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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1923 & 1924 of 2014
and C.M.P.Nos.17752 and 17880 of 2016
and M.P.Nos. 1 & 1 of 2014

The Oriental Insurance Co. Ltd.,
rep. By its Divisional Manager,
Samundi Complex, Four Road,
Salem-1.

.. Appellant/2nd Respondent in
both the appeals

Vs.

1.Madhu

.. 1st Respondent in
C.M.A.No.1923/2014/Petitioner

1.Govindan

.. 1st Respondent in
C.M.A.No.1924/2014/Petitioner

2.T.M. Nachimuthu

.. 2nd Respondent in both the
appeals/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common award dated 25.10.2013, made in M.C.O.P. Nos.671 & 672 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

(In both appeals)

For Appellant : Mr. S. Arun Kumar

For Respondents: Mr. K. Prasanna (For R1)
for M/s. Mukund R. Pandiyan

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

These appeals have been filed against the common judgment and decree dated 25.10.2013, made in M.C.O.P. Nos.671 & 672 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.



2.Both the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

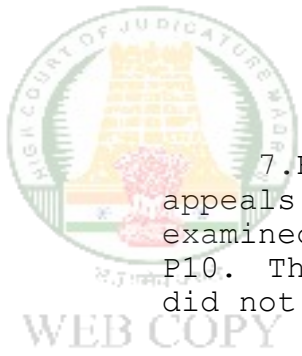
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3.The appellant in both the appeals is the 2nd respondent-Insurance Company in M.C.O.P. Nos.671 & 672 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent in both the appeals filed the said claim petitions, claiming a sum of Rs.5,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 07.03.1989.

4.According to the 1st respondent in both the appeals, on the date of accident, they were driving double bullock carts loaded with each 12 bags of jaggery to Mechery Shandy. At about 22.00 hours, when the 1st respondent in both the appeals were riding their cart near Vellappampatti in Mecheri to Thoppur road, a Lorry bearing Registration No.KRK-6516, belonging to the 2nd respondent driving the same in a rash and negligent manner without observing the road traffic rules, dashed the bullock carts from backside and caused the accident. In the accident, the 1st respondent in both the appeals sustained grievous injuries, their double bullock carts got damaged and bulls died. Thus, they filed the claim petitions, claiming compensation against the appellant as insurer and 2nd respondent, as driver of the offending vehicle.

5.The 2nd respondent remained exparte before the Tribunal.

6.The appellant-Insurance Company filed separate counter statements and denied all the averments made by the 1st respondent in their respective claim petitions. According to the appellant-Insurance Company, on the date of accident, the driver of the Lorry belonging to the 2nd respondent drove the same carefully following all the road traffic rules. The 1st respondent in both the appeals driving the bullock carts did not care about the signal given by the driver of the Lorry from behind. On hearing the horn sound, the bullocks got frightened and started to move and dashed on the Lorry and invited accident. The accident occurred only due to negligence of the 1st respondent in both the appeals. The 1st respondent in both the appeals have to prove that the Lorry was insured with the appellant at the time of accident. They also have to prove their age, avocation and income, injuries sustained and treatment taken to claim compensation. In any event, the total compensation claimed by the 1st respondent in both the appeals are excessive and prayed for dismissal of both the claim petitions.



7. Before the Tribunal, the 1st respondent in both the appeals examined themselves as P.W.1, P.W.2 respectively, examined Doctor as P.W.3 and marked 10 documents as Exs.P1 to P10. The appellant examined one K.Panneerselvam as R.W.1, but did not mark any document.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.4,10,000/- and Rs.3,61,700/- as compensation to the 1st respondent in both the appeals respectively.

9. Against the said common award dated 25.10.2013, made in M.C.O.P. Nos.671 & 672 of 2013, the appellant-Insurance Company has come out with the present appeals.

10. The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred on 07.03.1989 and claim petitions were filed only on 03.03.2010, after 21 years of the accident. Due to the enormous delay, the appellant is denied opportunity of verifying the records. The certified copies of Exs.P1 to P4 marked by the 1st respondent in both the appeals were not made available to the appellant and hence, the same are not acceptable. The appellant examined their Administrative Officer as R.W.1. The Tribunal failed to consider the evidence of R.W.1 in proper perspective. The learned counsel appearing for the appellant further contended that policy number mentioned in the claim petitions does not relate to the appellant and vehicle was not insured by them. The policy number mentioned in the claim petitions is incorrect and the 1st respondent in both the appeals have not mentioned the full policy number and policy was not issued by the appellant and vehicle was not insured with them. The Tribunal erred in relying on the number mentioned in the Motor Vehicle Inspector's report and concluded that policy was issued by the appellant. The learned counsel appearing for the appellant contended that award of the Tribunal is liable to be set aside on the ground of delay in approaching the Tribunal as well as the appellant has not insured the offending vehicle at the time of accident and and prayed for allowing both the appeals.

