



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: - 05.08.2024
Pronounced on: - 07.08.2024

I. CR-6066-2023 (O&M)

NATIONAL INSURANCE COMPANY LIMITED

... APPELLANT

Vs.

JASBIR KAUR AND OTHERS

... RESPONDENTS

II. CR-6076-2023 (O&M)

NATIONAL INSURANCE COMPANY LIMITED

... APPELLANT

Vs.

SIMRANJEET KAUR AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. R.C. Kapoor, Advocate, for the appellant.

Ms. Kamlesh, Advocate, for the respondents.

DEEPAK GUPTA, J.

In both these petitions, under challenge is the similarly worded order dated 03.08.2023 passed by learned MACT, Hoshiarpur in two different claim petitions arising out of same motor vehicular accident, whereby applications of the Insurance Company (*petitioner herein*) so as to dismiss the claim petitions, being barred by limitation, were dismissed.

2. The Motor Vehicular Accident took place on 08.10.2017, resulting in death of Harcharan Singh and Jagdish Singh. Respective legal representatives of the two deceased brought two separate claim petitions in the first week of February, 2023. Application was moved by the Insurer of the offending vehicle to dismiss the claim petitions being barred by limitation in view of amended Section 166 (3) of the Motor Vehicle Act, 2019 (for short 'the 2019 Act'), as per which no application for compensation is to be entertained unless it is made

within six months of the occurrence of the accident. Same were dismissed by way of impugned orders

3. The contention of learned counsel is that the amended provision of Section 166(3) of the 2019 Act had come into force w.e.f. 01.04.2022 and the claim petitions were not filed even within 06 months from 01.04.2022, what to talk of bringing the claim petitions within 06 months from the date of accident. Reliance was placed on ***Santhi and Others Vs. Suresh and Another, C.R.P. (P.D) No.4066 of 2022 decided on 07.12.2022***, wherein High Court of Judicature at Madras has taken the view that in respect of the accident, which occurred prior to 01.04.2022, MACT is bound to entertain applications till the expiry of the period of 06 months to be reckoned from the date of amendment i.e. 01.04.2022 but if the applications are filed beyond 06 months from the date of amendment, regarding the accident occurred prior to the amendment, such applications alone are not entertainable.

4. Refuting the aforesaid contention, learned counsel for the claimants-respondents, defended the impugned order passed by the Tribunal and placed reliance upon a decision of Kerala High Court rendered in ***Biju Mathew Vs. Suraj Mon. K Shaji, 2022(5) KLT 605***; and a decision of Allahabad High Court rendered in ***Mangal Batra Vs. Mohammad Rafeeq Visayati and Others, 2022(8) ILR (Allahabad) 590*** in order to contend that amended provisions of the 2019 Act are not applicable to the facts of this case, as the accident had taken place much prior thereto and that the aforesaid amended provisions are not retrospective in nature.

5. Having considered submissions of both the sides, this Court does not find merit in these petitions.

6. The provision of the Motor Vehicles (Amendment) Act, 2019, whereby limitation period of 06 months has been provided under Section 166(3) of the Act, was notified to be made operative in the official gazette by the Central Government w.e.f. 01.04.2022. Neither the amendment Act of 2019 nor the gazette notification, whereby the amendment was made operative, reflect that the amendment was made retrospective in nature. It has been held by Hon'ble Supreme Court in ***State of Punjab and Others Vs. Bhajan Kaur and***

Others, 2008 (3) RCR (Civil) 260 that a statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication and that substantive law is presumed to be prospective.

7. A similar situation had arisen, when amendment was brought in old Motor Vehicles Act, 1939 (for short 'the 1939 Act') by introducing Act of 1988. The 1939 Act provided maximum compensation of ₹15,000/- in case of no fault liability; whereas the amended provisions of Section 140 introduced by 1988 amendment, gave the said benefit at ₹50,000/-. The controversy as to whether the provision was retrospective or prospective reached Hon'ble Supreme Court in the case of ***Bhajan Kaur and Others (supra)*** and it was held as under:-

"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 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."

8. In the present case also, while introducing the Act of 2019, effective from 01.04.2022, legislature has not caused any amendment repealing and saving clause so as to specify its applicability in respect of accidents occurred prior to the introduction of the amendment and therefore, having

regard to the legal position explained by the Hon’ble Supreme Court **Bhajan Kaur and Others (supra)**, this Court is of the view that the provisions of Section 166 (3) of the 2019 Act ,which has been made effective from 01.04.2022, shall be prospective in nature and will not be applicable to the cases, where the accident had taken place prior to the amendment.

9. Consequently, this Court concurs with the view taken by Kerala High Court in **Biju Mathew (supra)** and Allahabad High Court in **Mangal Batra case (supra)**; and respectfully disagrees with the view taken by the High Court of Judicature at Madras in the case of **Santhi and Others (supra)**.

10. Consequently, present petitions are hereby dismissed.

Pending applications(s), if any, shall stand disposed of.

A photocopy of this order be placed on the file of another connected case.

07.08.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No