

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 1376 of 2003 (O&M)

Date of decision: 03.11.2017.

Balwinder Kaur

...Appellant

versus

Punjab State and another

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : None for the appellants.

Mr. Pankaj Gupta, Addl. Advocate General, Punjab.

RAJIV NARAIN RAINA, J. (ORAL)

1. There is no representation on behalf of the appellants. I see no reason why this matter should be adjourned and judgment delayed. I have heard learned State counsel in making this order.

2. Gurinderjit Singh was a Constable in Punjab Police. While on duty travelling in a police vehicle it hit a tree and as a result of the accident, he sustained fatal injuries which led to his premature death. The incident occurred on the intervening night of 26.10.1992. Deceased was unmarried. The Punjab Government offered compassionate appointment to his brother in the police department under the Ex-gratia Scheme. His family was given other monetary benefits as were permissible under the rules arising out of the pre-mature death of the government servant.

3. The mother filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (unamended) for compensation which was

dismissed as withdrawn in January 1996 before the Motor Accident Claims Tribunal, Faridkot. It is not clear from the record on file whether permission was granted by the Tribunal to file a fresh claim petition, but, the mother filed a fresh claim petition on 09.02.2000 which has been dismissed by the Tribunal on the ground of limitation vide award dated 10.01.2003. It is true that Section 166 was amended in the year 1994 and limitations in presenting the claim petitions was done away with Legislature being a socially beneficial legislation.

4. There can be no doubt that the award of the Tribunal can be faulted on the ground of dismissal of the petition as barred by time, but, learned counsel for the respondents-State of Punjab relies on a judgment of the Supreme Court in M/s Purohit and Company Vs. Khatoonbee and another in Civil Appeal No. 2555 of 2017 decided by 3 Judge Bench of the Supreme Court on 09.02.2017 by which the apex Court has introduced the negating principle introducing concept of 'stale and dead claims'. The conclusions drawn are contained in paragraph No. 13 onwards. The Court drew analogy from other socially beneficial legislations such as the Consumer Protection Act, 1986, The Industrial Disputes Act, 1947 where despite their being no bar of limitation yet Courts have introduced the principle of delay and laches in approaching Courts, including Tribunals to see whether the claim is a live and surviving claim. Their Lordships of the Supreme Court side-lined their previous decision in Dhannalal Vs. DP Vijayvargiya (1996) 4 SCC 652

holding that the question of inordinate delay in approaching the Motor Accident Claims Tribunal was not considered in the decision and the specific case infact is the authority in The New India Assurance Company Limited Vs. C. Padma, (2003) 7 SCC 713.

5. In *C. Padma* case (Supra), the Supreme Court has held that the Tribunal was bound to entertain the claim petition without taking note of the date on which the accident took place in a petition filed under Section 166 (3) of the MV Act, but, in reaching this conclusion the Supreme Court used guarded words: “...if otherwise the claim is found genuine...”. Drawing from the first observation, the conclusion drawn by the Supreme Court in *C. Padma* (Supra) the Court held that it is not as if it can be open to all aggrieved to approach the Motor Accident Claims Tribunal, to raise a claim for compensation, at any time, after the accident had taken place. The individual concerned, must approach the Tribunal within a reasonable time. The question of reasonability would naturally depend on the facts and circumstances of each case.

6. The case in *M/s Purohit* (supra) was a case contending with delay of 28 years in approaching the claims tribunal which is apparently rather extraordinary. The delay in this case stands on somewhat different footing where the second round of litigation by the mother was initiated after 4 years of withdrawal of the earlier claim petition which itself was filed arising out of the death in a road accident on October

1992. It can be said that the actual delay is of about 7 years which is long enough to activate laches.

7. The distinguishing feature in this case to bring it within the bar of delay and laches and equity is that employer Punjab Government had adequately compensated the family of the deceased by offering a job to the brother of the deceased and handing over other monetary dues which were available in the rules to be provided to the mother, the claimant herein. Looking to the totality of the facts and circumstances, in my considered view this case would fall in the ratio of *M/s Purohit* case and for me to hold in principle that this case involves a stale claim and ought to be treated as a “dead claim” and not a “genuine” one looking to the peculiar facts of the case and the offer and acceptance of employment by claimant's second son, who must have looked after and provided comfort to her over the years.

8. Such like dead claims are not only associated with the present subject matter but also in service law for which one may notice the law in Union of India Vs. M.K. Sarkar, (2010) 2 SCC 59 and C. Jacob Vs. Director Geology of Mining, (2008) 10 SCC 115.

9. For these reasons, I would not think it proper to disturb the award even though the claim could not have been dismissed in view of provisions of Article 137 of the Limitation Act, 1963 and by ignoring the omission of Sub-section (3) of Section 166 by Parliament by amendment which came into force on 14.11.1994.

10. The appeal is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

November 03, 2017

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Whether speaking/reasoned : Yes

Whether reportable : Yes