

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

A.O. No. 464 of 2001.
(Old F.A.F.O. No. 226 of 1996)

United India Insurance Co. Ltd. through its Assistant Divisional Manager, Divisional Office, 17, Edmerstron Road, Allahabad.

... Appellant.

Vs.

Diwakar father of late Sri Manoharan and three others.

... Respondents.

WITH
A.O. No. 465 of 2001.
(Old F.A.F.O. No. 225 of 1996)

United India Insurance Co. Ltd. through its Assistant Divisional Manager, Divisional Office, 17, Edmerstron Road, Allahabad.

... Appellant.

Vs.

Shanker Pillai father of late Shri Sunder Pillai and three others.

... Respondents.

Sri Naresh Pant, learned counsel for the appellant.
None appeared for the respondents despite sufficient service by publication.

Date July 31, 2008.

Hon'ble B.S.Verma, J.

These two appeals under Section 173 of the Motor Vehicles Act, 1988 (*for short the Act*) are directed against the common award dated 15-3-1996 passed by the Motor Accident Claims Tribunal, Nainital (*for short the Tribunal*) passed in M.A.C. Petition No. 354 of 1991, Diwakar and another Vs. Smt. Sita Rani and another and M.A.C. Petition No. 356 of 1991, Shanker Pillai and another Vs. Smt. Sita Rani and another. Since both the appeals have arisen from the same motor vehicle accident, therefore, for the sake of convenience, they are being decided by this common judgment. Both the claim petitions namely M.A.C. Petition No. 354 of 1991 and 356 of 1991 were filed under Section 166 of the

Act. Along with them separate petition under Section 140 of the Act in each case was also filed for interim compensation, which too have been decided along with the main claim petition.

Relevant facts, giving rise to the present appeals, in brief, are that on 17-9-1986 at Lalpur, Rudrapur Road, within police station Rudrapur, one Manoharan was going on a bicycle. Surendra was also sitting on the carrier of the cycle with him. At about 4-30 p.m. offending truck No. U.R.N.-1495, which was being driven rashly and negligently by its driver, hit the cycle with the result Manoharan, aged 23 years, sustained fatal injuries and died at the spot, while Surendra, aged about 24 years, suffered grievous injuries in the said accident, who was taken to the hospital at Rudrapur, but he succumbed to his injuries. The autopsy on the dead bodies was conducted on 18-9-1986. An F.I.R. of the incident was lodged with the Police Station and a case under Section 279/304 of the I.P.C. was registered. Deceased Manoharan was employed on the post of Foreman in the tyre factory at Rudrapur and deceased Surendra was working as Chief Operator in Agro Company at Lalpur. Manoharan was getting Rs. 1100/- per month and Surendra was getting Rs. 1200/-.

Legal representatives of the deceased Manoharan and Surendra Pillai filed separate claim petitions for compensation of Rs.3,50,000/- each against the owner Smt. Sita Rani and the insurance company.

The owner of the truck contested the claim petition and filed her written statement. She admitted the date, time and place of the accident. It was stated that the truck was duly insured with the appellant, the United India Insurance Company at the time of accident. It was stated in additional pleas that the accident occurred due to own negligence on the part of the cyclist. The truck was being driven cautiously and carefully by its driver. It was also stated that the vehicle was duly insured and the insurer was liable to

pay compensation, if any. The driver was having a valid driving licence.

The appellant-Insurance Company also contested the claim petitions and filed its written statement. It was stated in additional pleas that the appellant had not received any information about the alleged accident. It was also stated that the claim petitions are barred by limitation and were filed after a lapse of three years and eleven months, while the limitation was six months from the date of accident. The petition could not have been entertained after the expiry of one year by the learned Tribunal. It was further stated that the appellant reserved the right to defend the claim petition on all the grounds available to the insured and to submit its additional written statement in case the owner of the vehicle was found to have colluded with the claimant or he was not interested to contest the claim petitions. It was also stated that the liability of the insurer under the insurance policy is limited to statutory limits towards third party.

On the pleadings of the parties, following Issues were framed by the learned Tribunal:-

ISSUES

1. Whether the accident is caused by rash and negligent driving of truck no. URN 1495 by its driver on 17.9.1986 at 4.30 p.m.?
2. Whether the claim petition is time barred? If so, its effect?
3. Whether the insurance policy is limited to the extent of statutory limits? If so, its effect?
4. Whether the accident is caused by the contributory negligence of deceased Manoharan in plying the cycle? If so, its effect?
5. To what amount of compensation the claimants are entitled?

Learned Tribunal recorded the evidence led by the parties, heard them and after perusing the evidence took up Issue

Nos. 1 and 4 together for disposal. Learned Tribunal came to the conclusion that the motor vehicle accident took place due to sole negligence on the part of the driver of the offending truck and there was no negligence or rashness on the part of the cyclist.

On Issue No.2, which is on the point of limitation, it has been contended on behalf of the insurance company that the accident took place on 17-9-1986. The claim petition ought to have been filed before the Tribunal latest by 16-9-1987, while the same was filed on 1-9-1990, hence the claim petition was barred by limitation. Learned Tribunal has observed that the claimants have filed application under Section 5 of the Limitation Act for condonation of delay, which was allowed by the Tribunal by order dated 10-5-1991 and, thereafter, the claim petition was registered. Learned Tribunal has observed that the insurance company cannot now claim that the claim petition was barred by limitation. It was also observed that the order dated 10-5-1991 was not challenged by the insurance company and the order attained finality. It was held that the claim petition is not barred by limitation. The learned Tribunal vide award dated 15-3-1996 partly allowed the claim petitions and awarded a sum of Rs. 1,50,000/- in each claim petition in favour of the claimants, along with simple interest at the rate of 12% from 16-5-1991, the date of registration of claim petition.

