

CASE NO.:
Appeal (civil) 5764 of 1997

PETITIONER:
The New India Assurance Co. Ltd.

RESPONDENT:
C. Padma & Anr.

DATE OF JUDGMENT: 12/09/2003

BENCH:
S.N. VARIAVA & H.K. SEMA.

JUDGMENT:
J U D G M E N T

SEMA, J

This appeal is directed against the judgment and order dated 5.12.1996 passed by the High Court.

Briefly stated the facts leading to the filing of the present appeal arise out of the following circumstances. In a motor accident, which took place on 18.2.1989, the respondents sustained bodily injuries. The claim petition was filed on 2.11.1995, claiming compensation of Rs.one lakh. The Claims Tribunal rejected the plea of limitation raised by the appellant herein and awarded compensation of Rs. 45,000/-. The Revision Petition, filed by the appellant, was also dismissed by the High Court on 5.12.1996.

We have heard Mr. Sunil Kapoor, learned counsel for the appellant. Respondent Nos. 1 and 2 were put to notice. The Office Report dated 24.7.2003 disclosed that the notice was served on respondent No.1 on 14th October, 1997 by affixing notice on the door of the house of respondent No.1. A certificate of the High Court dated 24th October, 1997 indicates that respondent No.2 had refused to accept the notice and the same was affixed on the door of her given address. The respondents are, therefore, not represented before us.

The only contention, which has been strenuously urged by the counsel for the appellant, is that the accident had taken place on 18.2.1989 and the claim petition was filed on 2.11.1995; when the claim was barred under the old Act, the same could not have been revived under the new Act. It is his contention that on this score alone the claim petition should have been dismissed. To answer this contention it would be useful to have a quick survey of changes that have taken place in the Act. The old Act of 1939 has been repealed and since then there is a sea of changes in the Act. In the old Motor Vehicles Act, 1939(hereinafter referred to as 'the Act') sub-section (3) of Section 110-A provided:

"110-A. (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 if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

The 1939 Act was repealed w.e.f 1.7.1989. The period of limitation prescribed in the new Act is provided under sub-section (3) of Section 166. It reads:-

"166.(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."

The only difference that has been brought about in between the old Act and the new Act is that the Tribunal may entertain an application after the expiry of period of six months but not later than twelve months. In the instant case, at the time, when the respondents had filed claim petition on 2.11.1995, the situation was completely different. Sub-section (3) of Section 166 of the Act had been omitted by Act 53 of 1994 w.e.f. 14.11.1994. The result of the Act 53 of the Motor Vehicles (Amendment) Act, 1994 is that there is no limitation prescribed for filing claim petitions before the Tribunal in respect of any accident w.e.f. 14.11.1994. It is noticed that the High Court while dismissing the Revision Petition filed by the appellant had followed the decision rendered by this Court in *Dhannalal vs. D.P.Vijayvargiya*, (1996) 4 SCC 652. The facts of that case were like this. The appellant was injured in a motor accident, which took place on 4-12-1990. The claim petition for compensation was filed before the Tribunal on 7.12.1991 along with an application for condonation of delay, which was allowed by the Tribunal by its order dated 18.11.1993. The validity of order of the Tribunal was challenged before the High Court and the High Court by its order dated 31.7.1995 set-aside the order of the Tribunal holding that the power of Tribunal to condone the delay under Sub-section (3) of Section 166 of the Motor Vehicles Act of 1988 had been withdrawn and therefore the claim petition must be filed within the period prescribed therein. This Court set aside the High Court order.

