

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 16TH JANUARY 2006 / 26TH POUSHA, 1927

MFA.No. 351 of 1994()

OPMV.2168/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE

APPELLANT:

PARUTHINAKANDY KUNHALI,
S/O.ABDULLA, RESIDING AT
PARUTHINAKANDY HOUSE, P.O.ULLIYERI,
QUILANDY TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.V.V.SURENDRAN

RESPONDENTS:

1. M.M.RAJAN, S/O.CHATHU, MAVULLA MOTTAMMAL,
P.O.MOILOTHARA, THOTTILPALAM, KOZHIKODE DISTRICT.
2. V.K.RAVINDRAN, S/O.KELAPAN,
OTANKADU KUNIYIL HOUSE, KAVILUMPARA,
THOTTILPALAM, KOZHIKODE DISTRICT.
3. UNITED INDIA INSURANCE CO. LTD., BADAGARA.

BY ADV. SRI.GEORGE VARGHESE NARAYANPARAMBIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 16.1.2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.HEMA, J.

M.F.A.No.351 of 1994

Dated this the 16th January, 2006

JUDGMENT

A motor accident occurred on 27.4.1989, when Motor Vehicles Act, 1989 ('the Act', for short) was in force. As per Section 166(3) of the Act, an application for compensation shall not 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.

2. Going by the date of occurrence, an application ought to have been filed as on 26.10.1989 within six months and if sufficient cause is shown by the applicant that she was prevented from sufficient cause from making the application in time, the Tribunal could have entertained the application after expiry of the said period and if it is made within one year from the date of occurrence. That means, an application filed after 26.4.1990 shall not be entertained by the Tribunal in view of Section 166 (3) of the Act.

3. But the appellant filed the application after 12 months as stated above on 14.8.1991. This was much after the period of limitation as per the law prevailing at that time. The petition was dismissed as per order dated 2.7.1993, i.e., before deletion of Section 166(3) of the Act. By the deletion of Section 166(3) as the law stands now, no application for

compensation shall be barred by limitation as held in the decision reported in Dhannalal v. D.P.Vijayvariya (1996(2) KLT 283(SC)).

4. The question is whether the application can be treated as barred by limitation or not. Learned counsel for the appellant would strongly contend that as per the decision reported in Dhannalal's case (supra), the Claims Tribunal ought not to have dismissed the petition under Section 166 of the Act on the round that the claim is time barred. On going through the decision cited above, it can be seen that the Supreme Court was considering the effect of deletion of sub-section(3) of Section 166 of the Act regarding the question of limitation. The effect of deletion of sub-section (3) of Section 166 of the Act was tested by an illustration also in the said judgment. It was held that when sub-section (3) of Section 166 of the Act 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.

5. Claim petitions cannot be thrown out on the ground that such claim petitions were time barred when sub-section (3) of Section 166 was in force. Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs if the victims die. But the present application was dismissed even before the deletion of sub-section (3) of Section 166 of the Act. The application was dismissed by the Tribunal when as per the amendment in the year 1989 Section 166(3) was introduced with effect from 1.7.1989. The position at that time was that in view of

Section 166(3) of the Act, no petition shall be entertained after expiry of one year from the date of accident. Therefore, the dismissal of a claim made under Section 166 of the Act cannot be said to be illegal in the light of the law prevailing at that time, especially since the order itself was passed before the introduction of an amendment by deleting Section 166(3) of the Act (14.11.1994).

6. However, learned counsel for the appellant would vehemently contend that the appeal was pending before this Court and hence going by the dictum laid down by the Supreme Court in the decision cited above, the issue is still open for this Court to entertain the claim under Section 166 of the Act on the ground that it is not time barred. The order of dismissal on the ground of barred by limitation has not become final in view of the pendency of the appeal. The Supreme Court only held as follows:

"....The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The aforesaid Amending Act shall be of no help to such claimant. The reason being that a judicial order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal, High Court or this Court. In such cases, the benefit of amendment of sub-s.(3) of S.166 should be extended."

7. It was submitted that the appeal was pending before this Court and if dictum laid down by the Supreme Court is followed, the benefit ought to have been extended to the appellant and this Court has to give

a direction to the Tribunal to consider the application filed under Section 166 of the Act. But the position in this case is different. Though an appeal was filed by the claimant under Section 173 of the Act against the order passed under Section 166 of the Act, it was pointed out by learned counsel for the Insurance Company (third respondent) that the appellant has not challenged dismissal of the application under Section 166 of the Act. A reading of the grounds of the appeal, it is clear that the challenge is only against the dismissal of the claim under Section 140 of the Act. The appellant has only made a prayer for interference with respect to the claim made under Section 140 of the Act. He has requested only for setting aside the award and pass an award for Rs.12,000/- as provided under Section 140 of the Act.

8. Therefore, it has to be concluded that the appellant has allowed the claim made under Section 166 of the Act to become final. In such case as held by the Supreme Court in the decision cited above, the claim cannot be entertained because the claim was barred by limitation and the order passed by the Tribunal has attained finality. Hence, no interference is called for with respect to the claim made under Section 166 of the Act.

9. However, the dismissal of the claim made under Section 140 of the Act cannot be justified. This was not legal for various reasons. Learned counsel for the appellant would contend that the claim under Section 140 of the Act ought to have been considered separately and the prayer under Section 166(3) of the Act would not apply to a claim under

Section 140 of the Act. This is in the light of Section 144 of the Act.

