



C.R.P.(MD).No.329 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.329 of 2023

1.Minor.Ameera Fathima

2.Minor.Athiba Fathima

....Petitioners

*(Both petitioners are represented by their
Guardian and Grandmother M.Mallika Begum)*

M.Mallika begum

... Petitioner/Claimant

Vs

1.J.Mohammed Rafiq Raja

2.The Branch Manager,
New India Assurance Company Limited,
Periyakulam Main Road,
Theni.
(Policy No.71070031170360071087)

....Respondents/Respondents

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to direct the Motor Accident Claims Tribunal (District and Sessions Court), Theni to number the petition and decide the same on merits by allowing this revision and direct the registry to return the



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Original Petition, which is the impugned one in the Civil Revision
Petition.

For Petitioner : Mr.K.K.Udayakumar

For R-1 : No Appearance

For R-2 : Mr.J.S.Murali

ORDER

The revision petitioners are the claimants and they had filed a claim petition before the Motor Accident Claims Tribunal, Theni under Section 166/140 of Motor Vehicle Act 1988 claiming compensation for the death of their mother in a motor accident that took place on 03.07.2019. The said claim petition has been presented before the Tribunal on 25.01.2023. As per endorsement, the Claims Tribunal had returned the said claim petition on the ground that as per Motor Vehicles (Amendment Act) 2019, Section 166 (3) has been introduced and no application for compensation can be entertained unless it is made within a period of 6 months from the date of occurrence of the accident.



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2. According to the learned counsel for the petitioner, the accident had taken place on 03.07.2019. Therefore on the date when cause of action arose, there was no limitation for filing a claim petition seeking compensation for the death/injuries sustained in a motor accident. The Motor Vehicle Act 1988 was amended by way of Motor Vehicles (Amendment Act 2019) which came into force on 01.04.2022. The claim petition has been presented on 25.01.2023.

3. According to the learned counsel for the petitioner, the law that was prevailing on the date of cause of action alone should be taken into consideration and the claim petition cannot be considered to be barred by limitation based upon the amendment that is subsequent to the arising of cause of action. Therefore, the petitioners sought to direct the Claims Tribunal to number the claim petition.

4. I have given anxious consideration to the submissions made on the side of the learned counsel for the petitioner.



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5. Before considering the effect of amendment, introducing period of limitation, let us consider the history of the legislation. In the Motor Vehicles Act 1939, Section 110(A)(3) barred the Courts from entertaining an application for compensation unless the said application is made within a period of 6 months from the date of occurrence of the accident. However, the Claims Tribunal was empowered to condone the delay, if sufficient cause is made out. The said Motor Vehicles Act 1939 was repealed with effect from 01.07.1989 and the Motor Vehicles Act 1988 came into force. Under 1988 Act, Section 166(3) directed the Court, not to entertain any application unless it is made within 6 months from the date of occurrence of the accident. However, the Tribunal were empowered to condone the delay for further period of 6 months (the application should be filed within a period of 12 months from the date of accident), if it is satisfied that the applicant was prevented by sufficient cause.

6. The Motor Vehicles Act, 1988 was again amended by way of Act 53 of 1994 with effect from 14.11.1994. The limitation that was prescribed for filing a claim petition was deleted by the said amendment. Now again by way of Act 32 of 2019, limitation of 6 months has been



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re-introduced with effect from 01.04.2022 onwards for filing a claim petition. However, the Tribunal has not been empowered to condone the delay if the claim petition has been filed beyond a period of 6 months from the date of occurrence of accident.

7.The issue now that arises for consideration is that when an amendment is brought into force, introducing period of limitation whether that would take away the vested rights of the claimants or not.

