

GAHC010181312024



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

Case No. : CRP/92/2024

BISA MIYA AND ANR
S/O- LATE KABEL SHEKH @ KABEL SHEIKH, VILL.-KANHARA, P.O.
CHAYGAON-781136, DIST. KAMRUP, ASSAM

2: BUDDU MIYA
S/O- LATE KABEL SHEKH @ KABEL SHEIKH
VILL.-KANHARA
P.O. CHAYGAON-781136
DIST. KAMRUP
ASSA

VERSUS

HERO MOTO CORP. LTD. AND 2 ORS.
G.S. ROAD, ABC BUS STOP (OPP. RAJIB BHAWAN), BHANGAGARH, P.O.
GUWAHATI-781005, DIST. KAMRUP(M), ASSAM

2:ASHRAFUL ISLAM
S/O- MOHIR UDDIN
VILL.- HAHCHORI
P.O. CHAYGAON-781124
DIST. KAMRUP
ASSAM

3:SOFIUR RAHMAN KHAN
S/O- MONSUR RAHMAN KHAN
VILL- JAUKATA DIA
P.O. DEKACHANG-781136

Advocate for the Petitioner : MR. A R AGARWALA, MR ADITYA AGARWALA

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

16.09.2024

Heard Mr. A.R. Agarwala, learned counsel for the petitioners.

2. This petition, under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure (C.P.C.), is directed against the order dated 13.06.2024, passed by the learned Member, Motor Accident Claims Tribunal, Kamrup (Amingaon), in MAC Case No. 35/2023.

3. It is to be noted here that vide order dated 13.06.2024, the learned Member, Motor Accident Claims Tribunal, Kamrup (Amingaon) has dismissed the condonation petition and also the claim case filed by the petitioner.

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“On 31.10.2021, at about 5 p.m., the father of the claimant, Late Kabel Shekh @ Kabel Seikh was proceeding from Goraimari Bazar towards his residence on foot. On the way, one motor cycle bearing registration No. AS-25-S-9007 (Glamour), was coming in the same direction in a very rash and negligent manner and in a very high speed without due care and knocked down Kabel Shekh @ Kabel Seikh on his side of the road. As a result of the accident, the father of the petitioners sustained injuries over his head. On being reported the matter to the Goraimari Police Outpost, under Chhaygaon Police Station by the public, the victim was taken to the Goraimari CHC and from there he was referred to GMCH, wherein he succumbed to his injuries on the same day, during the course of treatment. Thereafter, the petitioner had filed one claim

petition before the learned Member, Motor Accident Claims Tribunal, Kamrup at Amingaon along with a delay condonation petition which came to be dismissed on 13.06.2024, on account of absence of provision for condonation of delay in the new MV Act.

5. Mr. Agarwala, learned counsel for the petitioners submits that though the claim petition was filed on 10.04.2023, the occurrence of accident took place on 31.10.2021. Mr. Agarwala further submits that in view the Suo Moto WP (Civil) Case No. 3/2020 and subsequent orders, the limitation period will stop running for the period of 15.03.2020 to 28.02.2022, due to the Covid-19 pandemic. Mr. Agarwala also submits that due to some extreme hardship, poverty and mental agony, the petitioners could not file claim petition in time and as such, it is contended to allow this petition by setting aside the impugned order, which according to him is arbitrary and illegal.

6. Having heard the submission of learned counsel for the petitioners, I have carefully gone through the petition as well as the documents placed on record.

7. It appears that the accident took place on 31.10.2021, and in connection with the same, an FIR was lodged before the Goraimari Police Outpost, upon which, the Chhaygaon P.S. Case No. 1293/2021, under Sections 279/304(A) of the IPC had been registered.

8. It is to be noted here that the Motor Vehicles Act was amended in the year 2019 and the amendment came into force from 01.04.2022.

9. Now the question before this court is which provision of the MV Act will be applicable in this case, whether the amendment act or the old act. This issue was dealt with by High Court of Kerala in **OP (MAC) No. 51/2022 (Sathi & 3 Others vs. Dileep and 2 Others)** wherein the accident took place on 23.05.2019. The High Court of Kerala has dealt with the issue in paragraph Nos. 9 & 10, of the said judgment which are extracted herein below :-

“9. Section 6 of the General Clauses Act, 1897 postulates the

situation of a similar nature where by protecting right, privilege, obligation or liability acquired or accrued under any repealed enactment. It is settled law that the provisions of the new Act cannot infringe or relegate the right granted under the old Act. Section 6 of General Clauses Act reads thus:

"6. Effect of repeal. Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

- (a) revive anything not in force or existing at the time of which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or
- (c) affect any right, privilege, obligation or liability acquired or accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment as aforesaid; and
- (f) any such investigation, legal proceeding or

remedy may be instituted continued or enforced and any math penalty forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.'

