xxx xxx

xxx

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold."

14. In the aforesaid judgments, the Hon'ble Supreme Court has been of the view that where a case has been presented in the Court beyond limitation, the person has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. Though limitation may harshly affect the rights of a party, it has to be applied with all rigour when prescribed by statute.

15. In the instant case, as already indicated above, there has been a casual, cavalier and lackadaisical approach on the part of the appellants all along inasmuch as, it has taken the State almost ten months to take a decision for filing of the appeal and despite the appeal having been allegedly prepared, it took the pairokar eleven months to realize that the appeal has not been filed. This is sheer negligence on the part of the appellants and thus, the grounds, as taken in the applications for condonation of delay, do not inspire confidence and consequently, the applications for condonation of delay merit to be rejected and are accordingly, **rejected.**

(Order on the Memo of Revision)

16. Since the applications for condonation of delay have been rejected, the revision also stands **dismissed.**

(2025) 3 ILRA 30
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.03.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

First Appeal From Order No. 182 of 2023

TATA AIG General Insurance Company Ltd. ...Appellant

Versus

Aman Kumar & Ors. ...Respondents

Counsel for the Appellant:
Deepak Kumar Agarwal

Counsel for the Respondents:
Arunendra Nath Mishra, Praveen Chandra

Criminal Law - Motor Vehicles Act, 1988 - Sections 168, 169 & 173 — Motor Accident Claim — Duty of Tribunal — Mandatory inquiry — Tribunal failed to conduct proper inquiry under Section 168 — Contradictory vehicle registration numbers in FIR and claim petition — Tribunal proceeded without deciding application to summon key eyewitness for cross-examination —Plea of accident involving insured vehicle not proved — Award passed without adequate scrutiny — Judgment and award set aside — Matter remitted for fresh adjudication-Appeal partly allowed. (Paras 10 to 13, 14,16, and 23)

HELD:

The Hon'ble Supreme Court, in the case of Gopal Krishnaji Ketkar Vs Mohamed Haji Latif & ors.; 1968 AIR SC 1413/1968 SCC OnLine SC 63, has held that if a party, even if the burden of proof does not lie on him/her, withholds important evidence in his possession which can throw light on the facts in issue, the adverse inference may be drawn by the court. (Para 14)

The aforesaid facts were required to be examined by the Tribunal under the facts and circumstances of the case because the accident was denied by the owner and driver. They adduced evidence to the effect that the vehicle was being driven in their village on the date of accident, though they have specifically not St.d that at the time of the accident the vehicle was not at the place of accident, but there are several discrepancies in the pleadings and evidence adduced by the claimant-respondent, which were required to be inquired by the Tribunal in inquiry under Section 168 of the M.V.Act. Section 168 of the M.V.Act provides that on receipt of an application for compensation made under Section 166, the claims Tribunal shall, after giving notice to the insurer and parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or as the case may be, subject to the provisions of Section 163, and may make an award determining the amount of compensation which appears to it to be just. (Para 16)

In view of aforesaid Section 169 of the M.V.Act the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Sub-Section (2) of Section 169 provides that the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed and it shall be deemed to be a Civil Court. Thus the Claims Tribunal has to hold the inquiry following the summary procedure to ascertain the truth to be just. It is true that the claim petition under the M.V.Act has to be decided on the preponderance of probabilities and the strict proof beyond doubt as required under the Criminal Cases is not required but when discrepancies as above were pointed out before the Tribunal and an application was also moved by the appellant for summoning the eye witness for cross-examination, whose evidence could have been material to clarify the discrepancies, the same was required to be inquired by the Tribunal or adverse inference could have been drawn. (Para 18)

In view of above and considering the overall facts and circumstances of the case, this court is of the view that the learned Tribunal has not only failed to make inquiry as required under Section 168 of the M.V.Act, but also failed to given sufficient opportunity to the appellant by not considering and disposing of its applications before passing the impugned judgment and award, therefore the same is liable to be set aside with the direction to the Tribunal to consider and decide the case afresh in accordance with law and in the light of the observations made here-in-above in this order. (Para 23)

Appeal partly allowed. (E-14)

List of Cases cited:

1. Gopal Krishnaji Ketkar Vs Mohamed Haji Latif & ors.; 1968 AIR SC 1413/1968 SCC OnLine SC 63

2. Kuldeep Singn Bawa & ors. Vs Tika Ram & ors.; 2009 SCC OnLine Del. 4293

3. Bhagat Singh Vs Jai Bhagwan & ors.; 2011 SCC OnLine P&H 12472

4. Mayur Arora Vs Amit @ Pange & ors.; 2011 (1) TAC 878 (Del.)

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Shri Deepak Kumar Agarwal, learned counsel for the appellant and Shri Praveen Chandra, learned counsel for the respondent no.1. None appeared on behalf of respondents no.2 and 3.