11. In support of his contentions, the learned counsel appearing for the appellant relied on the following judgments:

(i) (1991) 4 SCC 333 [Vinod Gurudas Raikar Vs. National Insurance C. Ltd., and others]:

"2. The appellant was injured in a road accident and his claim petition has been dismissed as being barred by limitation. The accident took



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place on January 22, 1989. The Motor Vehicles Act, 1939 was repealed by Section 217(1) of the Motor Vehicles Act, 1988 which came into force on July 1, 1989. The period of limitation for filing a claim petition both under the old Act and the new Act being six months expired on July 22, 1989. The claim petition of the appellant, however, was filed belatedly on March 15, 1990 with a prayer for condonation of delay. The Accident Claims Tribunal held that in view of the provisions of sub-section (3) of Section 166 of the new Motor Vehicles Act, the delay of more than six months could not be condoned. The application was accordingly dismissed. The appellant unsuccessfully challenged the decision before the High Court.

.....
4. The period of limitation for filing a claim petition both under the old Act and the new Act is six months from the date of the accident. The difference in the two Acts, which is relevant in the present case, is in regard to the provisions relating to condonation of delay. In view of the proviso to sub-section (3) of Section 166 of the new Act, the maximum period of delay which can be condoned is six months, which expired on January 22, 1990. If the new Act is held to be applicable, the appellant's petition filed in March has to be dismissed. The case of the appellant is that the accident having taken place before the new Act came into force, the proceeding is governed by the old Act, where there was no such restriction as in the new Act. The question is as to which Act is applicable; the new Act or the old.

.....
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



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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. In the present case the occasion to take the benefit of the provision for condonation of delay in filing the claim arose only after repeal of the old law. Obviously the ground for condonation set up as 'sufficient cause' also relates to the time after the repeal. The benefit of the repealed law could not, therefore, be available simply because the cause of action for the claim arose before repeal. 'Sufficient cause' as a ground of condonation of delay in filing the claim is distinct from 'cause of action' for the claim itself. The question of condonation of delay must, therefore, be governed by the new law. We accordingly hold that the High Court was right in its view that the case was covered by the new Act, and delay for a longer period than six months could not be condoned. The appeal is dismissed, but in the circumstances, without costs. "

(ii) CDJ 2017 SC 247 [M/s. Purohit and Company Vs. Khatoonbee and another]:

"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



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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.

14. The question of reasonability would naturally depend on the facts and circumstances of each case. We are however, satisfied, that a delay of 28 years, even without reference to any other fact, cannot be considered as a prima facie reasonable period, for approaching the Motor Accident Claims Tribunal. The only justification indicated by the respondents, for initiating proceedings after a lapse of 28 years, emerges from paragraph 4, contained in the application for condonation of delay, filed by the claimants, before the Tribunal. Paragraph 4 aforementioned is extracted hereunder:

"4. That the Petitioners are poor person and they have no knowledge about the Law. Also the Respondent has not pay the single pie towards any compensation."

15. Having given our thoughtful consideration to the justification expressed at the behest of the respondents, for approaching the Tribunal, after a period of 28 years, we are of the view, that the explanation tendered, cannot be accepted. Undoubtedly, the claim (pertaining to an accident which had occurred on 02.02.1977), in the facts and circumstances of the instant case, was stale, and ought to have been treated as a dead claim, at the point of time, when the respondents approached the Tribunal by filing a claim petition, on 23.02.2005."

(iii) 2007 (2) TNMAC 188 [The Branch manager, The Oriental Insurance Co. Ltd., Vs. Karthikesan and others]:

"3. As regards the insurance coverage, the



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award of the Tribunal is silent. The Tribunal has wrongly observed under Point No.2, that the appellant is the Insurer of the vehicle of the second respondent. But it has not discussed about the features with regard to the Insurance Policy in its award. When it is definitely denied by the appellant Insurance Company that there was no insurance policy, it is incumbent upon the claimant to prove that the Insurance Policy was in force. In this case, those details are miserably absent. That being the case, it is incharitable to fasten the liability on the appellant-Insurance Company.

4.Learned counsel for the appellant cited an unreported decision delivered by a Division Bench of this Court in C.M.A.No.1389 of 1993 dated 28.02.1994, where their Lordships have held that when the claimant has failed to establish that the Insurance Policy was in force at the time of accident, no liability could be fixed upon the Insurance Company and the owner of the vehicle should be held liable. Considering the circumstances of this case, it is to be held that the compensation as fixed by the Tribunal has to be paid by the owner of the tractor viz., the second respondent herein."

