

GAHC010184932024



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

Case No. : CRP(IO)/427/2024

SHRIRAM GENERAL INSURANCE COMPANY LIMITED
HAVING ITS CORPORATE AND REGISTERED OFFICE AT E-8, EPIP, RIICO
INDUSTRIAL AREA, SITAPURA, JAIPUR, RAJASTHAN, INDIA, PIN- 302022
AND ONE OF THE BRANCH OFFICE AT B.R. ARCADE, 3ED FLOOR,
OPPOSITE TO PRIYA PALACE HOTEL, 21, JANAPATH ULUBARI, GHY-
781007.

VERSUS

MD. SADIK HUSSAIN @ SADDIQUE AND 2 ORS.
S/O- MOUR UDDIN, VILL.- BARIK NAGAR PART-II, UTTAR MOHANPUR,
P.O. AND P.S. SONAI, DIST. CACHAR, ASSAM, PIN- 788119.

2:MD. AZAD HUSSAIN
S/O- FORIZ UDDIN
VILL.- UTTAR MOHANPUR
P.O. KAPTANPUR
P.S. SONAI
DIST. CACHAR
ASSAM
PIN- 788119.

3:MD. SABIR AHMED
S/O- MAUR UDDIN AHMED
VILL.- KAPTANPUR
P.S. SONAI
DIST. CACHAR
ASSAM
PIN- 788119

Advocate for the Petitioner : MR. A J SAIKIA, M CHETIA,MR. S. PEGU

Advocate for the Respondent : ,

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

28.10.2024

Heard Mr. A.J. Saikia, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India read with Section 151 of the C.P.C., the petitioner has put to challenge the correctness or otherwise of the order dated 15.06.2024, passed by the learned Member, M.A.C.T., Cachar, Silchar, in Petition No. 71/26.

3. It is to be noted here that vide order dated 15.06.2024, the learned Member, M.A.C.T., Cachar, Silchar has dismissed the Petition No. 71/26 filed by the petitioner for dismissal of the MAC Case No. 156/2023.

4. Mr. Saikia, learned counsel for the petitioner submits that the respondent No. 1 has instituted one MAC case, being MAC Case No. 156/2023, before the learned Member, M.A.C.T., Cachar, Silchar, by claiming compensation from the petitioner for sustaining injuries in a motor vehicle accident which took place on 18.10.2017, involving one Auto Rikshaw, bearing registration No. AS-11-BC-0111. In the said claim, the present petitioner along with the driver and owner of the vehicle were made parties. On receipt of notice, the present petitioner entered appearance and filed a petition on the ground that the claim is not maintainable being time barred, as the said accident took place on 18.10.2017, and the case was filed on 18.04.2023. Mr. Saikia further submits that while the accident took place on 18.10.2017, and the case was filed on 18.04.2023, in the meantime the new amended Motor Vehicle Act came into force w.e.f. 01.04.2022. As such, the claim petition ought to have been filed under the newly amended Act. Mr. Saikia also submits that Section 166(3) of the M.V. Act prescribed a period for limitation for filing a claim petition as 6 months and since the claim petition has not been filed

within the limitation of 6 months of the date of accident, the claim petition is barred by limitation. But, the learned Tribunal had failed to consider this aspect and dismissed the petition filed by the petitioner and therefore, the impugned order is arbitrary and illegal. Therefore, it is contended to set it aside.

5. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 15.06.2024, passed by the learned Member, M.A.C.T., Cachar, Silchar, in Petition No. 71/26.

6. It is not in dispute that the accident took place on 18.10.2017, and the claim petition was filed on 18.04.2023, before the learned Tribunal. It further appears that the amended Motor Vehicle Act came into force w.e.f. 01.04.2022.

7. That being so, the issue before this court is which provision of the M.V. Act will be applicable in this case, whether the new amended M.V. 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 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 punishment as aforesaid; and or

(f) any such investigation, legal proceeding or remedy may be instituted continued or enforced and any such 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.”

9. The reasons so assigned by the High Court of Kerala appears to be sound, based on the relevant Rules and decisions of Hon'ble Supreme Court and the same can be gainfully applied in the present case also.

10. Thus, having examined the impugned order in the light of the given facts and circumstances on record and also in the light of the decision of High Court of Kerala, this court is of the view that no case for interfering with the impugned order is made out. The learned counsel for the petitioner has failed to show any illegality or infirmity in passing the impugned order by the learned Tribunal.

11. In the result, I find no merit in this petition. Accordingly, the same stands **dismissed.**

Comparing Assistant

JUDGE