

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.149 of 2016

ORDER:

This revision petition by the 2nd respondent/Insurance Company in O.P.No.370 of 2010 on the file of the learned V-Additional Metropolitan Sessions Judge-cum-XIX Additional Chief Judge-cum-Motor Accidents Claims Tribunal, Hyderabad, is directed against the orders dated 4th November 2015 of the said Tribunal in I.A.No.311 of 2015 filed in the aforementioned O.P. under Order VIII Rule 9 of the Code of Civil Procedure to permit the 2nd respondent/Insurance Company to file its additional counter with a plea that the claim petition is barred by law of limitation.

I have heard the submissions of Sri N.J.Sunil Kumar, learned counsel for the petitioner/Insurance Company and Sri C.Vikram Chandra, learned counsel for the 1st respondent-Insured-claimant.

I have perused the material record.

The case of the Insurance Company in support of its request to permit it to file an additional counter to raise the plea of bar of limitation of the 1st respondent's claim is that the accident in question had occurred on 07.08.1993 and that in view of the provision of Sub-section (3) of Section 166 of Motor Vehicles Act, 1988 prior to the amendment, the claim petition is barred and that therefore, it has become necessary to file an additional counter to raise the said plea. Per contra, though no counter is filed by the 1st respondent/claimant before the Tribunal, her case is that as per settled legal position, though the said Sub-section (3) of Section 166 of Motor Vehicles Act is omitted by Amending Act 59/1994, the claim petition of the

1st respondent cannot be thrown out on the ground that the claim is barred by time as on the date of the accident the said Sub-section (3) was in force.

The Tribunal having taken note of the settled legal position, while holding that the claim is not barred by time, dismissed the application of the Insurance Company. Therefore, the aggrieved Insurance Company preferred this revision.

Having regard to the submissions made in line with the contentions of the parties which are stated supra, this Court is of the considered view that while considering the application seeking permission to file additional pleadings, the Tribunal is obliged to consider as to whether permission is to be accorded or not, but shall not deal with the merits of the proposed contentions in the additional pleadings being sought to be filed by the parties. The issue of limitation being a mixed question of fact and law, has to be decided at the time of adjudication of the main claim petition, in the event, the additional pleading is permitted to be filed and in case such an issue arises for adjudication but not while considering the application of present nature which was filed seeking leave to file additional pleadings. No doubt in **Dhannalal v. D.P.Vijayvargiya**¹, the Hon'ble Supreme Court had an occasion to examine the issue which is being sought to be raised in the additional counter of the Insurance Company. However, for the reasons already stated, the said aspect need not be gone into while considering the application of the Insurance Company which was filed seeking leave to file the additional counter. Further, in view of the provision of section 3 of the Indian Limitation Act, 1963, the issue of limitation has to be considered

¹ 1996 ACJ 1013

although limitation has not been set up as a defence. Viewed thus, this Court finds that the order of the Tribunal calls for interference.

In the result, the civil revision petition is allowed and the order dated 04.11.2015 in I.A.No.311 of 2015 in O.P.No.370 of 2010 on the file of the learned V-Additional Metropolitan Sessions Judge-cum-XIX Additional Chief Judge-cum-Motor Accidents Claims Tribunal, Hyderabad, is set aside and the said application is allowed according permission to the 2nd respondent/Insurance Company to file additional counter. It is made clear that the Tribunal shall now give an opportunity to the 1st respondent/claimant to file rejoinder, if any, and decide, in accordance with procedure established by law, the issue of limitation along with other issues at the time of adjudication of the O.P. No costs.

Pending miscellaneous applications, if any, shall stand closed.

25th October 2016

ajr

M.SEETHARAMA MURTI, J