

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1 of 2013

1. Most. Gyatri Devi, W/O Late Shyam Babu Soni

2. Bandana Kumari, D/O Late Shyam Babu Soni

Both are R/O Mohalla - Sonar Toli, P.S. Siwan Town, District - Siwan

... .. Petitioner No. 1 & 2/Appellants

Versus

1. Kameshwar Prasad, S/O Nand Kishor Prasad, R/O Lodipur, P.S. Doriganj,
District - Saran, Chapra

2. The Branch Manager, The Oriental Insurance Co. Ltd., Sudarshan Building,
Municipal Chowk, P.O. Chapra (H.O.), P.S. Chapra Town, District – Saran,
Chapra

3. Rajiv Kumar, S/O Late Shyambabu Soni

4. Amit Kumar, S/O Late Shyambabu Soni

5. Abinash Kumar, S/O Late Shyambabu Soni,

Appellant No. 3, 4 and 5 are the resident of village - Sonar Toli, P.S. Siwan
Town, District - Siwan

... .. Opposite Party No. 1-5/Respondents

Appearance :

For the Appellants : Mr. Anuj Dilbar Krishna, Advocate

For the Respondent No. 2 : Mr. Durgesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-01-2019

Heard learned counsel for the parties under Order
41, Rule 11 of the Code of Civil Procedure.

2. This appeal has been preferred against dismissal of
the claim petition by order dated 01.10.2012 passed by the 1st
Additional District Judge-cum-Motor Vehicle Accident Claim
Tribunal, Saran at Chapra in Claim Case No. 30 of 2003.

3. Appellant No. 1 Ms. Gyatri Devi is wife and
appellant no. 2 Bandana Kumari is daughter of Late Shyam



Babu Soni. Shyam Babu Soni met with an accident on 07.01.1989 while he was going on a motorcycle as pillion rider and the offending truck bearing registration no. BRD 8483 dashed against the motorcycle causing instant death. The claim was preferred in the year, 2003.

4. The impugned order would reveal that the claim was dismissed as hopelessly barred by limitation and non-joinder of necessary party.

5. Submission of the learned counsel for the appellants is that when the claim petition was filed, the statutory provision of sub-section 3 of Section 166 of the Motor Vehicles Act, 1988 prescribing period of limitation was already deleted, hence, no limitation was there on the date of application.

6. Learned counsel for the appellants has relied upon a judgment of the Supreme Court in the case of **Dhannalal** versus **D.P. Vijayvargiya & Ors.** reported in **1996(4) Supreme 281** for his submission that in **Dhannalal's** case, the accidental death was caused on 04.12.1990 and the claim was preferred on 07.12.1991 along with application for condonation of delay of 4 days only. The Tribunal had condoned the delay. The validity of the said order was challenged before the High Court and the High Court set aside the order of the Tribunal. The matter went



to the Supreme Court and the Supreme Court set aside the order of the High Court observing in para 6 and 7 of the aforesaid judgment as follows:-

“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 Section 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 realized 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 escapes death some of such victims are hospitalized 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 the Parliament, rightly thought that



prescribing a period of limitation and restricting the power of 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 interest 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:

"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 incharge 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 incharge 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 concerned Insurer. 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 said section by the 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 filling the claim petition is pending either before the Tribunal, High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from 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 filling 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 upto this Court cannot be thrown out on the ground of limitation.”

7. Contention of the learned counsel for the appellants is that in view of the aforesaid decision, the impugned order is not sustainable in law.

8. Learned counsel for the respondent-insurer contends that the Two Judges Bench Judgment of the Hon’ble Supreme Court in **Dhannalal’s** case was considered by a Three Judges Bench of the Hon’ble Supreme Court in the case of **M/s. Purohit & Company Versus Khatoonbee & Anr.** reported in **2017(4)SCC 783** wherein it was held that in **Dhannalal’s** case, the question of inordinate delay in approaching the Motor Accident Claim Tribunal was not considered. The Hon’ble Supreme Court further explained the ratio in the case of **The New India Assurance Co. Ltd. vs. C. Padma & Anr** reported in **2003(7) SCC 713** that the claim should be found genuine and held that the claim raised before the Motor Accident Claim Tribunal can be considered to be genuine so long as it is a live



and surviving claim. Learned counsel submits that in **M/s. Purohit's** case, the Supreme Court did not accept a period of 28 years delay to be a reasonable period nor accepted that the claim was genuine in the sense that it was live and surviving one.

9. In **M/s. Purohit's** case, the accidental death took place on 02.02.1977 and claim was preferred on 23.02.2005. In **M/s. Purohit's** case, **Dhannalal's** case was also considered and distinguished. Para 13 of **M/s. Purohit's** judgment reads as follows:-

“13. We are satisfied, that the submission advanced at the hands of the learned counsel for the appellant merits acceptance. The judgments on which the High Court had relied, and on which the respondents have emphasised, in our considered view, are not an impediment, to the acceptance of the submission canvassed on behalf of the appellant. We say so, because in Dhannalal's case (supra) the question of inordinate delay in approaching the Motor Accident Claims Tribunal, was not considered. In the second judgment in C. Padma's case (supra), it was considered. And in the C. Padma's case, the first conclusion drawn in paragraph 12 was “... if otherwise the claim is found genuine...”. We are of the considered view, that a claim raised before the Motor Accident Claims Tribunal, can be considered to be genuine,



so long as it is a live and surviving claim. We are satisfied in accepting the declared position of law, expressed in the judgments relied upon by the learned counsel for the appellant. It is not as if, it can be open to all and sundry, to approach a Motor Accident Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident had taken place. The individual concerned, must approach the Tribunal within a reasonable time.”

10. Learned counsel for the respondent-insurer has further placed reliance on the Full Bench judgment of Madhya Pradesh High Court reported in **1999 Accident Claim Journal 771 Jivrakhan V. Shivcharandas & Others** wherein the Hon’ble Madhya Pradesh High Court has quoted with approval the relevant portion at page 15 of the Principles of Statutory Interpretation 6th Edition by G.P. Singh which reads as follows:-

“The Union Parliament as also State Legislature have plenary powers of Legislative field of and subject to certain constitutional restrictions, they can legislate prospectively as well as retrospectively. It is, however, a cardinal principle of construction that every statute is a prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation.”

11. On the basis of aforesaid principle, learned counsel for the respondent-insurer submits that deletion of



Section 3 of Section 166 of the Motor Vehicles Act, 1988 deleting the period of limitation for preferring claim, would not change the situation of the present case as the deletion was not retrospective either express or by necessary implication. In **Jivrakhan’s** case also **Dhannalal’s** case was considered by the Full Bench.

12. After going through the aforesaid settled principles in **M/s. Purohit’s** case, I am of the considered view that the claim preferred, after more than 13 years, in the present case, cannot be considered to be within a reasonable period nor the claim can be said to be a genuine claim in the sense that the claim was a live and surviving claim.

13. In the result, this Court is not inclined to interfere with the impugned order. Accordingly, this appeal is dismissed as devoid of any merit.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	AFR
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