IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.Nos.2671,2675 and 2701 of 2023

1. Deepika ... Petitioner in C.R.P.No.2671 of 2023

2. Krishnamoorthy ... Petitioner in C.R.P.No.2675 of 2023

3.Minor Nelesh ... Petitioner in C.R.P.No.2701 of 2023

Vs.

1. Monika ... Respondent in C.R.P.Nos.2671 and 2701 of 2023

2. Karpagavalli

3. The Chief Executive Claim Officer,
Sri Ram General Insurance Company,
No.5, Ramachandran Street,
Saravana Nagar, Seevaram,
OErungudi, Chennai 600 0096

... Respondents in C.R.P.No.2675 of 2023

3. The Chief Manager,
United India Insurance Company
(Third Party Service Hub)
Flat No.35,36 & 37, A.R. Plaza,
45 Feet Road, Balaji Nagar Extension,
Saram, Pondicherry - 605 013

... Respondent in all C.R.P's

Prayer in C.R.P.No.2671 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India to direct the MAC Tribunal / Subordinate Judge, Tindivanam to take on file M.A.C.T.O.P.SR No.59 of 2023 filed by the petitioner and proceed in accordance with law.

Prayer in C.R.P.No.2675 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India to direct the MAC Tribunal / Subordinate Judge, Tindivanam to take on file M.A.C.T.O.P.SR No.620 of 2022 filed by the petitioner and proceed in accordance with law.

Prayer in C.R.P.No.2701 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India to direct the MAC Tribunal / Subordinate Judge, Tindivanam to take on file M.A.C.T.O.P.SR No.60 of 2023 filed by the petitioner and proceed in accordance with law.

For Petitioner : Mr.M.Santhanaraman

ORDER

These Civil Revision Petitions are filed under Article 227 of the Constitution of India to number the unnumbered claim application in MAC Tribunal / Subordinate Judge, Tindivanam to take on file M.A.C.T.O.P.SR

Nos.620 of 2022 and 59 and 60 of 2023 filed by the petitioner and allow these Civil Revision Petitions

2. M.C.O.P. Sr.Nos.620 of 2022 and 59 and 60 of 2023 are filed seeking compensation under Section 166 of Motor Vehicles Acts, in respect of injuries sustained in the accident that had taken place on 23.10.20212. However, the same is returned with an endorsement that claim of the claimant is barred by limitation on account of the amendment to the Motor Vehicles Act came into force by Act 32 of 2019 with effect from 01.04.2022. Learned trial Judge has passed order based on the order passed in C.R.P.(PD).No.4066 of 2022, in which this Court has held that claim made beyond period of limitation as per Amendment Act 32 of 2019 is barred by limitation.

3. Learned counsel for the petitioner/claimant submitted that in a similar case, the High Court of Kerala has passed an order in Sathy vs.Dileep, reported in 2022 (2) TN MAC 1 (Ker.), O.P.(MAC).No.51 of 2022 wherein direction was given to approach the Tribunal concerned to admit M.C.O.P., and proceed with the case. Para Nos.7 to 10 of the judgment of the Kerala High Court reads as follows:

"?7. It is a matter of record that when the old Motor Vehicles Act 1939 was substituted and repealed by Act of 1988, the provision of limiting the right to file claim petition was six months. The aforementioned period of six months was omitted by way of amendment in the year 1994. Thus, the affected parties had a right to file claim petition in a case of injury or death at any point of time untrammeled by the objection of limitation. Legislature in the wisdom on due deliberation have reintroduced the O.P.(MAC) No.51/2022 6 aforementioned erstwhile provisions of sub~section (3) of Section 166 limiting the right to entertain the claim petition before the concerned court within a period of six months from the date of the accident. The accident in this case, as noticed above, had occurred on 23.5.2019. The claim petition was filed on 23.4.2022. By that time the new amendment had already come into force by Act 32 of 2019 effective from 1.4.2022 resulting into the impugned order. The same reads as under :

?"This application is filed under Section 166(1) of MV Act, 1988. The date of accident is 23.5.2019. As per Motor Vehicle (Amendment) Act, 2019, which came into force with effect from 1.4.2022, the application to be filed within six months of the occurrence of the accident (vide Section 166(3) of the M.V.Act, 1988). The present application filed on 23.4.2022 is barred by limitation. In the result, this application is rejected as time barred.?