I have heard learned counsel for the parties and perused the record including the impugned award.

The main contention of the learned counsel for the appellant is that the motor vehicle accident had taken place in the year 1986, hence the provisions of the Motor Vehicles Act 1939 (*for short the Old Act*) as prevailing at that time would be applicable. It was vehemently argued that the claim petitions having been barred by limitation, no compensation could have been awarded in favour of the claimants.

The undisputed facts are that the motor vehicle accident had occurred on 17-9-1986, when the provisions of the Old Act were applicable. The Act has been enforced with effect from 1st July 1989. The claim petitions were filed on 1-9-1990. Along with the claim petitions application under Section 5 of the Limitation Act for condonation of delay, supported by an affidavit was filed. The application under Section 5 of the Limitation Act was allowed by the learned Tribunal vide order dated 10-5-1991. The claim petitions were decided by award dated 15-3-1996. The appellant-Insurance Company did not challenge the order dated 10-5-1991 before the High Court in revision till the date of award.

At the outset it may be mentioned that in the Old Act, there was a provision for filing of claim petitions under Section 110-A and sub-section (3) thereof provides limitation for filing a claim petition, which reads as under:-

“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 period of six months of accident, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

The old Act was repealed by the new Motor Vehicles Act 1988 and provisions of the Act came into force from 1-7-1989 and the limitation for filing the claim petitions had been provided under sub-section(3) of Section 166 of the Act, which reads as under:-

“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 12 months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

The provision of sub-section (3) of Section 166 of the Act was omitted w.e.f. 14-11-1994 by Act No. 54 of 1994 thereby the bar of limitation for filing claim petition had been lifted from the Act. Admittedly, the Act is a beneficial legislation aimed at providing relief to the victims or their families.

In these premises, the short question for determination in the present appeals is whether the claim petitions could not have been entertained by the learned Tribunal on the ground of limitation in the facts and circumstances of the case.

The Apex Court has considered the provisions of Section 166(3) proviso of the Act in the case of **Vinod Gurudas Raikar Vs. National Insurance Company Ltd. and others [(1991) 4 Supreme Court Cases 333]**. In that case the motor vehicle accident took place on January 22, 1989. The claim petition was filed belatedly on March 15, 1990 with a prayer for condonation of delay. The Claims Tribunal held that in view of the provisions of sub-section (3) of Section 166 of the new Act, the delay of more than six months could not be condoned. The application was dismissed. The order was unsuccessfully challenged before the High Court. The Apex Court relying on the case of *New India Insurance Co. Ltd. Vs. Shanti Misra (Smt) [(1975) 2 SCC 840]* has *inter alia* observed in paragraph 7 as under:-

“The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be

governed by the new Act-subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceedings so as to make it unpractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention *New India Insurance Co. Ltd. v. Smt. Shanti Misra.*”

It was held in that case that the right or privilege to claim benefit of provision for condonation of delay can be governed only by the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes applicability of the enactment when the need arises to take its benefit.

Subsequently, the Apex Court has considered the provision of sub-section (3) of Section 166 of the Act, which was omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994, which came into force w.e.f. 14-11-1994 in the case of **Dhannalal Vs. D.P.Vijayvargiya and others [(1996) 4 SCC, 652]**. In that case the motor accident took place on 4-12-1990 and the claim petition was filed on 7-12-1991 along with an application for condonation of delay. The Apex Court has inter alia observed in paragraph no. 7 as under:-

“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.”

It has been held that “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.”

The Apex Court in a subsequent decision in the case of **New India Assurance Co. Ltd. Vs. C.Padma and another [(2003) 7 Supreme Court Cases, 713]** considered the provisions of Section 166(3) of the Act. In that case, the motor accident took place on 18-2-1989 when the Old Act was in force and the claim petition was filed on 2-11-1995. The Claims Tribunal rejected the plea of limitation raised by the insurer and awarded compensation. The revision petition filed by the appellant was dismissed by the High Court by order dated 5-12-1996. The appellant-Insurance Company challenged the order of the High Court in appeal before the Apex Court. The insurer’s appeal was ultimately dismissed. The Apex Court has relied upon the ratio laid down in the case of *Dhannalal* (supra) and it was held that the Tribunal was bound to entertain the claim petition without taking note of the date on which the accident took place. The Apex Court has observed inter alia in paragraph no. 12 of the judgment as under:-

“Parliament, in its wisdom, realized 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.”

The salient feature of the present appeals is that the delay in filing the claim petitions had been condoned by the learned Tribunal as far back as 10-5-1991 before admitting the claim petition. The written statement in the claim petition was filed by the appellant-Insurance Company before the Tribunal on 16-9-1993 wherein plea of limitation has been taken. Issues were framed in the Claim Petitions on 15-12-1993, which were decided by the Tribunal vide impugned judgment and award dated 15-3-1996.

In view of the law laid down by the Apex Court in the case of *New India Assurance Co. Ltd. Vs. C. Padma and another* (supra) I am of the considered view that the plea of limitation would not be a good ground to reject the claim petitions. Besides, the order dated 10-5-1991 whereby the delay in filing the claim petitions was condoned was not challenged by the appellant and because at the time of disposal of Issue No.2, which was framed on the plea of limitation raised by the appellant in its written statement, i.e. on 15-3-1996, date of decision of the Claim Petitions, the provision of sub-section (3) of Section 166 which provided for limitation for filing the claim petitions had already been omitted by the legislature, therefore, the learned Tribunal was justified in holding that the claim petitions were not barred by limitation.

For the reasons and discussion aforesaid, the appeals preferred by the Insurance Company are devoid of merit and are liable to be dismissed outright.

Both the appeals are dismissed. Costs easy.

(B.S.Verma,J.)

