

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2647 OF 2004

JUDGMENT:

The unsuccessful petitioner preferred the instant appeal assailing the order and decree, dated 06-12-1996, in M.O.P. No.509 of 1995, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Vizianagaram (for short 'the Tribunal'), whereby and where-under, the claim of the petitioner for the injuries he sustained in a road accident for Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), was dismissed on the ground that the accident had taken place prior to amendment Act of 1991, during which period, provisions of Section 166 (3) of the Act was in force, and that the amended Act would not have retrospective effect, though, the Tribunal has determined the amount at Rs.1,31,640/- towards 40% disability.

2. The appellant herein is the petitioner, while respondent Nos.1 to 3, who are driver, owner and insurer of lorry bearing registration No.AP 26T 79, respectively, are respondents as such in M.O.P. before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in MOP before the

Tribunal.

4. The facts, in brief, are that on 11-09-1991 at about 9.00 a.m., the petitioner and his brother-in-law were proceeding in a Van bearing registration No.ADH 2922 from Visakhapatnam to Amudalavalasa, and when it reached near Chopala Kancheru road junction at about 12.30 p.m., a person stopped the van and requested the petitioner to help him to push his van which was rested at that place with mechanical defect. The petitioner respected the request and along with his brother-in-law and the driver of their van pushed the said van and then returning to reach their van ADH 2922. At that juncture, a lorry bearing registration No.AP 26T 79 coming from Bhogapuram proceeding towards Visakhapatnam driven by respondent No.1 in a rash and negligent manner at high speed, came and hit him, due to which, he sustained injuries. He was immediately shifted to Government Hospital, Vizianagaram for treatment. The Station House Officer, Bhogapuram Police Station, registered a case in Crime No.92 of 1991 under Section 337 IPC. The petitioner claiming that he was earning Rs.40/- per day by selling the clothes in surrounding villages on his bicycle and since he sustained permanent disability, sought a sum of Rs.1,50,000/- as compensation.

5. Respondent Nos.1 and 2 appeared to have remained *ex parte* before the Tribunal.

6. Respondent No.3 - Insurer of the lorry, opposed the claim by raising various pleas, including the plea that the claim was barred by limitation since under Section 166 (3) of the Old Act an application for compensation shall be entertained unless it is made within six (06) months from the date of accident and proviso provides further period of six (06) months in case sufficient cause is shown that prevented him from making application within six months from the date of accident. Since the accident occurred on 11-09-1991, the claim petition is not maintainable and thereby sought to dismiss the claim petition.

7. Basing on the said pleadings, the Tribunal framed the following three (03) issues for trial:

- “ 1. Whether the petitioner received injuries due to rash and negligent driving of the lorry AP 26 T 79 by its driver the first respondent?
2. Whether the petitioner is entitled to any compensation? If so? to what amount and from whom?
3. To what relief? ”

8. Before the Tribunal, the petitioner examined himself as PW.1, besides examining the doctor - Dr. A.

Sreeramamurthy, as PW.2 and marked Exs.A-1 to A-3, besides marking Exs.X-1 to X-3, through the doctor. On behalf of the respondents, neither oral nor documentary evidence was adduced.

9. The Tribunal on appraisal of evidence let in by the petitioner, held issue No.1 in favour of the petitioner, holding that due to rash and negligent driving of respondent No.1, the accident had occurred; on issue No.2, while appreciating the evidence of Medical Officer examined as PW.2, who asserted that the petitioner sustained 60% permanent disability and issued Ex.A-3 – disability certificate, the Tribunal taking the daily earnings of the deceased at Rs.30/-, applied structural formula and assessed 40% disability at Rs.1,16,640/-. Besides the same, the Tribunal has also granted Rs.2,000/- towards loss of income; Rs.3,000/- towards pain and suffering and Rs.10,000/- towards purchase of medicines expended including transport charges and, thus, arrived at a total of Rs.1,31,640/- as compensation to which the petitioner is entitled. But, however, placing reliance on the judgment of this Court in **New India Assurance Company Limited v. Salapuriappa**^[1], wherein this Court held that the omission of sub-section (3) of Section 166 of the Act did not have retrospective effect, holding that the claim petition was not laid within time, dismissed the claim

petition.

10. It is the aforesaid order which is under challenge in the instant appeal mainly contending that the Tribunal ought not to have dismissed the claim petition solely on the basis of bar by limitation.

11. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellant - petitioner, and Sri N.S. Bhaskara Rao, learned counsel for respondent No.3 - Insurance Company.

12. The appeal against respondent No.1, driver of the lorry, was dismissed for default on 16-09-2011. Though, notice was served on respondent No.2, owner of the lorry, none appears for him. However, the same makes no difference in deciding the controversy herein as they were remained *ex parte* before the Tribunal.

