

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3912 OF 1996

1. Kum. Jyoti Manohar Shetye,
Age : 30 years, Occu.: Service,
R/o. B/5, Sudamkrupa, Sudamwadi,
Aarey Road, Dattanagar, Dombivali
(East), District : Thane.

...Petitioner

Versus

1. Ahsok Jagannath Powar
age 24 years, Occu.: Driver,
R/o. Sawalji, Tal. Tasgaon,
District : Sangli
2. Jaysingrao Balwantrao Yadav
age : 50 years, Occu.: Business,
R/o. Mangolwadi, Tal. : Hatkanangale,
District : Kolhapur.
3. The New India Assurance Company
Kolhapur, Kolhapur Branch,
Opp. Parvati Talkies, Kolhapur

...Respondents

Ms. Anjali Helekar, for the Petitioner.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 5th April, 2019.

PRONOUNCED ON: 16th April, 2019.

JUDGMENT:-

1. This petition under Article 227 of the Constitution of India raises the issue of the contours of the power of the Tribunal constituted under the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') to entertain a claim for compensation preferred beyond the period of limitation stipulated by Sub-

section (3) of Section 166 of the Act, which came to be omitted with effect from 14th November, 1994.

2. The aforesaid issue arises in the backdrop of the following facts:

The Petitioner, who is employed with the Bombay Port Trust, is a socially engaged citizen. As a part of social awareness drive, the Petitioner had participated in a bicycle ride from Mumbai to Bangalore. On 1st March, 1988, while the Petitioner was entering into Kolhapur city, a Tractor bearing No. M.G.I. 1112, attached with two trolleys bearing No.MWK 8004 and 8005, driven by Respondent no.1, owned by Respondent no.2 and insured with Respondent no.3, came in a very high speed and gave a violent dash to the Petitioner. Due to the impact, the Petitioner was seriously injured. She was initially admitted in Chhatrapati Pramile Raje Hospital, Kolhapur, in an unconscious state and, thereafter, she was shifted to Bombay Port Trust Hospital, Mumbai. The Petitioner was discharged from hospital on 4th April, 1988. On account of the injuries sustained in the accident, the Petitioner suffered 15% permanent disability.

Since the Petitioner was required to take continuous treatment as an out-door patient and was advised not to travel

long distance, the Petitioner could not prefer the application for compensation within the stipulated period of limitation. Thus, the Petitioner filed application, Miscellaneous M.A.C. No.22 of 1991 for condonation of delay in preferring the claim for compensation for the injuries suffered in the said accident.

The learned Member, Motor Accident Claims Tribunal ('MACT'), Kolhapur, after considering the application for condonation of delay and the resistance put-forth by Respondent no.3 – Insurer, was persuaded to dismiss the application by impugned order dated 2nd February, 1996. The learned Member was of the view that, since the application was preferred beyond the period of 12 months, in view of the provisions of Sub-section (3) of Section 166 (as it stood before its omission), it was not competent to condone the delay. Secondly, on the facts of the case, in the opinion of the learned Member, the Petitioner had not made out a sufficient cause for condonation of delay. Being aggrieved by and dissatisfied with the impugned order of refusal to condone the delay and entertain the claim for compensation, the Petitioner has preferred this petition.

3. Respondent no.3 – Insurer, who had contested the application before the learned Member, MACT, Kolhapur, did not turn up despite service of notice.

4. I have heard Ms. Anjali Helekar, the learned Counsel for the Petitioner, at some length.

5. Ms. Helekar urged that the learned Member committed an error in holding that the delay could not be condoned in view of the proviso to Sub-section (3) of Section 166 of the Act. The learned Member, according to the learned Counsel for the Petitioner, lost sight of the fact that by the time the impugned order came to be passed, on 2nd February, 1996, the said Sub-section (3) stood abrogated from the statute book as the legislature, in its wisdom, thought it appropriate not to prescribe any period of limitation for filing a claim for compensation, in the backdrop of the beneficial nature of the Act. The learned Counsel would further submit that the approach of the learned Member in refusing to condone the delay on the premise that no sufficient cause was made out also reflects a pedantic view. The learned Member ought to have appreciated that ordinarily a litigant should not be deprived of the opportunity to get the *lis* adjudicated on merit and a liberal approach is required to be adopted while considering a prayer for condonation of delay.

