

GAHC010138242023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/188/2023

THE UNITED INDIA INSURANCE CO LTD.
HAVING ITS REGISTERED HEAD OFFICE AT 24 WHITES ROAD, CHENNAI-
600014 WITH ONE OF ITS REGIONAL OFFICE AT G.S. ROAD, GUWAHATI-
781005, REPRESENTED BY ITS CHIEF REGIONAL MANAGER.

VERSUS

ARATI RABHA
D/O- JYOSNA RABHA, R/O- VILL.- BARJORA NO. 1, P.O. BARJORA, P.S.
LAKHIPUR, DIST. GOALPARA, ASSAM

For the Petitioner(s)	: Mr. A. N. Das, Advocate
For the Respondent(s)	: Mr. S. Sahu, Amicus Curiae
Date of Hearing	: 27.08.2024
Date of Judgment	: 27.08.2024

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. N. Das, the learned counsel appearing on behalf of the Petitioner. None has appeared on behalf of the sole Respondent in spite of service of notice.

2. This Court vide an order dated 21.05.2024 taking into account the issue involved had requested Mr. S. Sahu, the learned counsel as to whether he would be inclined to assist this Court more so when the Respondent had not put in her appearance, Mr. S. Sahu, the learned counsel had readily agreed and accordingly, on 21.05.2024, Mr. S. Sahu was duly appointed as the Amicus Curiae in the instant proceedings.

3. In the instant proceedings, the challenge made is to an order dated 21.03.2023 passed in MAC Case No. 339/2021 wherein an application filed by the Petitioner herein who is the Respondent in the said proceedings for rejection of the claim on the ground of unreasonable delay was rejected.

4. For appreciating the dispute involved, it is relevant to take note of that on 17.09.2003, the Respondent herein while travelling from Dudhnoi to Agia as a passenger suffered grievous injuries. Thereupon, on 07.09.2021 i.e. almost after 18 years, the claim petition was filed seeking a compensation of Rs.8,00,000/- by the Respondent herein. The Petitioner Company upon receipt of the notice, appeared and submitted a preliminary objection to the maintainability of the said claim proceedings on the ground that the said claim proceedings was filed after 18 years 4 months. It is not known as to whether the Respondent herein filed any objection to the said petition raising preliminary objections or as to whether the learned Tribunal asked the claimant/respondent herein to file any affidavit explaining the delay in approaching the Claims Tribunal after a period of 18 years.

5. Be that as it may, vide an order dated 21.03.2023, the learned Tribunal rejected the application for dismissal of the claim petition on the ground of delay and being aggrieved, the present proceedings has been filed.

6. Mr. A. N. Das, the learned counsel appearing on behalf of the Petitioner submitted that although Section 166(3) Motor Vehicles Act, 1988 (for short "the Act of 1988") which earlier mandated filing of the claim proceedings within a period of 6 months was deleted vide the Motor Vehicle (Amendment) Act, 1994 w.e.f 14.11.1994 (for short "the Amending Act, 1994") but the learned Tribunal ought to have taken into consideration that the dispute in question was a stale dispute. The learned counsel submitted that approaching the learned Tribunal after such an unexplained delay, makes it very difficult for the Petitioner Company to have a proper defence inasmuch as there is no records available as well as witnesses for the Petitioner company to take a reasonable defence which is also a facet of the principles of natural justice and Article 21 of the Constitution. He referred to the judgment of the Supreme Court in the case ***Purohit and Company Vs. Khatoonbee and Another*** reported in ***(2017) 4 SCC 783*** wherein the Supreme Court had rejected the claim proceedings on the ground of being stale and accordingly to be treated as a dead claim. He submitted that in that case, the Supreme Court was dealing with a case wherein the delay was for 28 years.

7. Per contra, Mr. S. Sahu, the learned Amicus Curiae submitted that in terms with the Amending Act of 1994, three significant legislative changes were incorporated inasmuch as Section 158(a) was substituted, Section 166(3) was deleted and Section 166(4) was substituted. The learned Amicus Curiae therefore submitted that by virtue of substitution of Section 158(6) of the Act of 1988, a statutory obligation was cast upon the Officer-in-Charge of the Police Station to submit the report before the Claims Tribunal having jurisdiction and a copy thereof to the insurer in question. He therefore

submitted that upon submission of the report by the concerned Police Officer, the Tribunal was required to treat the same as a claim proceedings in terms with the substituted Section 166(4) of the Act of 1988. It is therefore submitted that as the report would be submitted by the Police Officer and would be treated as a claim proceeding, the Legislature in its wisdom had removed Section 166(3) of the Act of 1988. The learned counsel further submitted that the Supreme Court in the case of ***Dhannalal Vs. B. P. Vijayvargiya and others reported in (1996) 4 SCC 652*** had also duly taken note of the said aspect of the matter and accordingly had come to an opinion that the claim proceedings could not have been rejected on the ground of limitation. He further submitted that the judgment in the case of ***Purohit and Company (supra)*** would not be applicable as the accident in question in that proceedings was at a time when the Motor Vehicles Act, 1939 was in force and there was no pari materia provisions similar to Section 158(6) and 166(4) of the Act of 1988.