8. It is settled law that in case there is no provision protecting the rights of a litigant viz by causing amendment which inexplicably *takes away exceptional rights, then the provisions of Section 6 of General Clauses Act, 1897 would come into play. Similar situation had occurred when the amendment was caused in the old Act of 1939 by introducing Act of 1988 wherein in a case of no fault liability the maximum compensation of MACT award was Rs.15,000/~. The High Court while entertaining the appeal by O.P.(MAC) No.51/2022 7 taking aid of the amended provisions of Section 140 introduced by way of 1988 amendments gave the benefit of Rs.50,000/~. The aforementioned objection was assailed before the Supreme Court in a matter reported in State of Punjab and others v. Bhajan Kaur and others [2008 (3) KHC 823]. After deliberation on the issue, it was held that when there is no introduction or omisision of the provisions of the Act, there is no intention of the legislature to have its prospective or retro~active applicability and in such circumstances, the amendment caused in the new Act would have a prospective effect. It would be expedient to extract paragraphs 13, 16 and 17 of the above judgment :*

?"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 herein before, 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 the Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly,

when it came into force on or about 1.07.1989. ....

16. Section 6 of the General Clauses Act, therefore, inter alia saves a right accrued and/ or a liability incurred. It does not create a right. When Section 6 applies only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise. Section 140 of the 1988 Act does not contain any procedural provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood, viz., before the new Act come into force.

17. 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.?

9. Section 6 of the General Clauses Act, 1897 postulates the situation of a similar nature where by protecting right, privilege, obligation or liability acquired or accrued under any repealed enactment. It is settled law that the provisions of the new Act cannot infringe or re~ligate the right granted under the old Act. Section 6 of General Clauses Act reads thus : ?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.? 10. Since while introducing the Act of 2019 effective from O.P.(MAC) No.51/2022 9 1.4.2022, Legislature did not cause any amendment in the repealing and savings clause specifying its applicability in respect of the accidents occurred prior to the introduction of the amendment, in view of the provisions of Section 6 and the observations of the Supreme Court in the judgment in State of Punjab and others v. Bhajan Kaur and others (supra), I am of the view that the applicability of the Act i.e., introduction of the old provisions of subsection (3) of Section 166, would have a prospective effect and the limitation period of six months would apply after introduction of the amendment i.e., post 1st April 2022. In other words, in any accident occurred after 1.4.2022, provisions of the amendment caused in the Act prescribing the limitation to entertain a claim petition, the parties would be governed by the* *same but not in respect of the persons whom a right had already accrued and was available if the amendment had not been caused. For the reasons aforementioned the impugned order is set aside. Original petition is allowed. The MACT is directed to entertain the claim petition preferred and try the case on merits. Since the Insurance Company has already put in appearance, the counsel representing the Insurance Company will be at liberty to put an appearance before the MACT as it will save the time O.P.(MAC) No.51/2022 10 regarding service of the Insurance Company. The parties are directed to appear before the MACT on 7.7.2022.?"*

4. Considering the above facts and circumstances, this Civil Revision Petition is disposed of with a direction to the learned Subordinate Judge, Tindivanam, to reconsider the claim petition in the light of the above judgment of the High Court of Kerala. The learned counsel for the petitioner is directed to resubmit the . M.C.O.P. Sr.Nos.620 of 2022 and 59 and 60 of 2023 within a period of three weeks from the date of receipt of a copy of this order and thereafter, the learned Subordinate Judge, Tindivanam, is directed to hear the petitioner. Taking into consideration, the orders passed in O.P.(MAC).No.51 of 2022 by the High Court of Kerala and consider to register the same, if it is otherwise in order, without reference to limitation.

5. In view of the above, these Civil Revision petitions are disposed of. No costs.

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

07.08.2023

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Index:Yes
Internet:Yes
Speaking Order
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To

1. The Subordinate Judge, Tindivanam

2. The Chief Executive Claim Officer,
Sri Ram General Insurance Company,
No.5, Ramachandran Street,
Saravana Nagar, Seevaram,
OErungudi, Chennai 600 0096

3. The Chief Manager,
United India Insurance Company
(Third Party Service Hub)
Flat No.35,36 & 37, A.R. Plaza,
45 Feet Road, Balaji Nagar Extension,
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V.BHAVANI SUBBAROYAN, J.,

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