2. This First Appeal From Order (here-in-after referred as F.A.F.O.) has been filed under Section 173 of the Motor Vehicles Act, 1988 (here-in-after referred as M.V.Act) against the judgment and order dated 10.03.2023 and award dated 13.03.2023 passed in Motor Accident Claim Petition No.287 of 2017; Aman Kumar Versus Arun Kumar and others by the Motor Accident Claims Tribunal, Hardoi.

3. Learned counsel for the appellant submits that the First Information Report was lodged with a delay of four months and odd without any explanation for delay because the alleged accident was occurred on 23.04.2017 and the First Information was lodged on 26.08.2017. He further submitted that the First Information Report was lodged alleging the accident from the Motorcycle having Registration No.UP-30-AJ-7710, but the claim petition was filed against the Motorcycle having Registration No.UP-30-AF-7710 and the learned Tribunal has accepted the same on the ground that the application was submitted by the claimant-respondent for correction in the First Information Report, whereas he denied to give the same before the Tribunal. In the First Information Report lodged by the claimant-respondent the final report was filed against the Motorcycle having Registration No.UP-30-AJ-7710. He further submitted that learned Tribunal has also failed to consider the factum of the accident appropriately as there are glaring discrepancies in the description of the respondent-claimant. The respondent-claimant had lodged the First Information Report alleging therein that he was standing alongwith one Desh Raj when the alleged accident occurred and it has also been pleaded in the claim petition and his evidence on affidavit (examination-in-chief) was also filed alongwith the affidavit of claimant-respondent, but the said Desh Raj did not appear in the cross-examination and despite the application moved by the appellant for summoning him for cross-examination, the same was not considered and no orders were passed by the Tribunal before passing the impugned judgment and award. Thus the submission is that the learned Tribunal has failed to make the inquiry as required under Section 168 of the M.V.Act and failed to record any finding after considering as to whether the alleged Motorcycle having Registration No.UP-30-AF-7710 was involved in the accident or not. Thus the impugned judgment and award is not sustainable in the eyes of law and liable to be set aside.

4. Per contra, learned counsel for the claimant-respondent submits that the claimant-respondent had suffered serious injuries in the accident, on account of which his one leg was amputated and he had remained hospitalized for about one month and on account of the mental and physical shock he could not lodge the First Information Report in time and the reason for delay has been given in the First Information Report itself, therefore, the delay in lodging the First Information Report cannot be a ground for rejection of claim petition. Even otherwise once the accident and rash and negligent driving of

the offending vehicle is proved before the Tribunal under the M.V.Act, the proceedings of the criminal case has no bearing on it. He further submits that merely because the final report was filed in regard to the vehicle having Registration No.UP-30-AJ-7710 the involvement of vehicle having Registration No.UP-30-AF-7710 cannot be denied as it could not be found by the investigating officer. The respondent no.2 i.e. the owner of the offending vehicle has admitted that Ram Sagar was driving the vehicle on the date of accident. Though a plea has been taken that he was driving in the village, but no evidence of the same has been given. Even otherwise he has not disputed the accident and the respondent no.3 i.e. the driver of the Motorcycle has also supported the evidence of the respondent no.2, but they have not denied that they were not at the place of accident on the date and time of the accident. Thus learned counsel for the claimant-respondent submits that the impugned judgment and award has rightly been passed by the learned Tribunal after considering the pleadings, evidence and material on record, which does not suffer from any illegality or error, which may call for any interference by this court. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

