

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

**Pronounced on : 31.12.2021**

CONC No. 42/2011

IA No. 27/2013

Naresh Kumar

....Petitioner(s)

Through: Mr. R.K.Bhatia, Advocate.  
**Vs**

United India Insurance Company Ltd.  
and others

.....Respondent(s)

Through: Mr. Vishnu Gupta, Advocate for R-1.  
Mr. Sunil Sethi, Sr. Advocate with  
Mr. Dhiraj Choudhary and Mr. Navyug  
Sethi, Advocates for R-2 & 3.

**Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

**ORDER**

1. Applicant, Naresh Kumar has filed the appeal against the Award passed by the Motor Accident Claims Tribunal, Jammu vide dated 27.06.2009. Along with the appeal, he has also filed an application for condonation of delay of more than 506 days in filing the appeal. It is submitted in the application that he was not aware of filing of any claim petition against him as no notice was served upon the appellant in the claim petition.
2. The respondents herein filed application for recovery of amount against the appellant as the liability was fastened upon the applicant and respondent Nos. 2 & 3. The Tribunal passed an order for seizure of shop of brother of appellant and the shop was seized on 23<sup>rd</sup> January, 2011. The appellant engaged a counsel who informed him about the passing of award by the Tribunal

against him. The delay in filing the appeal is not intentional is what is pleaded in the application.

3. The objections to the application have been filed by the respondent-Insurance Company as well as respondent Nos. 2 & 3 jointly. The Insurance Company in its objections has submitted that the petitioner was duly served through the agency of the District Court and despite service failed to appear before the Tribunal. There is no sufficient cause for delay in filing the appeal. The appeal having been filed after three years from the date of passing of the award without any sufficient cause the application is required to be dismissed.
4. The respondent Nos. 2 & 3 have submitted that the applicant-Naresh Kumar had participated in the proceedings after due notice. There is no sufficient cause for allowing the application.
5. The scanned record of the Tribunal is also before the court.
6. Learned counsel appearing for the applicant has argued that summons were not served upon the applicant-Naresh Kumar during the pendency of the claim petition before the Tribunal and the applicant came to know of the passing of the award only after the execution proceedings came to be filed and the shop was sealed. There is no deliberate delay in filing the appeal thereafter.
7. Learned counsels for the respondents submit that no sufficient cause is shown by the applicant in not filing the appeal within

time. The applicant was duly served but never cared to appear before the Tribunal to contest the claim petition. It is also argued that the appeal filed is itself not maintainable as the applicant-appellant has not deposited the requisite amount as envisaged under Section 173 of the Motor Vehicles Act.

8. The only ground taken in the application filed for condonation of delay is that the applicant herein was not served during the pendency of the claim petition before the Tribunal. The perusal of the record proceedings of the Tribunal reveals that the summons were issued to the applicant herein Naresh Kumar through registered post but were received back with the report unclaimed or incomplete address. The notice was thereafter issued to the applicant-Naresh Kumar through Process Serving Agency of the District Court, Jammu. As per the report of the process server, the notice was duly served upon the applicant on 16.10.2004. The signatures of said Naresh Kumar also appear on the back of the summons issued by the Tribunal. The signatures of the applicant on the summons when apparently compared with the pleadings filed before this court with the naked eye the same appear to be the same. It cannot be said that the applicant was not served during the pendency of the claim petition before the Tribunal. It is not the case of the applicant in the present application as well as in the appeal filed along with the present application that he was

not at all served but submits that he cannot be said to be served as the complete address was not mentioned in claim petition and copy of the claim petition was not annexed with the summons. The court is of the view that the plea raised is specious and needs rejection. In a proceeding of the present nature every irregularity occurring in the summons even if it is there cannot be the only reason to set aside the proceedings initiated against him. May be the applicant adopted callous attitude in the claim proceedings laboring under the impression that the award, if any, is to be passed in favour of the claimants only the insurance company shall be liable for the same.

9. The authorities produced by the learned counsel for the appellant do not help the applicant in the present application. 1995 Legal Eagle 1032 has been decided by the Hon'ble Apex Court keeping in view the peculiar facts of the case. In 1990 KLJ 260 the Hon'ble High Court dealt with the issue of service of the summons under O 5 CPC taking into consideration the factum of the report of the process server that the defendant refused to accept the summons.
10. The learned counsel has also taken plea of Rule 316 framed under the Motor Vehicles Act wherein it is stated that if the Tribunal is to proceed with the case then the Tribunal is required to send to the owner and the driver of the vehicle copy of the application

together with the notice on the date on which the Tribunal shall dispose of the application. The Court is of the view that the plea of the applicant herein cannot sustain in the facts and circumstances of the case as emanating from the record of the Tribunal.

11. The Court is of the view that the plea taken by the applicant is an afterthought and does not support the case of the appellant.
12. The learned counsels appearing for the respondents have argued that the appeal itself is not maintainable as the applicant has not deposited the requisite amount as mandated in Section 173 (1) of The Motor Vehicles Act, 1988.
13. The learned counsel for the applicant herein, however, submits that the applicant was not required to deposit the amount unless the court entertains the appeal and directs the applicant to deposit the amount as per the requirement of the aforesaid Section. He has relied upon the judgment of the learned Single Judge reported in 2008 ACJ 1912 titled Kabla Singh v. Kailash Kumari and others. However, the answer to the aforesaid plea of the respondents is found in the judgment of Division Bench of this Court reported in 1999 KLJ 758 titled United India Insurance Company Limited v. Mohd. Maqbool Reshi wherein the Division Bench held the appeal to be not maintainable as the appellant had not deposited the amount in terms of sub-section (1) of Section 173 of the Act

while filing the appeal. The court had also taken note of the fact that the appeal filed by the appellant before the Single Bench was time barred as is the case here. The judgment of the Division Bench applies on all fours in the present case.

14. The Court is of the considered opinion that the appeal is not maintainable as the applicant herein failed to deposit the amount as required in terms of Section 173 (1) of the Act. Otherwise too, the court has not found that the applicant-appellant has made out a case for condonation of delay in filing the appeal.
15. In the light of the discussion made above, the application filed for condonation of delay is dismissed. Consequently, the appeal filed along with the application also stands dismissed.

**Jammu**  
31.12.2021  
Pawan Chopra

**(Puneet Gupta)**  
**Judge**

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