

(2021) 01 CHH CK 0015

Chhattisgarh High Court

Case No: M.A(C) No. 605 Of 2020

Mukesh Patle

APPELLANT

Vs

Shailendra Verma And Ors

RESPONDENT

Date of Decision: Jan. 20, 2021**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 165, 166, 168, 169, 170, 173
- Motor Vehicles (Amendment) Act, 2019 - Section 53

Hon'ble Judges: Sanjay S. Agrawal, J**Bench:** Single Bench**Advocate:** Hemant Kesarwani**Final Decision:** Allowed

Judgement

, Sanjay S. Agrawal, J",

1. Challenge to this Appeal is the award dated 19.02.2020 passed in unregistered claim case whereby, the learned Additional Motor Accident Claims",

Tribunal, Khairagarh (for short 'the Tribunal') has dismissed the claim holding it to be barred by time. The parties to this Appeal shall be referred",

hereinafter as per their description in the Tribunal.,

2. The facts which are essential to be stated for adjudication of this Appeal are that on 23.04.2019 at about 7.30 pm, the Claimant was dashed",

vehemently by offending vehicle "Bolero" bearing registration No.CG 08 AK 2333 owned by Ritesh Kumar Vaishnav and insured by IFCO,

Tokiyo General Insurance Company Limited when he was returning to his village Amlidihkhurd from Khariagarh. The alleged accident occurred,

owing to rash and negligent driving of its driver Shailendra Verma, as a result of which, the Claimant sustained injuries leading to the filing of the claim",

Petition, instituted on 17.02.2020 under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Principal Act').",

3. The aforesaid claim was dismissed by the Tribunal holding it to be barred by time as it was instituted beyond the prescribed period of six months,

from the date of occurrence of the accident as provided under sub-section (3) of Section 166 of the Principal Act, which was inserted by virtue of",

Section 53 of the Motor Vehicles (Amendment) Act, 2019 (hereinafter referred to as 'the Amendment Act').",

4. Shri Hemant Kesarwani, learned Counsel appearing for the Appellant/Claimant submits that since the accident had taken place on 23.04.2019 i.e.,",

prior to the the Amendment Act when the relevant provision of the Principal Act was in force, where no time period was prescribed, the proceeding",

as initiated before the Tribunal, therefore, must have been governed by the provisions made in the said Principal Act and the claim could not have",

been held to be barred by time by taking recourse to the said provisions as inserted by the said Amendment Act. According to him, although the said",

Amendment Act has come into force w.e.f 1st September, 2019, but the provisions of Section 53 of it proposing to amend the said provision in Section",

166 of the Principal Act were not notified by the Central Government as required under sub-section (2) of Section 1 of the said Amendment Act,"

therefore, application for condonation of delay is neither required, nor the claim could have been dismissed on the point of limitation. The learned",

Tribunal has, therefore, committed a serious illegality in dismissing the claim Petition by holding it to be barred by time.",

5. No one appears on behalf of the Respondents despite service of notice of this Appeal.,

6. In view of the facts involved herein, the question which falls for consideration is as under:-",

â€œWhether the claim Petition could be held to be barred by time under sub-section (3) of Section 166 of the Principal Act as inserted by way of,

Section 53 of the Amendment Act ?â€

7. Before adverting to the aforesaid question, it is necessary to trace the legislative development with regard to the matter of prescription of the period",

of limitation for filing the claim Petition for compensation of death or injury arising out of the use of the motor vehicle.,

8. Initially, the Motor Vehicles Act, 1939 was in force, which contained the following provisions with regard to the period of limitation under Section",

110-A and the relevant portion of which, is extracted as under:-",

â€œSECTION 110A: APPLICATION FOR COMPENSATION,

(1) XXXXXâ XXXX,

(2) XXXXXâ XXXX,

(3) No application for 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.â€

9. By virtue of the aforesaid provision, a claim Petition was required to be filed within the period of six months of occurrence of the accident and by",

virtue of proviso to it, the Tribunal may have entertained the same even after the expiry of six months, if it is satisfied by the Claimant that he was",

prevented by sufficient cause from making such an application in time.,

10. The aforesaid Act was, however, repealed subsequently by virtue of the enforcement of the Principal Act, which came into force with effect from",

01.07.1989. According to it, the period of limitation for filing the claim Petition is provided under sub-section 3 of Section 166 as under:-",

â€œ166. Application for compensation.-,

(1)xxxxxxx,

(2)xxxxx,

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident;

Sl. No.,Sections

1.,Section 2 and 3;

2.,Clauses (i) to (iv) of Section 4 (both inclusive);

- 3.,Clauses (i) to (iii) of Section 5 (both inclusive);
- 4.,Section 6;
- 5.,Clause (i) of Section 7;
- 6.,6. Section 9 and 10;
- 7.,Section 14;
- 8.,Section 16;
- 9.,Clause (ii) of Section 17;
- 10.,Section 20;
- 11.,Clause (ii) of Section 21;
- 12.,Section 22;
- 13.,Section 24;
- 14.,Section 27;
- 15.,Clause (i) of Section 28;
- 16.,Section 29 to 35 (both inclusive)
- 17.,Section 37 and 38;
- 18.,Section 41 and 42;
- 19.,Section 43;
- 20.,Section 46;
- 21.,Section 48 and 49;
- 22.,Section 58 to 73 (both inclusive)
- 23.,Section 75;
- 24.,Sub-clause (i) of clause (B) of Section 77;
- 25.,Section 78 to 87 (both inclusive);
- 26.,Section 89;
- 27.,Sub-clause (a) of clause (i) and clause (ii) of Section 91; and
- 28.,Section 92.

(2) of Section 1 of the Amendment Act, Claimant/s can still file an application under Section 140 of the Principal Act independently or along with an",

application for compensation under Section 166 of the Principal Act or in alternative, the Claimant/s can prefer an application under Section 163-A of",

the Principal Act for compensation based upon the structured formula. It is to be remembered, as observed herein above, that w.e.f 14th November,",

1994, the provision prescribed under Section 166 (3) of the Principal Act, wherein the provision with respect to condonation of delay was made, has",

been omitted. As of now, there is no provision which provides for seeking condonation of delay if an application for compensation is filed beyond the",

period of six months from the date of the occurrence of the accident till the time Section 53 of the Amendment Act is notified under sub-section (2) of,

Section 1 of the Amendment Act, Claimant/s are not required to file an application for condonation of delay.",

23. In view of the above discussion, the Appeal is allowed and award impugned dated 19.02.2020 passed in unregistered case is hereby quashed and",

claim Petition is accordingly restored with a direction that the Additional Motor Accident Claims Tribunal, Khairagarh and/or the concerned Tribunal",

shall register it and decide the same in accordance with law. No order as to costs.,