5. I have considered the submissions of learned counsel for the parties and perused the records.

6. The claim petition was filed by the claimant-respondent alleging therein that he alongwith Desh Raj was waiting for the transport for coming to his house from village Singuwamau, Police Station-Sursa, District-Hardoi on 23.04.2017 at about 7 in the evening, when the Motorcycle having Registration No.UP-30-AF-7710, coming from the side of Lucknow, being driven rashly and negligently by its driver, came on the wrong side and hit him, in which he suffered serious injuries. He was admitted to District Government Hospital, Hardoi, but on account of serious condition he was referred to Lucknow. During treatment his left leg was amputated and the other leg was operated and the treatment is still going on. He has become completely handicapped from both the legs. The First Information Report in regard to the accident was lodged by the order of the Superintendent of Police, Hardoi vide case Crime No.208 of 2017, under Sections 279, 338 IPC, at Police Station-Sursa, District-Hardoi. The claimant-respondent was a vegetable trader and used to earn Rs.15,000/- per month, but on account of the injuries suffered in the accident he is unable to earn the livelihood, therefore, he is entitled for compensation from the respondents.

7. Owner of Motorcycle having Registration No.UP-30-AF-7710, the respondent no.2, filed his written statement mainly denying the averments made in the claim petition. He also stated that the alleged accident has not occurred from his vehicle. The vehicle involved in the accident is different. He has no concern with the accident. He has been implicated on account of enmity and party rivalry. His vehicle was validly registered and insured with the Tata AIG Insurance Company Ltd. and its Driver Ram Sagar had the valid driving licence. Thus the claim petition is liable to be dismissed against him.

8. The respondent no.3 i.e. the appellant filed the written statement mainly denying the averments made in the claim petition. It was further stated that looking

to the nature of accident it appears that the accident had occurred from unknown vehicle and false case has been lodged in collusion with the police to get the claim. The First Information Report has been lodged against the Motorcycle having registration No.UP-30-AJ-7710, but subsequently the Motorcycle having Registration No.UP-30-AF-7710 has been planted in the accident. The documents such as proof of age, medical prescriptions seems to be fabricated, therefore, the Insurance Company is not liable to make the payment of interest for the said period and the claim petition is liable to be dismissed with costs.

9. On the basis of pleadings of the parties four issues were framed. Thereafter documentary as well as oral evidence was adduced by the parties.

10. The learned Tribunal, while considering the issue no.1 in regard to accident on 23.04.2017 at about 7 in the evening near village Singuwamau, Police Station-Sursa, District Hardoi from Motorcycle having Registration No.UP-30-AF-7710 being driven by its driver rashly and negligently in which claimant-respondent got serious injuries and has become handicapped, considered the evidence of P.W.-1, O.P.W.-1 and O.P.W.-2 and recorded a finding that the accident had occurred on account of rash and negligent driving of the respondent no.2 Ram Sagar i.e. respondent no.3 in the present appeal on 23.04.2017 by Motorcycle having Registration No.UP-30-AF-7710, but failed to consider the pleadings of the claimant-respondent that he was standing and waiting for transport alongwith Desh Raj of his village, when the accident had occurred and the First Information Report was also lodged mentioning this fact and an affidavit of Desh Raj in evidence (examination-in-chief) was also filed alongwith the affidavit of the claimant-respondent, but he was not produced for cross-examination, whereas he could have been the best independent witness to prove the accident and rash and negligent driving of respondent no.3. On 02.03.2023 an application bearing paper No.30-ga was filed by the appellant-Insurance Company for summoning the paper book of Criminal Case relating to the claim petition, which was taken on record. On 10.03.2023 two applications were moved by the appellant-Insurance Company.

11. The learned Tribunal, by means of the order dated 02.03.2023, fixed the case for defence evidence, if any, and arguments on 10.03.2023. Paper No.31-ga was moved under Section 169 of the M.V.Act for providing the photocopy of the documents relating to treatment filed by the claimant-respondent on 20.02.2023 and Paper No.34-ga for summoning Desh Raj alleging therein that the evidence of Desh Raj as witness has been filed, but he has not been produced for cross-examination and the claimant-respondent got his evidence recorded and closed on 15.02.2023, therefore, the claimant-respondent may be directed to produce Desh Raj for his cross-examination. On the paper No.31-ga, the Tribunal ordered to ‘keep on file’ and on paper No.34-ga ordered to ‘keep on file only’. Though the Tribunal taken all the aforesaid three applications on record, but without passing any order thereon, passed the impugned judgment and award on 10.03.2023 itself.

