

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****M.A(C) No.605 of 2020****Reserved on 13.01.2021****Pronounced on 20.01.2021**

Mukesh Patle S/o Shri Figeshwar Patle Aged About 24 Years R/o Ward No. 15 Bhaklidi Khurd, Tahsil Khairagarh, District Rajnandgaon Chhattisgarh. (Claimant)

**---- Appellant****Versus**

1. Shailendra Verma S/o Kamtalal Verma Aged About 24 Years R/o Village Kushyari, Police Station And Tahsil Khairagarh, District Rajnandgaon Chhattisgarh. (Driver)
2. Ritesh Kumar Vaishnav S/o Subhash Vaishnav Aged About 34 Years R/o Ward No. 18 Naya Tikrapara, Khairagarh, Tahsil Khairagarh, District Rajnandgaon Chhattisgarh. (Owner)
3. Iffco Tokiyo General Insurance Company Limited Branch Office Rajnandgaon Chhattisgarh

**---- Respondents**

For Appellant:

Shri Hemant Kesarwani, Advocate.

For Respondents:

None, though served.

**Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**  
**C A V Award/Order**

1. Challenge to this Appeal is the award dated 19.02.2020 passed in unregistered claim case whereby, the learned Additional Motor Accident Claims Tribunal, Khairagarh (for short 'the Tribunal') has dismissed the claim holding it to be barred by time. The parties to this Appeal shall be referred hereinafter as per their description in the Tribunal.

2. The facts which are essential to be stated for adjudication of this Appeal are that on 23.04.2019 at about 7.30 pm, the Claimant was dashed vehemently by offending vehicle "Bolero" bearing registration No.CG 08 AK 2333 owned by Ritesh Kumar Vaishnav and insured by IFCO Tokiyo General Insurance Company Limited when he was returning to his village Amlidihkhurd from Khairagarh. The alleged accident occurred owing to

rash and negligent driving of its driver Shailendra Verma, as a result of which, the Claimant sustained injuries leading to the filing of the claim Petition, instituted on 17.02.2020 under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Principal Act').

3. The aforesaid claim was dismissed by the Tribunal holding it to be barred by time as it was instituted beyond the prescribed period of six months from the date of occurrence of the accident as provided under sub-section (3) of Section 166 of the Principal Act, which was inserted by virtue of Section 53 of the Motor Vehicles (Amendment) Act, 2019 (hereinafter referred to as 'the Amendment Act').

4. Shri Hemant Kesarwani, learned Counsel appearing for the Appellant/Claimant submits that since the accident had taken place on 23.04.2019 i.e., prior to the the Amendment Act when the relevant provision of the Principal Act was in force, where no time period was prescribed, the proceeding as initiated before the Tribunal, therefore, must have been governed by the provisions made in the said Principal Act and the claim could not have been held to be barred by time by taking recourse to the said provisions as inserted by the said Amendment Act. According to him, although the said Amendment Act has come into force w.e.f 1<sup>st</sup> September, 2019, but the provisions of Section 53 of it proposing to amend the said provision in Section 166 of the Principal Act were not notified by the Central Government as required under sub-section (2) of Section 1 of the said Amendment Act, therefore, application for condonation of delay is neither required, nor the claim could have been dismissed on the point of limitation. The learned Tribunal has, therefore, committed a serious illegality in dismissing the claim Petition by holding it to be barred by time.

5. No one appears on behalf of the Respondents despite service of

notice of this Appeal.

6. In view of the facts involved herein, the question which falls for consideration is as under:-

“Whether the claim Petition could be held to be barred by time under sub-section (3) of Section 166 of the Principal Act as inserted by way of Section 53 of the Amendment Act ?”

7. Before advertng to the aforesaid question, it is necessary to trace the legislative development with regard to the matter of prescription of the period of limitation for filing the claim Petition for compensation of death or injury arising out of the use of the motor vehicle.