6. From the perusal of the impugned order, it becomes evident that, to meet the challenge on account of the maximum

period of limitation (12 months), postulated by the proviso to the Sub-section (3) of Section 166, a submission was advanced on behalf of the Petitioner that since the accident had occurred before the Motor Vehicles Act, 1988 was brought into force (1st July, 1989) by repealing the Motor Vehicles Act, 1939, the provisions of the Motor Vehicles Act, 1939 would govern the situation, whereunder there was no restriction in condoning the delay beyond the period of 12 months. The learned Member was, however, of the view that the application would be governed by the provisions of the new Act. In support of the said view, the learned Member placed reliance upon the ruling of Supreme Court in the case of ***Vinod Gurudas Raikar vs. National Insurance Company Ltd. & ors.***¹, wherein such a contention advanced on behalf of the claimant was repelled.

7. Before adverting to deal with the legality and correctness of the aforesaid view of the learned Member, it may be apposite to trace the legislative development in the matter of prescription of the period of limitation for filing a claim for compensation for death or injury arising out of use of motor vehicle.

8. As regards the period of limitation, the Motor Vehicles Act, 1939 (the old Act) contained the following provisions.

1 (1991) 4 Supreme Court Cases 333.

“110-A. Application for compensation: (1).....
(2).....

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

9. In the Motor Vehicles Act, 1988, Section 166 (3), as originally introduced, also stipulated six months limitation for filing a claim petition. However, the power to condone the delay was restricted to a maximum of 12 months. Sub-section (3) of Section 166 read as under:

“166 (3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

(emphasis supplied)

10. The period of limitation for filing a claim petition, of six months (which was provided in the Old Act as well as the Act of 1988) was, however, completely done away, with effect from 14th November, 1994 by the Motor Vehicles (amendment) Act, 1994, under which the aforesaid Sub-section (3) of Section 166, came to be omitted. The situation which thus obtains is that there is no period of limitation for filing a claim petition for

compensation for the death or injury arising out of use of motor vehicle.

11. A brief reference to the facts of the case, would become necessary. The accident had occurred on 1st March, 1988. The period of limitation prescribed under Sub-section (3) of Section 110-A of the Old Act expired on 31st August, 1988. The application for condonation of delay, along with claim petition, was filed on 19th May, 1989. The application was evidently filed beyond 12 months of the date of accident. The new Act came into force on 1st July, 1989.

12. In the backdrop of the legislative development and indisputable facts, the development of law, especially in the context of the legislative changes brought about by the Act of 1988 and the amending Act of 1944, is worth noticing. One of the earliest pronouncement appears to be in the case of **Vinod Raikar** (supra), on which reliance was placed by the learned Member in support of his decision. In the said case, the accident had taken place on 22nd January, 1989. The old Act was repealed and the new Act came into force on 1st July, 1989. The claim petition was filed on 15th March, 1990 with a prayer for condonation of delay. The claims Tribunal and the High Court dismissed the application on the ground that the delay of

more than six months could not be condoned in view of the proviso to Sub-section (3).