12. The learned Tribunal passed the impugned judgment and award without considering that the First Information

Report was lodged against the vehicle No.UP-30-AJ-7710, but the claim petition has been filed against the vehicle No.UP-30-AF-7710 and final report has been filed on the ground of non involvement of vehicle No.UP-30-AJ-7710 and that no correct information of the vehicle involved in the accident could be obtained and it is not traceable in future and the vehicle which was named in the First Information Report was purchased subsequent to the accident, therefore, though it is apparent that the said vehicle could not have been involved in the accident, but whether the other vehicle was involved in the accident or not, as the number of the same was corrected subsequently and there were discrepancies in pleadings and evidence of claimant-respondent in regard to accident, has not been considered appropriately.

13. The learned Tribunal also failed to consider specific pleading of the claimant-respondent that Desh Raj of his village was with him at the time of accident and his evidence as witness was also filed by the claimant-respondent alognwith his evidence, but he has not been produced for cross-examination, whereas he was a material eye witness of the accident as he was present alongwith the claimant-respondent at the time of accident and when his evidence was filed he should also have been produced for cross-examination. He has admitted in his affidavit filed on record that he was present on the spot of accident alongwith the claimant-respondent. It was also required to be considered as to why he has not been produced for cross- examination.

14. The Hon'ble Supreme Court, in the case of **Gopal Krishnaji Ketkar Versus Mohamed Haji Latif and others; 1968 AIR SC 1413/1968 SCC OnLine SC 63**, has held that if a party, even if the burden of proof does not lie on him/her, withholds important evidence in his possession which can throw light on the facts in issue, the adverse inference may be drawn by the court.

15. The learned Tribunal also failed to consider that the claimant-respondent though lodged the First Information Report stating that Desh Raj was present with him on the spot of accident, pleaded the same in the claim petition and also filed an affidavit of Desh Raj, who admitted this fact, but he in his evidence denied. He stated in his evidence in cross-examination that he was coming back alone from Singuwamau on the date of accident. He also failed to tell the names of the in-laws of his brother, where he stated to have gone. He also stated that he had given the information of the accident to the Police Station on 23.08.2024 and he had not given any application to the Superintendent of Police, Hardoi and the First Information Report was lodged on the information given by him at the Police Station, whereas the documents placed on record by the claimant-respondent himself indicate that the application was given by the claimant-respondent to the Superintendent of Police, Hardoi on 25.08.2017, on the basis of which the First Information Report was lodged, which is mentioned in the First Information Report also. The application for correction of the number of the vehicle was also given to the Superintendent of Police, Hardoi, which is referred in final report.

16. The aforesaid facts were required to be examined by the Tribunal under the facts and circumstances of the case because the accident was denied by the owner and driver. They adduced

evidence to the effect that the vehicle was being driven in their village on the date of accident, though they have specifically not stated that at the time of the accident the vehicle was not at the place of accident, but there are several discrepancies in the pleadings and evidence adduced by the claimant-respondent, which were required to be inquired by the Tribunal in inquiry under Section 168 of the M.V.Act. Section 168 of the M.V.Act provides that on receipt of an application for compensation made under Section 166, the claims Tribunal shall, after giving notice to the insurer and parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or as the case may be, subject to the provisions of Section 163, and may make an award determining the amount of compensation which appears to it to be just. Section 168 of the M.V.Act is extracted here-in-below:-

"168. Award of the Claims Tribunal. - (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of [section 163] may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

[***]

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

17. In view of above the Tribunal has to hold an inquiry into the claim before passing an award. Section 169 of the M.V.Act provides the procedure and powers of claims tribunal, which is extracted here-in-below:-

"169. Procedure and powers of Claims Tribunals. - (1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

[(4) For the purpose of enforcement of its award, the Claims

Tribunal shall also have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit.]"

18. In view of aforesaid Section 169 of the M.V.Act the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Sub-Section (2) of Section 169 provides that the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed and it shall be deemed to be a Civil Court. Thus the Claims Tribunal has to hold the inquiry following the summary procedure to ascertain the truth to be just. It is true that the claim petition under the M.V.Act has to be decided on the preponderance of probabilities and the strict proof beyond doubt as required under the Criminal Cases is not required but when discrepancies as above were pointed out before the Tribunal and an application was also moved by the appellant for summoning the eye witness for cross-examination, whose evidence could have been material to clarify the discrepancies, the same was required to be inquired by the Tribunal or adverse inference could have been drawn.