10. Since while introducing the Act of 2019 effective from 1.4.2022, Legislature did not cause any amendment in the repealing and savings clause specifying its applicability in respect of the accidents occurred prior to the introduction of the amendment, in view of the provisions of Section 6 and the observations of the Supreme Court in the judgment in State of Punjab and others v. Bhajan Kaur and others (supra), I am of the view that the applicability of the Act i.e., introduction of the old provisions of sub-section (3) of Section 166, would have a prospective effect and the limitation period of six months would apply after introduction of the amendment i.e., post 1 April 2022. In other words, in any accident occurred after 1.4.2022, provisions of the amendment caused in the Act prescribing the limitation to entertain a claim petition, the parties would be governed by the same but not in respect of the persons whom a right had already accrued and was available if the amendment had not been caused.

For the reasons aforementioned the impugned order is set aside. Original petition is allowed. The MACT is directed to entertain the claim petition preferred and try the case on merits. Since the Insurance Company has already put in appearance, the counsel representing the Insurance Company will be at liberty to put an appearance before the MACT as it will save the time regarding service of the

Insurance Company. The parties are directed to appear before the MACT on 07.07.2022.”

10. It is also to be noted here that the High Court of Madras, in the case of **Malaravan vs. Praveen Travels Private Limited and Others**, reported in **2023 SCC OnLine Mad 5467**, while dealing with the issue had discussed the Rule 159 of the Central Motor Vehicle Rules and held that the said Rule 159 mandates that on the occurrence of the accident the police should file an FIR and send a copy of the same within 48 hours to the jurisdictional MACT. Thereafter, taking note of the Hon’ble Supreme Court in the case of **Gohar Mohammed vs. Uttar Pradesh State Road Transport Corporation and Others**, reported in **(2023) 4 SCC 381** and the Rules it has been held as under :-

“25. the timeline which has been set forth would clearly show that the claim petition need not be commenced only by way of presentation of the petition under Section 166 of the MV Act. This is clear from Section 166(4) of the MV Act which states that a report filed by the police to the concerned authorities including the stakeholders, Insurance Companies and the jurisdictional Motor Accidents Claims Tribunal should be treated as the Claim Petition.

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29. the issue of six months limitation will arise only in case where no FIR has been registered by the police and no report has been sent/uploaded.

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32. The upshot of the discussion is that on registration of an FIR, a claimant is entitled to present the petition without the

fear of it being thrown out, on the ground of limitation. This would be the correct reading of the present legal dispensation in all cases where FIR is registered within six months, of the date of any motor accident which takes place after 01.04.2022.”

11. On such count, the High Court of Madras has allowed the Civil Revision Petition No. 2558 of 2023 [**Malaravan (Supra)**] and directed that the petition filed in MACT OP (SR) No. 3280/2023 has to only be treated as a reminder to the court to call for the FIR and other reports and to treat the same as a claim petition.

12. The reasons so assigned by the High Court of Kerala and High Court of Madras appear to be sound, based on the relevant Rules and decision of Hon’ble Supreme Court and the same can be gainfully applied in the present case also.

13. It appears that in connection with the said accident, police was immediately informed and a case was also registered, being Chhaygaon P.S. Case No. 1293/2021, under Sections 279/304(A) of the IPC.

14. It is to be noted here that in view of the decision of Hon’ble Supreme Court in the case of **Gohar Mohammed (Supra)** and also the Rule 159 of the Central Motor Vehicle Rules, the Investigating Officer is bound to prepare an Accident Information Report and furnish the same to the stakeholders, Insurance Companies and the jurisdictional Motor Accidents Claims Tribunal and the same should be treated as the claim petition. And if the same is treated as claim petition, the question of limitation does not arise here in this case.

15. Under the aforementioned facts and circumstances, this court is inclined to allow this petition. Therefore, it is provided that the learned Member, MACT, Kamrup at Amingaon shall make an effort to find out whether the Investigating Officer of Chhaygaon P.S. has forwarded an Accident Information Report to it or not and if not, then it shall call for the same along with the FIR of the said case and treat the same

as claim petition and thereafter, shall proceed to hear and dispose of the matter in accordance with law.

16. In terms of above, this CRP stands dispose of.

Comparing Assistant

JUDGE