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C.R.P.No.2433 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P. No. 2433 of 2022

V.Rajamanickam

...Petitioner

Vs.

1.Mr.Samidurai

2.Chola MS General Insurance Co.Ltd.,
Rep.by Authorised Signatory,
Office at Officers Line,
Opp. Voorhees College,
Vellore, Vellore District.

...Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 11.07.2022 made in Un-numbered MCOP Sr.No.5745 of 2022 in returning the petition by the Motor Accident Claims Tribunal-cum-Principal District Judge, Vellore and allow the Civil Revision Petition.

For Petitioner : Mr.C.Prabakaran

For Respondents :

[for R1] : No Appearance

[for R2] : Mr.Rajadurai for
M/s.M.B.Gopalan Associates



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ORDER

The revision petition is filed against the un-numbered claim application filed in M.C.O.P. SR.No.5745 of 2022, on the file of the Motor Accident Claims Tribunal-cum-Principal District Judge, Vellore.

2. The grievance of the revision petitioner is that the accident occurred on 14.02.2021 at Kanjanur to Anniyoor road and the Kajanur Police Station registered a case under Sections 279 and 337 of I.P.C. in Crime No.65 of 2021. The revision petitioner submitted a claim application on 22.06.2022. The said application was returned by the Motor Accident Claims Tribunal on the ground that as per the Amendments notified to the Motor Accident claims with effect from 01.04.2022 *“No application for compensation shall be entertained unless it is made within six month of the occurrence of the accident”* . The Motor Accident Claims Tribunal, relying on the amendment to Section 166(3) of the Motor Vehicles Act, returned the application merely on the ground that the application was presented by the victim on 20.06.2022.

3. The question arises, whether the date of accident is to be taken into consideration for the purpose of implementing the amended Section 166(3) or



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the date of presentation of the application is to be taken into consideration for implementing the amended Section 166(3).

4. The amendment to Section 166(3) contemplates “*No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.*” Such an amendment cannot have any retrospective effect so as to deprive the claimant who met with an accident prior to the amendment. Though, the amendment did not speak about the date of the accident, the object of the amendment is to ensure and prevent frivolous applications, if any filed, for seeking compensation. The amendment stipulates that no application for compensation shall be entertained beyond the period of six months of the date of the accident and in the present case, on the date of the accident, the amendment was not in force and the amendment implemented with effect from 01.04.2022, is to be given effect to, with reference to the accidents took place after 01.04.2022 and not prior to the amendment. Though the application in the present case is submitted on 20.06.2022, in such cases the period of six months contemplated in the amendment is to be reckoned from the date of the amendment and not from the date of the accident. More specifically, in the cases of accidents occurred prior to the amendment on 01.04.2022, the



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date of amendment i.e. 01.04.2022 is to be taken into consideration for reckoning the period of six months as per the amendment. Thus, if the accident occurred prior to 01.04.2022, the applications have to be entertained, up to the expiry of the six months from the date of the amendment on 01.04.2022. In respect of the accidents occurred after 01.04.2022, automatically the amended provision under Section 166(3) is to be applied and the period of six months contemplated is to be scrupulously followed.

5. In the present case, the accident occurred in the year 2021 and the application was presented on 20.06.2022, within the period of two and half months from the date of the amendment and therefore, the application is to be entertained.

6. Provision for compensation is a welfare legislation and the accident victims cannot be unnecessarily deprived of their right to compensation. As on the date of the accident, the period of limitation was not in force and therefore they would not have filed an application within a period of 6 months. Even, in respect of accidents that occurred prior to the amendment, if the period of six months already expired, then they must be permitted to file an



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application within a period of six months from the date of the amendment, which would have a pragmatic meaning in respect of the amendment. In the absence of any specific condition stipulated in the amendment, the Courts are bound to interpret, considering the purpose and object of the amendment and to ensure that the rights of the accident victims are protected with reference to the provisions of the Act.

7. In this context, it is relevant to rely on the judgement of the Supreme Court in the case of ***State of Punjab and others Vs. Bhajan Kaur and others, 2008 (12) SCC 112***, where the Apex Court had made the following observations:

13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force



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on or about 01.07.19898.

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16. It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication.

*17. In **Garikapati Veeraya vs. N.Subbiah Choudhry** the law is stated thus : (AIR p.553, para 25):*

“25.... The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.”

8. Section 6 of the General Clauses Act, 1897, postulates the situation of a similar nature where, by protecting right, privilege, obligation, or liability acquired are accrued under any repeal enactment. Thus, provisions of the new Act or amendment cannot infringe or relegate the right guaranteed under the old Act or the provisions which were in force. Section 6 of the General Clauses Act reads as follows:-



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6. Effect of repeal – *Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not –*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.



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9. While introducing the Act of 2019, effecting from 01.04.2022, the legislature did not cause any amendment in the repealing or saving clause, specifying its applicability in respect of the accidents occurred prior to the introduction of the amendment. Thus, the Hon'ble Supreme Court considered the circumstances with reference to Section 6 of the General Clauses Act, 1897, in the case *State of Punjab* cited supra, and applying the principles, this Court is of the considered opinion that the accidents occurred prior to the amendment on 01.04.2022, the applications have to be permitted till such time the period of six months expires from the date of amendment i.e. 01.04.2022. Thus, in respect of the accidents occurred prior to 01.04.2022, the Motor Accident Claims Tribunal is bound to entertain applications, till the expiry of the period of 6 months to be reckoned from the date of amendment i.e. from 01.04.2022. If at all any applications are filed beyond six months from the date of the amendment regarding the accidents occurred prior to the amendment, such applications alone are not entertainable.

10. In the present case, the application is filed within a period of two and a half months from the date of the amendment and therefore, the application is to be numbered and to be disposed of by following the procedures.



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Considering the facts and circumstances, the following orders are passed:-

(i). The amendment to Section 166 (3) of the Motor Vehicles Act is to be implemented scrupulously with reference to the accidents that occurred after 01.04.2022

(ii). Regarding the accidents occurred prior to 01.04.2022, the applications have to be entertained within a period of six months from the date of amendment i.e.01.04.2022.

(iii). In the present case, the application filed by the revision petitioner is directed to be numbered and to be disposed of on merits and in accordance with law.

11. Accordingly, the Civil Revision petition stands **allowed**. No costs.

12. The Registry is directed to return the original applications to the petitioner, enabling the petitioner to represent the same before the Trial Court.

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15.12.2022

Index:Yes

Internet:Yes

Speaking Order



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S.M.SUBRAMANIAM.J.,

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To

1. Motor Accident Claims Tribunal-cum-Principal District Judge,
Vellore
- 2.Chola MS General Insurance Co.Ltd.,
Rep.by Authorised Signatory,
Office at Officers Line,
Opp. Voorhees College,
Vellore, Vellore District.
3. The Section Officer,
VR Section,
High Court of Madras.

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