19. It is noticed that the application for summoning the file of the criminal case, providing the copies of the evidence on record and the witness for cross-examination were moved on the date of evidence, therefore, without deciding the same the Tribunal could not have proceeded to decide the claim petition on the very same date.

20. In view of above this court is of the view that the Tribunal has failed to make an inquiry as provided under the M.V.Act and has also passed the impugned judgment and award without affording sufficient opportunity to the appellant by not deciding the applications fled by him.

21. The Delhi High Court, in the case of **Kuldeep Singn Bawa and others Versus Tika Ram and others; 2009 SCC OnLine Del. 4293**, has held that Section 168 of the M.V.Act casts a duty on the learned Tribunal to conduct an inquiry in a meaningful manner. The relevant paragraph 5 is extracted here-in-below:-

22. Similar view has been taken by the Punjab and Haryana High Court, in the case of **Bhagat Singh Versus Jai Bhagwan and others; 2011 SCC OnLine P&H 12472** and the Delhi High Court, in the case of **Mayur Arora Versus Amit alias Pange & others; 2011 (1) TAC 878 (Del.).**

23. In view of above and considering the overall facts and circumstances of the case, this court is of the view that the learned Tribunal has not only failed to make inquiry as required under Section 168 of the M.V.Act, but also failed to given sufficient opportunity to the appellant by not considering and disposing of its applications before passing the impugned judgment and award, therefore the same is liable to be set aside with the direction to the Tribunal to consider and decide the case afresh in accordance with law and in the light of the observations made here-in-above in this order.

24. With the aforesaid the appeal is **partly allowed**. The impugned judgment and order dated 10.03.2023 and award dated 13.03.2023 passed in Motor Accident Claim Petition No.287 of 2017; Aman Kumar Versus Arun Kumar and others by the Motor Accident Claims Tribunal, Hardoi is hereby set aside. The matter is remitted back to the concerned Tribunal to decide the claim petition afresh in the light of the above observations/directions.

25. Since the matter is of the year 2017, this court deems it appropriate to direct to the Tribunal to decide the claim petition afresh expeditiously and preferably within a period of four months from the date fixed before the Tribunal in this order for appearance of the parties without granting unnecessary adjournment to either of the parties.

26. The parties shall appear before the concerned Tribunal on 24th of March, 2025.

27. The statutory deposit made before this court and any other amount under any order passed by this court shall be remitted to the concerned Tribunal forthwith and in any case within a period of four weeks from today, the disbursement of which shall abide by the fresh decision taken by the Tribunal.

(2025) 3 ILRA 38
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.03.2025

BEFORE

THE HON'BLE VIVEK CHAUDHARY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

First Appeal No. 27 of 2018

Khajanchi ...Appellant

Versus

Preete ...Respondent

Counsel for the Appellant:
Umesh Chandra Saxena, Santosh Kumar Maurya

Counsel for the Respondent:
Sanjay Kumar Patel (S.K.), Shrawan Kumar Verma)

Family Law — Hindu Marriage Act, 1955 - Sections 13 & 13B — Divorce — Appeal against dismissal of divorce petition by Family Court — Long separation and absence of cohabitation — Settlement arrived at before Mediation and Conciliation Centre — Payment of permanent alimony completed — All pending litigations agreed to be withdrawn — No further claims to be raised — Code of Civil Procedure, 1908 — Section 89(2)(d), Order XXIII Rule 3 — Mediation — Court empowered to pass decree based on voluntary and lawful mediated settlement — Satisfaction of statutory requirements under CPC and Mediation Rules — Decree of divorce rightly passed on basis of compromise- U.P. Civil Procedure Mediation Rules, 2009 — Rule 26 — Settlement recorded by Mediation Centre found to be voluntary and non-collusive — Court satisfied before passing decree-Held, decree of divorce by mutual consent granted in terms of Settlement Agreement — Appeal allowed. (Paras 10 to 14)

HELD:
In this regard, this Court is guided by Section 89(2)(d) of the Code of Civil Procedure, 1908, which St.s that where a dispute has been referred for mediation, the mediator will assist the parties in reaching a settlement, and if a settlement is arrived at, the Court may pass a decree in accordance with its terms. This ensures that mediated settlements have legal enforceability and enables courts to grant decrees based on mutually agreed terms,