8. I have heard the learned counsel appearing on behalf of the petitioner as well as the learned Amicus Curiae.

9. From the said submissions so made, the point for determination which arises as to whether the learned Tribunal was justified in rejecting the application filed by the petitioner whereby maintainability of the claim proceedings was raised on the unexplained ground of delay vide the impugned order dated 21.03.2023.

10. Prior to 14.11.1994, Section 166(3) of the Act of 1988 provided that no application for compensation shall be entertained unless it is made within 6 months of the occurrence of the incident provided that the Claims Tribunal

may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Section 166(3) of the Act of 1988 was deleted vide the Amending Act of 1994 w.e.f. 14.11.1994.

11. Sub-Section (6) of Section 158 of the Act of 1988 was substituted vide the Amending Act of 1994 which reads as follows:

“(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer.”

12. In addition to that, Section 166(4) was substituted which reads as follows:

“(4) The Claims Tribunal shall treat any report of the Accidents forwarded to it under Sub-Section (6) of Section 158 as an application for compensation under this Act.”

13. A conjoint reading of Sub-Section (6) of Section 158 with Section 166(4) of the Act of 1988 would show that the Officer-in-Charge of the Police Station upon receiving information regarding any accident including death or bodily injury to any person or a report under Section 158 completed by the Police Officer shall forward a copy of the same within 30 days from

the date of recording of the information or as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer and where a copy is made available to the owner, he shall also within 30 days of the receipt of such report forward the same to such Claims Tribunal and Insurer. It is also seen that in terms of Section 166(4) of the Act of 1988 which was also amended vide the Amending Act of 1994 with effect from 14.11.1994 that the Claims Tribunals shall treat any report of accident forwarded to it under Sub-Section (6) of Section 158 as an application for compensation under the Motor Vehicles Act, 1988.

14. From the above, it would be seen that in view of the provisions of Section 158(6) read with Section 166(4) of the Act of 1988, certain statutory obligations have been cast upon the Officer-in-Charge of the Police Station as well as the owner of the vehicle to forward the report to the Claims Tribunal. Additionally, the Claims Tribunal has also been statutorily obligated to treat such report under Section 158(6) of the Act of 1988 as an application for compensation under the Act of 1988. It is however, not known in the instant facts as to whether any report was sent to the Claims Tribunal by the Officer-in-Charge of the police station or by the Owner of the vehicle in question. No doubt, the statutory obligations which are cast upon the authorities are required to be performed. However, if such statutory obligations are not performed, the injured or the legal representatives of the deceased has the option of approaching the Claims Tribunal by him/her/them by filing application under Section 166(1) of the Act of 1988. However, if the injured or the legal representatives of the deceased do not take any action for an unreasonable period of time, the claim if any has to

be regarded as stale claim and cannot be proceeded with. The said observation is based upon two reasons. First, the principles of waiver and acquiescence would come into play inasmuch as right to claim compensation are only statutory rights. Secondly, an unreasonable delay in approaching the Claims Tribunal results in causing prejudice to the adversary as there is every possibilities of the records being destroyed or not available, the witnesses being not available etc. to resist the claim which in turn would also affect their rights under the principles of natural justice. It is no longer res-integra that right to an effective defence in the manner provided under law is a facet of our basic principles of our legal jurisprudence.

Be that as it may, this Court is also of the opinion that if the delay in approaching the Claims Tribunal though belatedly is explained by proper explanation, the Claims Tribunal would definitely have the jurisdiction to proceed with the adjudication of the claims proceedings. The greater the delay, more is the burden to explain.

15. This Court has also taken note of the claim petition wherein there is no explanation as to why there was a delay of 18 years in preferring the claim application. In this context, the judgment of the Supreme Court in ***Purohit and Company (supra)*** is relevant to be looked into wherein it was observed that a stale dispute cannot be a subject matter of a claim proceedings. Paragraph Nos. 13 to 18 of the said judgment being relevant are reproduced herein under:

“13. It would be relevant to mention, that the above judgment was rendered in a matter, where the challenge was raised under the provisions of the Industrial Disputes Act, 1947, wherein also no period of limitation is

prescribed to approach the Industrial Tribunal. Despite the above, this Court arrived at the conclusion, that a claim raised after a period of 7 years, was not a surviving claim. And therefore, the claim petition was held to be not maintainable.