13. Perused the order and the material on record. The Tribunal having determined the compensation as mentioned in the above, dismissed the claim petition observing thus:

“..... By virtue of Sec.166(3) which came into force on 01-07-1989 which was omitted by Act 54 of 1994 dt.14.11.1994 and the accident having been taken place in this case on 11.9.1991 it is the amended section 166 (3) under 1988 Act that is applicable whereunder the petition is to be filed within six months and power of condoning the delay is for six

months. As in this case, the petition is not filed within the prescribed time, the relief is barred by time and the question of cause of action being not barred by virtue of amending clause 166 (3) does not arise. Even assuming that 166 (3) omission is applicable in this case, even then the principles of Limitation Act i.e. Section 29 Read with Art.44 and Sch.I are applicable where under the limitation is three years. There appears no petition filed seeking condonation of the delay in the present petition. Hence, the relief claimed in this petition is clearly barred by time. This issue is decided accordingly.”

In fact, the Tribunal has not framed any issue touching bar by limitation.

14. When the records of the trial Court are summoned, it is stated in the letter, dated 28-01-2015 by the learned Judge, Family Court - cum - III Additional District Judge, Vizianagaram, that the entire record in O.P. No.509 of 1995 was already destroyed as per the orders of the I Additional District Court, Vizianagaram, dated 26-02-2004, but, however, Photostat copy of extract of O.P. register and copy of order of destruction have been sent. A perusal of the entries in column No.2 would show that the claim petition was presented on 28-8-1992 and it was registered on 16-10-1995. The nature of objection raised by the office of the Principal District Judge, which is the institutional Court, is not forthcoming, however, on the right side top, there is recording thus:

“ The delay of 3 years 1 month 8 days in representing the O.P. is condoned as per orders in IA 2946, dated 13.10.95.”

It is not known why the Tribunal has not resorted to the exercise of looking into the application which was filed after the claim petition was presented. The Tribunal ought to have probed into whether any application along with the claim petition was filed, whether it was filed beyond six (06) months from the date of accident in view of the proviso to sub-section (3) of Section 166 of the Act, then in vogue, and when delay of more than three (03) years was condoned, the Tribunal is duty bound to refer to these details and ought to have made a detailed discussion and arrived at a correct conclusion, instead, just stating that petition was not filed within the prescribed time and that the relief was barred by time.

15. In the present context, the learned counsel for the petitioner placing reliance on a decision of this Court in **Andhra Pradesh State Electricity Board, Srikakulam District v. Munji Ramanamma**^[2], would submit that now the law is well settled and the amendment made to Section 166 of the Act, which came into force on 14-11-1994, is held to be retrospective in operation. He has also placed reliance on the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. C.**

Padma^[3]. The fact-situation therein was that the accident had taken place on 18-02-1989, when old Act was in force, resulting in injuries to the claimant. She filed the claim petition on 02-11-1995, when the New Act was in force, seeking compensation of Rs.1,00,000/-. The plea of limitation raised by the insurer was rejected by the Tribunal and awarded a compensation of Rs.45,000/-. The revision petition filed by the insurer was also dismissed by the High Court on 05-12-1996. When the matter was carried to the Hon'ble Supreme Court, it was also dismissed. The Hon'ble Supreme Court has followed the ratio laid down in **Dhannalal v.D.P. Vijayyargiya**^[4], where the fact-situation was that the appellant was injured in a motor accident that took place on 04-12-1990; his claim petition for compensation was filed before the Tribunal on 07-12-1991 along with an application for condonation of delay, which was allowed by the Tribunal by its order, dated 18-11-1993 and the validity of order of the Tribunal was challenged before the High Court, and the High Court, by its order, dated 31-07-1995, had set aside the order of the Tribunal, holding that the power of Tribunal to condone the delay under sub-section (3) of Section 166 of the Act had been withdrawn and, therefore, the claim petition must be filed within the period prescribed therein. The Hon'ble

Supreme Court has set aside the order of High Court. The Hon'ble Supreme Court in **C. Padma's Case** (Supra 3) has extracted the law declared by the Hon'ble Supreme Court in **Dhannalal's Case** (Supra 4) in paragraph Nos.6 and 7. Since the same ratio would be applicable to the case on hand, the relevant paragraphs are extracted thus:

"9. This Court in **Dhannalal's** case (supra), after examining the effect of the various amendments that have been brought about in the Act, stated in paragraphs 6 and 7 as under:-

6. "Before the scope of Sub-section (3) of Section 166 of the Act is examined, it may be pointed out that the aforesaid Sub-section (3) of Section 166 of the Act has been omitted by Act 53 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 14.11.1994. The effect of the Amending Act is that w.e.f. 14.11.1994 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident of the bread earner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escape death some of such victims are hospitalised for months if not for years. In the present case itself the applicant claims that he met with the accident on 4.12.1990 and he was being treated as an indoor patient till 27.9.1991. According to us, in its wisdom, Parliament rightly thought that prescribing a period of limitation and

restricting the power of the Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants. The present case is a glaring example where the appellant has been deprived by the order of the High Court from claiming the compensation because of delay of only four days in preferring the claim petition.