13. In the Apex Court, on behalf of the Claimant a submission was advanced that since the accident had taken place before the Act of 1988 came into force, the bar introduced by the proviso to Sub-section (3) did not operate and the Tribunal was not precluded from condoning the delay exceeding six months. The Apex Court rejected the said contention. The following observations in paragraph 13 are significant and, thus, extracted below:

“13. In the case before us the period of limitation for lodging the claim under the old as well as the new Act was same six months which expired three weeks after coming in force of the new Act. It was open to the appellant to file his claim within this period or even later by July 22, 1989 with a prayer to condone the delay. His right to claim compensation was not affected at all by the substitution of one Act with another. Since the period of limitation remained the same there was no question of the appellant being taken by surprise. So far the question of condonation of six months delay was concerned, there was no change in the position under the new Act. In this background the appellant's further default has to be considered. If in a given case the accident had taken place more than a year before the new Act coming in force and the claimant had actually filed his petition while the old Act was in force but after a period of one year, the position could be different. Having actually initiated the proceeding when the old Act covered the field a claimant could say that his right which had accrued on filing of the petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condonation of delay can be governed only by the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes applicability of the enactment when the need arises to take its benefit.”

(emphasis supplied)

14. From the aforesaid observations, it becomes explicitly clear that the crucial factor which was taken note of by the Supreme Court was the filing of the claim petition after coming into force of the new Act. The Supreme Court expressly observed that had the claimant therein, actually filed the petition while Old Act was in force the position would have been different.

15. In the case at hand, as indicated above, the Petitioner had filed the application along with the claim petition on 19th May, 1989, before the Act of 1988 came into force. The learned Member, MACT, Kolhapur, however, did not notice this significant distinction between the facts of the instant case and the facts in the case of **Vinod Raikar** (supra) and observed that the aforesaid pronouncement in the case of **Vinod Raikar** (supra) was on all four to the facts of the case at hand.

16. The import of omission of aforesaid Sub-section (3), by the amending Act, 1994, arose for consideration before the Supreme Court in the case of **Dhannalal vs. D.P. Vijayvargiya & ors.**² In the said case, the accident had occurred on 4th December, 1990, the claim petition, along with application for condonation of delay of four days, came to be

2 (1996) 4 Supreme Court Cases 652.

filed on 7th December, 1991. The Tribunal had condoned the delay. However, the High Court of Madhya Pradesh set aside the order of the Tribunal in view of Sub-section (3) of Section 166 of the Act, 1988. The Supreme Court held that when Sub-Section (3) of Section 166 has been omitted, the Tribunal has to entertain a claim petition without taking note of the date on which accident had taken place. The claim petition cannot be thrown out on the ground that such petition would have been barred by time, when Sub-section (3) of Section 166 was in force. It need not be impressed that Parliament from time to time introduced amendment in the old Act as well as in the new Act in order to protect the interest of the victims in the accident and their heirs if the victims died. Thus, the Supreme Court, set aside the order passed by the High Court and observed as under:

“8 The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The aforesaid amending Act shall be of no help to such claimant. The reason being that a judicial order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal, the High Court or this Court. In such cases, the benefit of amendment of sub-section (3) of Section 166 should be extended.”

17. In the case of ***New India Assurance Co. Ltd. vs. C. Padma and another***³ the aforesaid pronouncement in the case of ***Vinod Raikar*** (supra) and ***Dhannalal*** (supra) came up for consideration before the Supreme Court. In the said case, the accident had occurred on 18th February, 1989. The claim petition was filed on 2nd November, 1995. The Tribunal and the High Court had rejected the defence based on bar of limitation. The Supreme Court held that the ratio laid down in ***Dhannala's*** case applied with full force to the facts of the said case, as, 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. The Supreme Court after noticing the facts in the case of ***Vinod Raikar*** (supra) observed that the decision in the said case was based on the facts of the said case and did not proscribe condonation of delay.

18. A three Judge Bench of the Supreme Court in the case of ***Purohit and Company vs. Khatoonbee and another***⁴ while considering the question of condonation of 28 years delay in preferring the claim petition, again considered the import of

3 (2003) 7 Supreme Court Cases 713.

4 (2017) 4 Supreme Court Cases 783.

omission of Sub-section (3) of Section 166. The moot question which was considered by the Supreme Court was, “does the omission of Section 166(3) by the amending Act, 1994 have the effect of allowing the claimant to file a claim petition, at any time and whenever he chooses? Even after a decade!”