8. Initially, the Motor Vehicles Act, 1939 was in force, which contained the following provisions with regard to the period of limitation under Section 110-A and the relevant portion of which, is extracted as under:-

“SECTION 110A: APPLICATION FOR COMPENSATION

(1) XXXXX XXXX

(2) XXXXX XXXX

(3) No application for 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. By virtue of the aforesaid provision, a claim Petition was required to be filed within the period of six months of occurrence of the accident and by virtue of proviso to it, the Tribunal may have entertained the same even after the expiry of six months, if it is satisfied by the Claimant that he was prevented by sufficient cause from making such an application in time.

10. The aforesaid Act was, however, repealed subsequently by virtue of the enforcement of the Principal Act, which came into force with effect from

01.07.1989. According to it, the period of limitation for filing the claim Petition is provided under sub-section 3 of Section 166 as under:-

“166. Application for compensation.-  
(1)xxxxxxx

(2)xxxxx

(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.”

11. A perusal of the aforesaid provision would show that the period of limitation for filing a claim Petition was the same (six months) as provided in the Motor Vehicles Act, 1939, however, a bar was introduced by way of proviso to the aforesaid provision for entertaining a claim Petition if filed beyond the period of twelve months from the date of occurrence of the accident. Meaning thereby, although the Tribunal may entertain the application after the expiry of the period of six months, but not later than twelve months from the date of accident as no discretion had been left with the Tribunal to consider the circumstances owing to which the application for claim cannot be filed within a period of twelve months of the occurrence of the accident.

12. Be that as it may, the Parliament has realised the grave injustice and the 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 the ground of limitation. Having realised so, the aforesaid sub-section (3) of Section 166 of the Principal Act has been omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994 (Act No.54 of 1994) which came

into force with effect from 14.11.1994. The effect of this amending Act was that there was no limitation for filing a claim Petition before the Tribunal in respect of any accident with effect from 14.11.1994. However, the period of limitation of six months, as provided hereinabove under the aforesaid Acts, has been proposed to be inserted again as per the provision prescribed under Section 53 of the said Amendment Act on and from the date of its commencement i.e.. 01.09.2019.

13. Applying the aforesaid provisions, the claim Petition instituted after the period of six months of the occurrence of the accident has been dismissed by the Tribunal holding it to be barred by time. In this background, the effect of the enforcement of the Amendment Act is now to be examined.

14. The Amendment Act, 2019 was published on 9<sup>th</sup> August, 2019 in the Gazette of India which has amended the Principal Act drastically.

15. Section 1 of the Amendment Act is relevant for the purpose which reads as under:-

**“1. Short title and commencement.\_(1) This Act may be called the Motor Vehicles (Amendment) Act, 2019.**

**(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.”**

16. A bare perusal of sub-section (2) of the aforesaid provision makes it clear that the provisions contained therein i.e., Amendment Act would be attracted only by virtue of the notification issued by the Central Government

and unless and until it is notified, it cannot be said to be operational.

17. The Central Government in exercise of the powers conferred by sub-section (2) of Section 1 of the Amendment Act has issued a notification appointing the 1<sup>st</sup> day of September, 2019 as the date on which the following provisions of the Amendment Act have come into force, namely:-

| Sl. No. | Sections                                                        |
|---------|-----------------------------------------------------------------|
| 1       | Section 2 and 3;                                                |
| 2.      | Clauses (i) to (iv) of Section 4 (both inclusive);              |
| 3.      | Clauses (i) to (iii) of Section 5 (both inclusive);             |
| 4.      | Section 6;                                                      |
| 5.      | Clause (i) of Section 7;                                        |
| 6.      | Section 9 and 10;                                               |
| 7.      | Section 14;                                                     |
| 8.      | Section 16;                                                     |
| 9.      | Clause (ii) of Section 17;                                      |
| 10.     | Section 20;                                                     |
| 11.     | Clause (ii) of Section 21;                                      |
| 12.     | Section 22;                                                     |
| 13.     | Section 24;                                                     |
| 14.     | Section 27;                                                     |
| 15.     | Clause (i) of Section 28;                                       |
| 16.     | Section 29 to 35 (both inclusive)                               |
| 17.     | Section 37 and 38;                                              |
| 18.     | Section 41 and 42;                                              |
| 19.     | Section 43;                                                     |
| 20.     | Section 46;                                                     |
| 21.     | Section 48 and 49;                                              |
| 22.     | Section 58 to 73 (both inclusive)                               |
| 23.     | Section 75;                                                     |
| 24.     | Sub-clause (i) of clause (B) of Section 77;                     |
| 25.     | Section 78 to 87 (both inclusive);                              |
| 26.     | Section 89;                                                     |
| 27.     | Sub-clause (a) of clause (i) and clause (ii) of Section 91; and |
| 28.     | Section 92.                                                     |