(iv) 2011 (1) TNMAC 832 [New India Assurance Co. Ltd., Vs. S.Sivapathi and others]:

"16. On the facts of the above case and having regard to the mandatory conditions stipulated under the Motor Vehicles Act, 1988 and the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, the Division Bench enumerated certain guidelines in the adjudication of Claim Petitions. Clause 5 and 6i of the guidelines may be relevant for the purpose of this case and they are produced hereunder:

"Clause V: The claimants are duty bound to furnish correct registration number of the vehicle, full insurance particulars as furnished by the Police Officer/Investigation Officer. If details are wanting at the time of filing of the Claim Petition, it is duty of the claimants to ascertain all those particulars either from the Police Officer/Investigation Officer or from the Motor Vehicle Inspector of the



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Transport Department or from the Tribunal having jurisdiction and mention those particulars in the Claim Petition.

Clause vi: If the Insurance Company feels that the particulars furnished in the Claim Petition are not correct or not sufficient, it shall ascertain the necessary details from the Police Officer/Investigation Officer concerned or from the office of the Motor Vehicle Inspector, and prove its case by positive evidence."

.....

18. On the facts of this case, this Court is of the considered view that merely because the Appellant-Insurance Company had taken out an application under Section 170 of the Motor Vehicles Act, 1986, to contest the Claim Petition and raise all the defences that are open to them under the statute and when the owner of the vehicle had remained ex parte, it cannot be construed that it is the burden of the Insurance Company to prove the negative, i.e., that the vehicle was not insured with them at the time of accident. The Claimants have failed to establish that there was valid insurance policy, on the date of accident and in such circumstances, the insurance company is not statutorily liable to pay compensation to the victims. In view of the above, the liability fastened on the appellant-insurance company, to pay the compensation is set aside."

12. The learned counsel appearing for the 1st respondent in both the appeals contended that accident occurred only due to rash and negligent driving by the driver of the Lorry and 1st respondent proved the same by examining themselves as P.W.1 and P.W.2 and by marking FIR as Ex.P1. In the accident, the 1st respondent in both the appeals suffered fracture and simple injuries all over the body, as mentioned in the claim petitions. The accident has occurred on 07.03.1989 and claim petitions were filed under the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). In the old Act, limitation of six months was fixed under proviso to Section 110-A (3) of the Motor Vehicles Act, 1939. In the Motor Vehicles Act, 1988, in Section 166 (3), limitation was fixed as 6 months and Tribunal has power to condone the delay of further 6 months. The said section was deleted by Act 54 of 1988 and now there is no limitation fixed to file claim petition. Hence, the claim petitions filed on 03.03.2010 is maintainable and the same cannot be dismissed on the ground of limitation. In support of his contention, the



learned counsel relied on the following judgments:

(i) 1996 SCC (4) 652 [Dhannalal Vs. D.P.Vijayvargiya and others]:

"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 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 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."

(ii) Order dated 12.09.2003 made in Appeal (Civil) No. 5764 of 1997 [The New India Assurance Co. Ltd., Vs. C. Padma and another]:

"4.Learned counsel for the appellant, next contended that since no period of limitation has been prescribed by the Legislature, Article 137 of the Limitation Act may be invoked, otherwise, according to him, stale claims would be encouraged leading to multiplicity of litigation for non-prescribing the period of limitation. We are



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unable to countenance with the contention of the appellant for more than one reason. Firstly, such an Act like Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, if otherwise the claim is found genuine. Secondly, it is a self contained Act which prescribes mode of filing the application, procedure to be followed and award to be made. The Parliament, in its wisdom, realised the grave injustice and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions at the threshold on the ground of limitation, and purposely deleted sub-section (3) of Section 166, which provided the period of limitation for filing the claim petitions and this being the intendment of the Legislature to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the Legislature....."

(iii) 1997 (1) MPLJ 230 [Hema Pandey Vs. Saroj Singh and another]:

"3. The learned counsel for the appellant has argued that in claim cases there is no time limit. In this regard the learned counsel for the appellant has placed reliance in the case reported as Dhannalal v. D. P. Vijayvargiya and Ors., 1997 (1) MPLJ 195, 1996 JLJ 528 (Supreme Court). The Apex Court in the above case has held that the provisions of section 166, sub-section 3 of the Motor Vehicles Act, 1988, deleted by Amendment Act prescribing the limitation of filing claims before the Tribunal is proper. The Apex Court also held that the Parliament in its wisdom rightly amended the provision, and as such, there is no limitation in filing a petition for claim in the accident cases. The principle laid down by the Supreme Court in the aforementioned case applies to the accidents which had occurred before amendment of section 166 of the Act referred to above. Therefore, the principles laid down in the case referred to above would apply to the facts of the present case. Similar view was expressed by this Court in the case reported as Narendra Singh v. Gulab Bai and Anr., 1996 MPLJ 1057, 1996 JLJ 448."



13. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent in both the appeals and perused the materials available on record.

14. From the materials on record, it is seen that it is the contention of the 1st respondent in both the appeals that while they were going in the bullock cart with jaggery, the driver of the Lorry belonging to the 2nd respondent drove the same in a rash and negligent manner and dashed against the bullock cart and caused accident. In the accident, both the 1st respondent suffered fracture and grievous injuries. The 1st respondent in C.M.A.No.1923 of 2014 was owner of bullock cart and jaggery. In the accident, one bull died, 3 bulls got injured and jaggery were damaged. To substantiate their contention, they examined themselves as P.W.1 and P.W.2 and marked FIR as Ex.P1. The appellant examined R.W.1 - their Administrative Officer and R.W.1 is not eye witness. The Tribunal considering the evidence of P.W.1 and P.W.2, held that accident occurred due to negligence of the driver of the vehicle insured with the appellant.

15. As far as the maintainability of the claim petition filed after a lapse of 21 years is concerned, it is the contention of the learned counsel appearing for the 1st respondent in both the appeals that no period of limitation is fixed under the Motor Vehicles Act and therefore, the claim petitions filed in the year 2010 is maintainable and question of limitation does not arise. In the judgment relied on by the learned counsel appearing for the 1st respondent in both the appeals, it has been held that after deletion of Section 166 (3) of Motor Vehicles Act, no period of limitation is fixed and Motor Vehicles Act being a beneficial legislation, a claim petition filed by the claimant after lapse of time cannot be dismissed on the question of limitation. On the other hand, in the judgments relied on by the learned counsel appearing for the appellant, reported in (1991) 4 SCC 333 and CDJ 2017 SC 247 referred to above, it is seen that the Hon'ble Apex Court has held that even if no period of limitation is fixed, the claim petition must be filed within a reasonable time. At the time of filing the claim petition, the claim must be alive and it should not be stale. The Hon'ble Apex Court in the judgment reported in (1991) 4 SCC 333 (referred to above), held that when the accident has occurred when the old act was in force and when the claim petition was filed after new act came into force, the claim petition ought to have been filed before expiry of 6 months. In that case, the accident was on 22.01.1989 and claim petition was filed beyond the period of limitation. The Hon'ble Apex Court considering Section 166 (3) of the Act, dismissed the claim petition as not maintainable.



16. In the judgment reported in CDJ 2017 SC 247 (referred to above), the Hon'ble Apex Court considered the claim petition filed after 28 years of the accident. The Hon'ble Apex Court held that even if there is no period of limitation fixed in the Act, when the claim petition was filed under Section 166 of the Act, the claim petition must be filed within the reasonable time and dismissed the claim petition.

17. In the present case, the accident has occurred on 1989, when the old act was in force. The 1st respondent in both the appeals ought to have filed the claim petitions within a period of 6 months from the date of accident. Before the expiry of 6 months, new act came into force with effect from 01.07.1989. As per Section 166 (3) of new Act, the Tribunal has power to condone the delay of 6 months. The 1st respondent in both the appeals have not filed the claim petitions within 12 months from the date of accident. Section 166 (3) was deleted with effect from 14.09.1994 by Act 54 of 1994. The Hon'ble Apex Court took note of deletion of this Section and held that even if no period of limitation is fixed, the claim petition must be filed within a reasonable time.

18. In the present case, the 1st respondent in both the appeals filed the claim petitions after 21 years of the accident and it cannot be held that claim petitions are filed within reasonable time and claim made by the 1st respondent in both the appeals was live at the time of filing claim petitions. The Tribunal erroneously entertained both the claim petitions. In view of the judgments of the Hon'ble Apex Court referred to above, relied on by the learned counsel appearing for the appellant, the erroneous award of the Tribunal is liable to be set aside and is hereby set aside. In view of the judgments of the Hon'ble Apex Court cited supra, the judgments relied on by the learned counsel appearing for the 1st respondent in both the appeals do not advance the case of the 1st respondent.

19. In the result, both the appeals are allowed. The appellant-Insurance Company is permitted to withdraw the amount, if any lying in the deposit to the credit of M.C.O.P.Nos.671 and 672 of 2013, if the entire amount has already been deposited by them. It is made clear that if the 1st respondent in both the appeals have already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent in both the appeals. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar



gsa

To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.42733

+2ccs to M/s. Mukund R. Pandiyan, Advocate SR.No.42718, 42719

C.M.A. Nos.1923 & 1924 of 2014

GP (CO)
GMY (27/08/2021)