This Court in *Dhannalal's* case (*supra*), after examining the effect of the various amendments that have been brought about in the Act, stated in paragraphs 6 and 7 as under:-

6."Before the scope of sub-section (3) of Section 166 of the Act is examined, it may be pointed out that the aforesaid sub-section (3) of Section 166 of the Act has been omitted by Act 53 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 14.11.1994. The effect of the Amending Act is that w.e.f. 14.11.1994 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and 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 ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident of the breadearner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escape death some of such victims are hospitalised for months if not for years. In the present case itself the applicant claims that he met with the accident on 4.12.1990 and he was being treated as an indoor patient till 27.9.1991. According to us, in its wisdom, Parliament rightly thought that prescribing a period of limitation and restricting the power of the Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants. The present case is a glaring example where the appellant has been deprived by the order of the High Court from claiming the compensation because of delay of only four days in preferring the claim petition.

7."In this background, now it has to be examined as to what is the effect of omission of sub-section (3) of Section 166 of the Act. From the amending Act it does not appear that the said sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the amending Act to show that

benefit of deletion of sub-section (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose an accident had taken place two years before 14.11.1994 when sub-section (3) was omitted from Section 166. For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of sub-section (3) of Section 166 w.e.f. 14.11.1994? According to us, the answer should be in negative. When sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when sub-section (3) of Section 166 was in force. It need not be impressed that Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interests of the victims of the accidents and their heirs if the victims die. One such amendment has been introduced in the Act by the aforesaid Amendment Act 54 of 1994 by substituting sub-section (6) of Section 158 which provides:

"158. (6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer in charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer."

In view of sub-section (6) of Section 158 of the Act the officer-in-charge of the police station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy thereof has also to be forwarded to the insurer concerned. It also requires that where a copy is made available to the owner of the vehicle, he shall within thirty days of receipt of such copy forward the same to the Claims Tribunal and insurer. In this background, the deletion of sub-section (3) from Section 166 should be given full effect so that the object of deletion of the said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, the High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from the Tribunal to this Court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990, in view of the amending Act he became entitled to

file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this Court cannot be thrown out on the ground of limitation."

(Emphasis supplied)

The ratio laid down in Dhannalal's case (supra) applies with full force to the facts of the present case. When the claim petition was filed sub-section (3) of Section 166 had been omitted. Thus, the Tribunal was bound to entertain the claim petition without taking note of the date on which the accident took place. Faced with this situation, Mr. Kapoor submitted that Dhannalal's case does not consider Section 6A of the General Clauses Act and therefore, needs to be reconsidered. We are unable to accept the submission. Section 6A of the General Clauses Act undoubtedly provides that the repeal of a provision will not affect the continuance of the enactment so repealed and in operation at the time of repeal. However, this is subject to "unless a different intention appears". In Dhannalal's case the reason for the deletion of sub-section (3) of Section 166 has been set out. It is noted that the Parliament realized the grave injustice and injury caused to heirs and legal representatives of the victims of accidents if the claim petition was rejected only on ground of limitation. Thus "the different intention" clearly appears and Section 6A of the General Clauses Act would not apply. Mr. Kapoor, learned counsel for the appellant, has placed reliance on the decision rendered by this Court in Vinod Gurudas Raikar vs. National Insurance Co. Ltd., AIR 1991 SC 2156. The facts of that case were that the appellant was injured in an accident, which took place on 22.1.1989. The claim petition of the appellant was filed on 15.3.1990 with a prayer for condonation of delay. The Tribunal held that in view of sub-section (3) of Section 166 of the new Motor Vehicles Act, which came into force on 1.7.1989, the delay of more than six months could not be condoned. In the facts and circumstances of that case this Court held that the case of the appellant was covered by the new Act and the delay for a longer period than six months could not be condoned. In our view, the facts of the case in Vinod Gurudas (supra) are different from the facts of the present case, as noticed above.

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. The Parliament, in its wisdom, realised the grave injustice and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions at the threshold on the ground of limitation, and purposely deleted sub-section (3) of Section 166, which provided the period of limitation for filing the claim petitions and this being the intendment of the Legislature to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the Legislature.

In the result, we do not find any infirmity in the order under challenge, which would warrant our interference. This appeal, being devoid of merits, is, accordingly dismissed with no order as to costs.