7. "In this background, now it has to be examined as to what is the effect of omission of Sub-section (3) of Section 166 of the Act. From the amending Act it does not appear that the said Sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the amending Act to show that benefit of deletion of Sub-section (3) of Section [166](#) is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of Sub-section (3) from Section 166 of the Act can be tested by an illustration Suppose an accident had taken place two years before 14.11.1994 when Sub-section (3) was omitted from Section [166](#). For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when Sub-section (3) of Section [166](#) was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of Sub-section (3) of Section [166](#) w.e.f. 14.11.1994? According to us, the answer should be in negative. When Sub-section (3) of Section [166](#) has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section [166](#) was in force . It need not be impressed that Parliament from time to time has

introduced amendments in the old Act as well as in the new Act in order to protect the interests of the victims of the accidents and their heirs if the victims die. One such amendment has been introduced in the Act by the aforesaid Amendment Act 54 of 1994 by substituting Sub-section (6) of Section 158 which provides:

"158.(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."

In view of Sub-section (6) of Section 158 of the Act the officer-in-charge of the police station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy thereof has also to be forwarded to the insurer concerned. It also requires that where a copy is made available to the owner of the vehicle, he shall within thirty days of receipt of such copy forward the same to the Claims Tribunal and insurer. In this background, the deletion of Sub-section (3) from Section [166](#) should be given full effect so that the object of deletion of the said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, the High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from the Tribunal to this Court. His right to get compensation in

connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990, in view of the amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this Court cannot be thrown out on the ground of limitation."

(Emphasis

supplied)

10. The ratio laid down in **Dhannalal's** case (supra) applies with full force to the facts of the present case. When the claim petition was filed Sub-section (3) of Section [166](#) had been omitted. Thus, the Tribunal was bound to entertain the claim petition without taking note of the date on which the accident took place. Faced with this situation, Mr. Kapoor submitted that **Dhannalal's** case does not consider Section [6A](#) of the General Clauses Act and therefore, needs to be reconsidered. We are unable to accept the submission. Section [6A](#) of the General Clauses Act undoubtedly provides that the repeal of a provision will not affect the continuance of the enactment so repealed and in operation at the time of repeal. However, this is subject to "unless a different intention appears". In **Dhannalal's** case the reason for the deletion of Sub-section (3) of Section [166](#) has been set out. It is noted that the Parliament realized the grave injustice and injury caused to heirs and legal representatives of the victims of accidents if the claim petition was rejected only on ground of limitation. Thus "the different intention" clearly appears and Section [6A](#) of the General Clauses Act would not apply."

16. The fact-situation occurring in the instant case squarely covered by the law laid down by the Hon'ble Supreme Court in **Dhannalal's Case** (Supra 4). Further,

as stated above, that the Tribunal has not properly appreciated the interlocutory proceedings in the claim petition and the delay of more than three years condoned by allowing the I.A. No.2946, and consequent registration of claim petition on 16-10-1995. Whether the petitioner has filed the said petition along with claim petition or when the claim petition was returned he made such an application is not forthcoming. Even otherwise, the claim petition was laid within one year from the date of taking place of accident. The maximum period provided by the provision to sub-section 3 of Section 166 of the Act, then in force, was a total period of one year limitation.

17. In that view of the matter, certainly, it is to be held that the finding recorded by the Tribunal, basing on which, the claim petition was dismissed, has to be set aside and, accordingly, the same is set aside. The amount determined by the Tribunal does not warrant any interference as it is based on proper appreciation of evidence in awarding just and reasonable amounts under various heads making a total of Rs.1,31,640/-. However, in regard to granting of interest, in view of the pronouncement of Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[5], the interest at the rate of 7.5% per annum is awarded on Rs.1,31,640/- from the date of registration of petition i.e., 16-10-1995 till

realization.

19. Accordingly, the appeal is allowed in part, and the order and decree, dated 06-12-1996, in M.O.P. No.509 of 1995, passed by the Tribunal are set aside. The amount of Rs.1,31,640/- determined by the Tribunal as against the claim of Rs.1,50,000/- is confirmed and, accordingly, the same is granted with interest at 7.5% per annum thereon from 16-10-1995 till realization. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

July 08, 2016.

Mgr

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- [\[1\]](#) . 1996 (2) ALT 330
 - [\[2\]](#) . 2006 (1) ALD 138
 - [\[3\]](#) . 2003 ACJ 1999
 - [\[4\]](#) . (1996) 4 SCC 652
 - [\[5\]](#) . 2013 ACJ 1403