19. After a detailed analysis of the legislative development and the judicial pronouncements, including the observations in the aforesaid three cases, the Supreme Court enunciated that despite these being no bar of limitation the claimant must approach the Tribunal within a reasonable time. The observations in paragraph 15 of the judgment are instructive in nature. They read as under:

“15 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 case* the question of inordinate delay in approaching the Motor Accidents Claims Tribunal, was not considered. In the second judgment in *C. Padma case*, it was considered. And in *C. Padma case*, the first conclusion drawn in SCC p. 718, para 12 was “... if otherwise the claim is found genuine...”. We are of the considered view, that a claim raised before the Motor Accidents 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 Accidents 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.”

(emphasis supplied)

20. The position which, thus, emerges is that the Tribunal is required to take note of the fact that the legislature in its wisdom chose not to provide any period of limitation for filing a claim petition under the Act. The omission of Sub-section (3) of Section 166, which provided a period of limitation of six months and further introduced a bar to condone the delay beyond the period of six months, however, does not imply that the claimant can approach the Tribunal at any point of time. The claimant has to approach the Tribunal within a reasonable period. The test of reasonability is whether the petition presents a live and surviving claim. Undoubtedly, it would be determined on the facts and circumstances of each case. If the Tribunal finds that the claim is genuine, as observed in the case of **C. Padma** (supra) the benefit of the omission of the provision prescribing the period of limitation can be extended.

21. In the backdrop of the aforesaid legal position, reverting to the facts of the case, it appears that the Tribunal lost sight of the fact that the Petitioner had filed the claim petition, along with application for condonation of delay, while the Old Act of 1939 was in force. The proviso to Sub-section (3) of Section 110-A therein, did not contain any bar for condonation of delay beyond certain period, as introduced by the Act of 1988. The

Tribunal without adverting to the observations of the Supreme Court in the case of **Vinod Raikar** (supra) (extracted above), wherein the Supreme Court expressly noted that different considerations would have come into play had the application been filed before the Act of 1988 came into force, and went on to mechanically hold that the said ruling governed the facts of the instant case. This approach vitiated the determination by the Tribunal. Secondly, the Tribunal ought to have noted the changes brought about by the omission of Sub-section (3) of Section 166, especially when the impugned order was passed on 2nd February, 1996. The Tribunal did not advert to the import of the legislative change. Lastly, even otherwise, in view of the subsequent pronouncements in the case of **Dhannalal** (supra) and **C. Padma** (supra), the benefit of the omission of the prescription of limitation under Sub-section (3) of Section 166 ought to have been given.

22. As regards the merits of the prayer for condonation of delay, the learned Member of the Tribunal, seems to have approached the aspect of condonation of delay in a rather hyper-technical manner. The Petitioner is admittedly based in Mumbai. The Petitioner claimed that she had sustained grievous injuries and was under treatment for a considerable

period. The Tribunal ought not have discarded the claim of the Petitioner on the score that there was no proof in respect of the claim of the Petitioner.

23. It is trite that an application for condonation of delay should receive liberal construction. Ordinarily, a Court leans in favour of condonation of delay so as to advance the cause of substantial justice. It is more so, when the claim petition is under a beneficial piece of legislation. The learned Member of the Tribunal, in my view, ought to have condoned the delay for the reasons ascribed by the Petitioner. Moreover, by no stretch of imagination, can it be said that, the application has been presented beyond the reasonable period of the accident.

24. The conspectus of the aforesaid consideration and discussion is that the impugned order deserves to be quashed and set aside. The delay in preferring the claim petition is required to be condoned and the claim petition deserves to be entertained and disposed of in accordance with law.

25. Resultantly, the writ petition stands allowed.

The impugned order stands quashed and set aside. The application bearing Miscellaneous M.A.C. No.22 of 1991 stands allowed.

The delay in preferring the claim petition stands condoned.

The Claim Petition be entertained by the Motor Accident Claims Tribunal, Kolhapur and decided in accordance with law.

26. Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]