14. *Drawing an analogy to the judgments rendered under the Consumer Protection Act, 1986, as also, under the Industrial Disputes Act, 1947, it was the submission of the learned counsel for the appellant, that even though no period of limitation remains prescribed, after the amendment of Section 166 of the Motor Vehicles Act, 1988, whereby sub-section (3) of Section 166 came to be deleted (with effect from 14-11-1994), yet it would be imperative to determine, whether at the juncture when the claimant approached the Motor Accidents Claims Tribunal, the claim was a live and surviving claim.*

15. *We are satisfied, that the submission advanced at the hands of the learned counsel for the appellant merits acceptance. The judgments on which the High Court had relied, and on which the respondents have emphasised, in our considered view, are not an impediment, to the acceptance of the submission canvassed on behalf of the appellant. We say so, because in Dhannalal case the question of inordinate delay in approaching the Motor Accidents Claims Tribunal, was not considered. In the second judgment in C. Padma case, it was considered. And in C. Padma case, the first conclusion drawn in SCC p. 718, para 12 was "... if otherwise the claim is found genuine...". We are of the considered view, that a claim raised before the Motor Accidents Claims Tribunal, can be considered to be genuine, so long as it is a live and surviving claim. We are satisfied in accepting the declared position of law, expressed in the judgments relied upon by the learned counsel for the appellant. It is not as if, it can be open to all and sundry, to approach a Motor Accidents Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident had taken place.*

The individual concerned, must approach the Tribunal within a reasonable time.

16. *The question of reasonability would naturally depend on the facts and circumstances of each case. We are however, satisfied, that a delay of 28 years, even without reference to any other fact, cannot be considered as a prima facie reasonable period, for approaching the Motor Accidents Claims Tribunal. The only justification indicated by the respondents, for initiating proceedings after a lapse of 28 years, emerges from Para 4, contained in the application for condonation of delay, filed by the claimants, before the Tribunal. Para 4 aforementioned is extracted hereunder:*

“4. That the petitioners are poor person and they have no knowledge about the Law. Also the respondent has not pay the single pie towards any compensation.”

17. *Having given our thoughtful consideration to the justification expressed at the behest of the respondents, for approaching the Tribunal, after a period of 28 years, we are of the view, that the explanation tendered, cannot be accepted. Undoubtedly, the claim (pertaining to an accident which had occurred on 2-2-1977), in the facts and circumstances of the instant case, was stale, and ought to have been treated as a dead claim, at the point of time, when the respondents approached the Tribunal by filing a claim petition, on 23-2-2005.*

18. *In view of the reasons recorded hereinabove, we hereby set aside the impugned order dated 7-7-2015, and allow the instant appeal, by holding, that the claim raised by the respondents before the Motor Accidents Claims Tribunal, was not a surviving claim, when the respondents approached the said Tribunal.”*

16. This Court, however, finds it very relevant to take note of that in the

claim proceedings, there was no explanation of the delay of 18 years in approaching the learned Tribunal. It is also not known as to whether the claimant was at all given any opportunity by the Tribunal to explain the delay of 18 years in approaching the learned Tribunal. Under such circumstances, this Court is of the opinion that the learned Tribunal had mechanically applied the law in the case of ***Dhannalal (supra)*** in passing the order dated 21.03.2023. The aspects which the learned Tribunal ought to have looked into are as to whether the claim so made was a stale claim taking into account that there was a delay of 18 years in approaching the Claims Tribunal and the corresponding prejudice to be caused to the adversary in permitting the claim proceedings to proceed.

17. Accordingly, this Court taking into account that the learned Tribunal did not consider the said aspects of the matter or for that matter did not seek an explanation from the claimant before passing the impugned order, sets aside the impugned order dated 21.03.2023 and further directs the learned Tribunal to decide afresh the application filed by the Petitioner for rejection of the claims proceedings on the ground of delay.

18. The learned Tribunal shall decide afresh on the touchstone of the observations so made by the Supreme Court in the case of ***Purohit and Company (supra)*** as well as the observations made hereinabove thereby giving an opportunity to the claimant to explain the delay in preferring the claim proceedings after a lapse of 18 years from the date of accident.

19. With the above observations and directions, the instant petition stands disposed of.

20. This Court vide an order dated 01.05.2024 had stayed the further proceedings of MAC Case No.339/2021. The said stay order stands vacated and the parties herein are directed to appear before the learned Tribunal on 18.09.2024.

21. It is also to be noted that the Respondent herein who is the claimant had not appeared before this Court and as such may not be aware of the instant order. The learned Tribunal shall issue notice to the claimant before carrying out the adjudication as directed above.

22. This Court appreciates the valuable assistance received from Mr. S. Sahu, the learned Amicus Curiae.

JUDGE

Comparing Assistant