8.The Hon'ble Supreme Court in a judgement reported in **(1975) 2 SCC Page 840 (New India Assurance Co.Ltd., Vs. Smt.Shanti Misra, Adult)** in Paragraph No.7 has held as follows:

“7.In our opinion taking recourse to the proviso appended to subsection (3) of [section 110A](#) for excusing the delay made in the filing of the application between the date of the accident and the date of the constitution of the Tribunal is not correct. [Section 5](#) of the Limitation Act, 1963 or the proviso to sub-section (3) of the [section 110A](#) of the Act are meant to condone the default of the party on the ground of sufficient cause. But if a party is not able to file an application for no fault of his but because the Tribunal was not in existence, it will not be a case where it can be said that the



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"applicant was prevented by sufficient cause from making the application in time" within the meaning of the proviso. The time taken between the date of the accident and the constitution of the Tribunal cannot be condoned under the proviso. Then, will the application be barred under sub-section (3) of [section 110A](#)? Our answer is in the negative and for two reasons:

(1) Time for the purpose of filing the application under [section 110A](#) did not start running before the constitution of the Tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.

(2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation."

9.The Hon'ble Supreme Court in a judgement reported in **(2011)**

6 SCC Page 739 (Thirumalai Chemicals Limited Vs. Union of India (UOI) and others) in Paragraph No.19 has held as follows:



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“19. Law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exist under substantive law. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier, but they are prospective in the sense that neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date....”

10.The Hon'ble Supreme Court in a judgement reported ***in (2015) 15 SCC Page 168 (Commercial Motors Ltd. Vs. Commissioner of Trade Tax U.P.Lucknow)*** in Paragraph No.16 has held as follows:

“16....It has to be borne in mind that law of limitation when affects substantial rights of a party, such subsequent amendment should not be read as retrospectively unless the amendment so stipulates or requires so by necessary implication...”



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11.A combined reading of the three judgements of the Hon'ble Supreme Court, it is clear that even though the law of limitation is procedural law and hence, any amendment introduced therein will have retrospective effect, it cannot suddenly extinguish the vested right by providing for a shorter period of limitation. There should be an express or implied provision in the amending Act so as to confer retrospective operation to the amended provisions. Unless such an express or implied provisions is found in the amending Act, conferring retrospective operation, the same cannot be construed to have retrospective effect insofar as amendment to the period of limitation is concerned. Otherwise that will result in destroying the accrued/vested rights of the parties.

12.In the present case, the accident has taken place on 03.07.2019 and on the date, cause of action has arisen for filing a claim petition. There was no limitation for filing a claim petition on the date when cause of action arose. The amendment was introduced with effect from 01.04.2022 that the claim petition should be filed within a period of 6 months from the date of occurrence of the accident. In other words, even before the amendment was introduced, from the date of accident limitation



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had already expired, thereby completely destroying the rights of the injured person from making a claim petition under the Motor Vehicles Act.

13.The Hon'ble Supreme Court in a judgement reported *in (2003) 7 SCC Page 713 (New India Assurance Co-Ltd., Vs. C.Padma)* in Paragraph No.12 has held as follows:

“12. 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 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....”

14.Therefore the period of limitation introduced in a beneficial legislation like that of the Motor Vehicles Act can never be construed to have retrospective/ retro active operation unless express or implied



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provisions of law provide for the same. Admittedly, Amending Act 32 of 2019 nowhere expressly or impliedly provided for retrospective or retro active operation for the amendment introduced for the period of limitation under Section 166(3) of the Act. Therefore, it is clear that the amendment that is introduced with effect from 01.04.2022 will apply only to those accidents that had occurred on or before 01.04.2022.

15.In view of the above said deliberations, the accident having taken place on 03.07.2019, the limitation prescribed under the Amending Act 32 of 2019 is not applicable and hence, the Tribunal is directed to number the claim petition and dispose of the same on merits and in accordance with law.

16.Accordingly, this Civil Revision Petition is allowed. No costs.

02.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
gbg/msa

Note: Registry is directed to return the original to the petitioner after getting attested copies of the same.



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To

- 1.The Motor Accident Claims Tribunal,
Theni.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Order made in
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