due to sheer lack of due diligence on part of the applicant. As per law, the applicant cannot be permitted to do so.

14. Consequently, the present application stands **dismissed**.

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1. The present appeal has been filed by the owner of the offending vehicle challenging the above said Award dated 21.9.2012, whereby the insurance company respondent No.1, has been granted the right to recover the entire compensation amount, along with interest at the rate of 9% per annum from the appellant/owner, and respondent No.2/driver, of the offending vehicle. The said right to recover has been granted to the Insurance Company on the ground that the offending vehicle did not possess a Valid Route Permit on the date of accident.

2. Brief facts of the case are that vide the impugned Award dated 21.09.2012 passed by the learned Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the ‘Tribunal’), the MACT claim petition No. 13, dated 27.01.2012 filed by the claimants/respondents No.3 and 4 herein, under section 166 of the Motor Vehicle Act (hereinafter referred to as the ‘Act’), has been allowed; and the claimants have been awarded compensation of ₹3,88,000/- along with interest at the rate of 9% per annum. The learned Tribunal upon appraisal of

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the pleadings and oral documentary evidence produced by the parties had concluded that the deceased Rakesh had died due to the injuries, suffered by him in a motor vehicular accident that took place on 13.01.2012 due to the rash and negligent driving of the truck bearing registration number HR-47-8324 (hereinafter 'the offending vehicle'), being driven by respondent no.2, owned by the appellant, and insured by the respondent no.1 herein.

3. Learned counsel for the appellant has submitted that the liability to pay the compensation amount has been wrongly fixed upon the appellant as the learned Tribunal failed to appreciate that the offending vehicle duly possessed a Valid Route Permit, which was a valid from 04.04.2011 to 03.04.2012 and which had been issued by the Secretary, Regional Transport Authority, Rewari. It is submitted that the appellant vide Challan dated 30.03.2011 had also paid an amount of ₹15000, for the National Permit, which had authorization from 04.04.2011 to 03.04.2012. It is submitted that the above said documents have been sought to be produced by the appellant before this Court by way of additional evidence. It is contended that from the said documents, it is clear that on the date of accident i.e. on 13.01.2012 appellant possessed a Valid Route Permit. Thus, recovery rights could not have been awarded to respondent No.1 against the appellant. It is accordingly, prayed that the present appeal be allowed; and the impugned Award dated 21.09.2012 qua the appellant may be set aside; and the liability to pay the compensation amount be fixed upon the respondent-Insurance Company.

4. Per contra, learned counsel for respondent No.1/Insurance Company opposes submissions of the appellant and again points out that despite grant of ample opportunity appellant had failed to produce a Route Permit. Even the

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authenticity of the Route Permit, now sought to be produced by the appellant, is not ascertained. It is submitted that therefore recovery rights have been correctly granted to respondent No.1 against the appellant; and he prays for dismissal of the present appeal.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in detail. I find no merit in the submission advanced on behalf of the appellant.

7. It is undisputed fact on record that respondent No.1/ insurance company had served a legal notice dated 23.08.2012 Ex.R2 upon the appellant and respondent No.2/driver for supplying copy of the Route Permit of the offending truck within a period of 7 days. However, the appellant and respondent No.2 had failed to produce the same. The appellant was therefore unable to prove before the learned Tribunal that the offending vehicle was being plied with a Valid Route Permit. No cogent reason has been given by the appellant before this Court or before the learned Tribunal for failing to produce the Route Permit. Before this Court, it has been sought to be submitted on behalf of the appellant that the appellant had handed over the Route Permit to his counsel, who had failed to produce the same. However, as discussed above, the same is not sufficient cause. The above said reason only indicates that the appellant has failed to pursue the present case with due diligence. The entire blame cannot be put upon the learned counsel representing the appellant before the Tribunal. Moreover, as pointed out by learned counsel for the respondent no.1, the veracity and authenticity of the Permit now sought to be produced by the appellant cannot be ascertained.

8. It may further be pointed out that through the entire Grounds of Appeal and the above mentioned two applications filed by the applicant/appellant,

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it has been mentioned/prayed that the impugned recovery of '₹4,13,798/-' granted against the appellant be set aside.

9. As noted above, vide the impugned Award, an amount of ₹3,88,000/- has been awarded by way of compensation to the claimants. Therefore, the very prayer made by the appellant, is, on the face of it, incorrect and cannot be granted.

10. In view of above discussion, the present appeal stands **dismissed**.

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

April 20, 2026
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(NIDHI GUPTA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No