Section 144 of the Act reads as follows:

"144. Overriding effect. The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. "

10. The claim made under Section 140 is dealt with separately under Chapter X. It is provided under Section 144 of the Act that the provisions of Chapter X shall have effect notwithstanding anything contained in any other provision of the Act or of any other law for the time being in force. Section 166(3) of the Act was introduced in the year 1989. It is also not specifically mentioned therein that the bar will apply to a claim under section 140 of the Act also. Therefore, the claim under Section 140 of the Act cannot be said to be time barred. The Legislature has not intended to bar the claim under Section 140 of the Act as is evident from the introduction of Section 166(3) of the Act without mentioning anything about the bar of limitation in a claim under Section 140 of the Act.

11. That apart, from a reading of the relevant provision, I find that for other reasons also a claim under Section 140 of the Act is to be treated as a separate claim. The provisions and procedures governing a claim under Section 140 of the Act are also different. A reading of Section 140 shows that in case where death or permanent disablement of any person has resulted from an accident arising out of the "use of a motor vehicle or motor vehicles", the owner of the vehicle shall be liable to pay compensation in accordance with the provisions of the said Section. The

amount payable in respect of the death of any person shall be a fixed sum of Rs.50,000/- and in respect of permanent disablement of any person shall be a fixed sum of Rs.25,000/- as per Section 166(2) of the Act. Sub-section (3) of Section 140 shows that claim falling under Section 140 of the Act is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

12. Sub-section (4) of Section 140 of the Act also shows that a claim for compensation under Section 140(1) shall not be defeated by reason of any wrongful act, neglect or default of even the claimant himself. It is also provided therein that no amount shall be deducted from such amount of compensation on the basis of the share of the claimant in the responsibility for the death or permanent disability. Therefore, it is quite clear that even the neglect of either the owner of the vehicle or that of the driver or even the claimant or the deceased is not relevant under Section 140 of the Act.

13. It is also evident from a reading of Section 141 of the Act that even an enquiry is not contemplated in a claim under Section 140 as different from a claim made under section 166 of the Act. While an enquiry is contemplated before passing an award of compensation under Section 166 of the Act, no such enquiry is necessary in the case of a claim under Section 140 of the Act. The court need be satisfied of only the fact that the

death or permanent disability arise out of the use of motor vehicle or motor vehicles. For that purpose the court may issue a notice to the person against whom an order is proposed to be passed, hear them and dispose of the application as expeditiously as possible.

14. In a case where there is a claim made for compensation in pursuance of any right on the principle of fault also, in addition to a claim under Section 140, as per Section 141(2) of the Act, the claim for compensation under Section 140 shall be disposed of in the first place as expeditiously as possible. The requirement is mandatory. Thus, the claim under Sections 140 and 166 of the Act stands on a different footing. With respect to the basis of the claim the relevant factors to be considered, the procedure to be adopted, the manner in which it has to be disposed of and even the time for disposal of the claim. Both are independent claims with respect to the nature in which the claim petition has to be disposed of. By virtue of Section 144, even the bar under Section 166(3) of the Act is made inapplicable in a case falling under Section 140 of the Act. Therefore, a petition under Section 140 of the Act cannot be said to be time barred by virtue of Section 166(3) of the Act. No bar is imposed in making an application under Section 140 of the Act.

15. The court below has proceeded under the impression that a reading of Section 166(3) and the proviso would show that such a petition including a claim under Section 140 of the Act shall not be entertained in case it is filed beyond 12 months of date of occurrence of the accident.

So, irrespective of the fact that the claim would include a claim under Section 140 of the Act also, a petition being filed beyond the period of 12 months of the accident was found to be barred by limitation under Section 166(3) of the Act. The court was carried away by the proviso to Section 166(2) of the Act, as per which where any claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant. This provision would also guard or alert the court in considering a claim under Section 140 of the Act separately. But that alone cannot be made a ground to hold that a claim under Section 140 of the Act also is time barred by virtue of Section 166(3) of the Act.

16. It would appear from sub-section(4) of Section 166 of the Act that in cases where a police officer filed a copy of report regarding the accident to a Claims Tribunal, the Tribunal can treat the report as it were an application for compensation under the Act. So in a case where a claim is made under Section 140 of the Act, the court can act upon the report of the police officer also. A reading of Section 168 of the Act shows that the manner in which the application under Sections 166 and 140 are to be dealt with. It is specifically provided in the proviso to Section 168 of the Act that where such application makes a claim for compensation under Section 140, such claim in respect of death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X. That means, a separate procedure is envisaged by the legislature in a claim

under Sections 140 and 166 of the Act. At any rate, the claim cannot be said to be barred by limitation under Section 166(3) of the Act.

17. In the above circumstances, I hold that the order passed by the Claims Tribunal in rejecting the claim for compensation under Section 140 of the Act is illegal and it is liable to be set aside and I do so. The Motor Accidents Claims Tribunal is directed to consider the claim made by the petitioner under Section 140 of the Act independently and dispose of the matter without any delay, it is being an old case. However, it is made clear that the claim made by the appellant under Section 166 of the Act need not be considered. Learned counsel for third respondent submitted that appellant has to establish that he has permanent disability of the value stated in Section 142 of the Act. The Tribunal shall consider this aspect also while disposing of the claim under Section 140 of the Act.

18. The claim being an old one of the year 1991 and the accident is of the year 1989, the Motor Accidents Claims Tribunal is directed to dispose of the case within one month from the date of receipt of a copy of this judgment.

This appeal is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.NO.351 OF 1994

JUDGMENT

16.1.2006