

Court even earlier in **Union of India versus M/s Popular Construction Company (5)**, that made inapplicable the application for condonation of delay under Section 5 for filing a petition or setting aside the award. The same principle could apply to this as well. I am not prepared to join issues on the merits contended by the State and if the Appellate Authority had dismissed it on the point of limitation, I am of the view that the decision was correct and would require no intervention. The issue of extending the period of limitation itself cannot be done through a writ petition, as held in a decision of the Delhi High Court in **Anil Mehra versus East India Weaving Limited (6)**. The writ petition filed by the State is, for the above reasons, dismissed.

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*M. Jain*

*Before K. Kannan, J.*

**JASBIR KAUR,—Petitioner**

*versus*

**ORIENTAL INSURANCE COMPANY LTD., CHANDIGARH  
THROUGH CHIEF REGIONAL MANAGER  
AND OTHERS,—Respondents**

**C.W.P. No.13921 of 2010**

24th August, 2011

*Constitution of India - Art. 226 - Permanent Lok Adalat - Claim dismissed by Insurance Company on ground that factum of death had not been informed immediately and had been done after nearly one and half years of event - Permanent Lok Adalat held that time limit for informing death must be one month as provided under policy and failure to inform constitutes breach of condition of policy absolving insurance company of its liability.*

*Held*, The breach that can constitute an occasion absolving the liability must be so fundamental to the terms that the insurance company could plead that the claim is not maintainable. A condition requiring the

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(5) JT 2001 (8) SC 271

(6) (2001) 2 RAJ 323

claimant to inform the contingency, in this case, the death of the person, ought not to be taken as breach of such a fundamental condition to absolve the insurance company of its liability to make the payment.

(Para 2)

Vineet Sharma, Advocate, *for the petitioner.*

Ashwani Talwar, Advocate, *for the respondents.*

**K. KANNAN J. (ORAL)**

(1) The claim before the Permanent Lok Adalat by widow of insured, who was covered under Group Insurance Scheme, comes in challenge to the order dismissing the claim on the ground that the fact of death had not been informed immediately and that it had been done nearly one and half years after the event. The Permanent Lok Adalat accepted the contention in defence that the time limit for informing the death must be one month as provided under the conditions of the policy and if it was not so done, it will amount to breach of condition of policy and will absolve the insurance company of its liability.

(2) In my view, it is clear misreading of the policy to contend that the time limit prescribed, constituted a legal bar for enforcement. It is only a method of preserving that fake claims are not made and that a claim form should be filed within a reasonable time. The breach that can constitute an occasion absolving the liability must be so fundamental to the terms that the insurance company could plead that the claim is not maintainable. It would be typically in a situation where there is a suppression of fact, which is essential to the terms of the policy of insurance itself. It is best on the principle that all contracts of insurance being matters of utmost good faith, called as *ubereima fiedi*, the party committing a breach shall not be able to enforce the claim against the insurance company. A condition requiring the claimant to inform the contingency, in this case, the death of the person, ought not to be taken as breach of such a fundamental condition to absolve the insurance company of its liability to make the payment. After all in this case, it is not denied that the petitioner's husband had died and that he was also covered by the terms of the policy and that if a notice of information had been made within the time as set forth in the policy, the insurance

company could not have stated that the petitioner would not entitle for the same.

(3) The award is set aside and the writ petition is allowed admitting the petitioner's claim for the amount assured in the policy to be paid. The same shall be paid with interest @7.5% from the date of petition till the date of payment.

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*M. Jain*

*Before K. Kannan, J.*

**D.A.V. CHARITABLE TRUST & MANAGEMENT SOCIETY,  
CHITRA GUPTA ROAD, NEW DELHI THROUGH  
TARLOCHAN SINGH, TEACHER, D.A.V. MODEL  
SENIOR SECONDARY SCHOOL, KHANNA,  
DISTRICT LUDHIANA,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**C.W.P. No.20057 of 2008**

11th August, 2011

*Constitution of India - Art. 226/227 - Charitable Endowments Act, 1890 - Ss. 4, 5 & 6 - Society's Registration Act, 1860 - Stamp Act, 1899 - Whether petitioner-institution would qualify to come within definition of charitable trust and thereby claim exemption from payment of stamp and registration charges - Trust registered as Society - Held petitioner can claim exemption - Failure to apply U/s 4 of the 1890 Act does not take away entitlement of exemption - State notification provide entitlement to a charitable institute under 1890 Act and to a trust registered or notified under the said act - Petition allowed.*

*Held*, That Section 4 is merely facilitative and it offers a right to a charitable institution to apply the Trust to be registered and to be notified in the Official Gazette. The provisions of Sections 4, 5 and 6 would apply in cases where any person connected with the charitable Trust seeks for