18. A bare perusal of the aforesaid table containing the enforcement of the provisions of the Amendment Act would show that the provisions prescribed therein alone are notified while excluding the others as no notification has been issued till date for their applicabilities.
19. By virtue of the Amendment Act, the Legislature has proposed by way of Section 50 for the omission of Chapter-X of the Principal Act, which contained the provisions prescribed under Sections 140 to 144 and simultaneously, has proposed by way of Section 51 for the substitution of new Chapter-XI in place of Chapter-XI of the Principal Act, which contained the provisions prescribed under Sections 145 to 164. It has proposed further by way of Sections 52 to 57 for the amendment in certain provisions, like Sections 165, 166, 168, 169, 170 and Section 173 of Chapter-XII of the Principal Act.
20. It would now be appropriate to have a comparative table of the relevant provisions of the Amendment Act, i.e., Sections 50 to 57 and the provisions contained in the Principal Act in order to consider the question involved herein, as under:-

| Sr. No. | Provisions contained under the Amendment Act | Provisions Contained under the Principal Act |
|---------|----------------------------------------------|----------------------------------------------|
| 1.      | Section 50                                   | Sections 140 to 144 (Chapter X)              |
| 2.      | Section 51                                   | Sections 145 to 164 (Chapter XI)             |
| 3.      | Section 52                                   | Section 165                                  |
| 4.      | Section 53                                   | Section 166                                  |
| 5.      | Section 54                                   | Section 168                                  |
| 6.      | Section 55                                   | Section 169                                  |
| 7.      | Section 56                                   | Section 170                                  |
| 8.      | Section 57                                   | Section 173                                  |

21. The aforesaid provisions of Sections 50 to 57 of the Amendment Act relate to Sections 140 to 144, Sections 145 to 164, Section 165, Section 166, Section 168, Section 169, Section 170 and Section 173 of the Principal Act respectively. Although the legislature, by virtue of the aforesaid provisions of the Amendment Act, as prescribed in Column-2 of the above mentioned table, has proposed for the Amendment in the aforesaid provisions of the Principal Act as described in Column-3 of the said table, but till date, no notification as required under sub-section (2) of Section 1 of the Amendment Act was issued by the Central Government. As such and in absence of the notification of the Central Government with regard to the aforesaid provisions of the Amendment Act, it is thus clear that the provisions of the Principal Act contained in 3<sup>rd</sup> Column of the aforesaid table continue to remain in operation.

22. Since the aforesaid provisions of the Amendment Act as contained in 2<sup>nd</sup> Column of the above mentioned table are not notified under sub-section (2) of Section 1 of the Amendment Act, Claimant/s can still file an application under Section 140 of the Principal Act independently or along with an application for compensation under Section 166 of the Principal Act or in alternative, the Claimant/s can prefer an application under Section 163-A of the Principal Act for compensation based upon the structured formula. It is to be remembered, as observed herein above, that w.e.f 14<sup>th</sup> November, 1994, the provision prescribed under Section 166 (3) of the Principal Act, wherein the provision with respect to condonation of delay was made, has been omitted. As of now, there is no provision which provides for seeking condonation of delay if an application for compensation is filed beyond the period of six months from the date of the occurrence of the accident till the time Section 53 of the Amendment Act is

notified under sub-section (2) of Section 1 of the Amendment Act, Claimant/s are not required to file an application for condonation of delay.

23. In view of the above discussion, the Appeal is allowed and award impugned dated 19.02.2020 passed in unregistered case is hereby quashed and claim Petition is accordingly restored with a direction that the Additional Motor Accident Claims Tribunal, Khairagarh and/or the concerned Tribunal shall register it and decide the same in accordance with law. No order as to costs.

Sd/-  
(Sanjay S. Agrawal)  
**JUDGE**

Priya