

(2003) 07 AHC CK 0193

Allahabad High Court

Case No: F.A.F.O. No. 161 of 1980

Nanku

APPELLANT

Vs

Janardan Prasad

RESPONDENT

Date of Decision: July 10, 2003

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A(3)
- Motor Vehicles Act, 1988 - Section 166(3)

Citation: (2003) 3 ACC 437 : (2005) ACJ 136 : (2003) 6 AWC 5392

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Advocate: A.L. Jaiswal and Savr Singh, for the Appellant;

Final Decision: Allowed

Judgement

Rajes Kumar, J.

This is an appeal filed u/s 110-D of the Motor Vehicles Act, 1939 against the order dated 5.11.1979 passed by the District Judge, Allahabad by which the application for condonation of delay has been rejected.

2. Brief facts of the case are that the appellant had filed a claim petition on 13.12.1978 under "the Act" on the ground that on 14.12.1977 at about 4.45 p.m. on G.T. Road, Police Station, Handia, District Allahabad, he was severely injured in the accident caused by the minibus No. USS 1534 by rash and negligent driving. The limitation for filing the claim petition was six months from the date of accident u/s 110-A of the Act. Since the claim petition was filed beyond the period of limitation, an application for the condonation of delay was filed along with an affidavit. In the affidavit it was explained that the applicant was confined to bed and there was no male member in the family to look after the work for filing of the claim petition and the applicant being illiterate could not file the claim petition within the statutory time prescribed u/s 110-A of Motor Vehicles Act. The learned District Judge vide

order dated 5.11.1979 rejected the application for condonation of delay on the ground that there was no medical certificate or copy of the injury report from which it could be said that the illness was of such magnitude as to prevent the applicant from filing a claim within the presentation period of limitation. Being aggrieved by the order, the present appeal has been filed.

3. Heard Mr. Savr Singh, Advocate holding brief of Mr. A.L. Jaiswal, learned counsel for the appellant. Despite of list being revised no one appears on behalf of the respondent.

4. The learned counsel for the appellant contended that the Motor Vehicles Act, 1939 was amended w.e.f. 1.7.1989 and section 166(3) was introduced in place of section 110-A (3), which also provided six months limitation for filing of claim petition. Further, section 166(3) has been omitted by section 53 of the Motor Vehicles (Amendment) Act, 1994 and after the omission of section 166(3) there is no limitation for filing of claim petition. He submitted that in respect of pending matters also it is deemed that there was no limitation for filing of claim petition. He submitted that the claim petition should be treated as maintainable even if it was filed beyond the period of limitation as contemplated under sub-section (3) of section 110-A of Motor Vehicles Act and should be decided on merit. In support of his contention he relied upon the judgment of the Hon"ble Supreme Court in the case of [Dhannalal Vs. D.P. Vijayvargiya and Others,](#)

5. Having heard the learned counsel for the appellant, I am of the view that the contention of the learned counsel for the appellant has substantial force and the matter is squarely covered by the judgment of the Hon"ble Supreme-Court in the case of [Dhannalal Vs. D.P. Vijayvargiya and Others,](#)

Sub-section (3) of section 110-A of the Motor Vehicles Act provides:

"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."

6. The Act which repealed the earlier Motor Vehicles Act of 1939 came in force w.e.f. 1.7.1989. The new Act prescribed a period of limitation for filing the claim petition in sub-section (3) of section 166. Said sub-section provided:

"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."

7. Section 166(3) has been omitted by section 53 of Motor Vehicles (Amendment) Act, 1994. After the omission of section 166(3) there is no limitation for filing of claim petition. In the case of [Dhannalal Vs. D.P. Vijayvargiya and Others](#), the Hon"ble Apex Court has considered the effect of the Motor Vehicles (Amendment) Act, 1994 by which section 166(3) has been deleted in the cases which were pending and the claim petitions have been dismissed on the ground of limitation and the appeal against the said orders are pending either before the Tribunal or before this court. The Hon"ble Apex Court held as follows:

"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 subsection (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 subsection (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 subsection (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 interest 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:

"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 incharge 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 of 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 incharge of the police station is enjoined to forward a copy of information/report regarding the accident to the Claims Tribunal having jurisdiction. A copy thereof has also to be forwarded to the concerned insurer. 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 subsection (3) from section 166 should be given full effect so that the object of deletion of said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer the 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, High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from Tribunal to this court. His right to get compensation in connection with the accident in question is being resisted by the respondent 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."

8. In the case of [New India Assurance Co. Ltd. Vs. Ramesh Bhai C. Patel and Others](#), against the rejection of claim petition which was beyond time, the writ petition was filed under Article 227 of the Constitution of India. During the pendency of the writ petition, section 166(3) of the Act was deleted in 1994. The writ petition was allowed by the court giving benefit of deletion of sub-section (3) of section 166 of the Act inasmuch as the writ petition was pending. New India Assurance Co. Ltd. filed appeal before the Hon"ble Supreme Court in which it was argued that the relief granted by the High Court of entertaining the claim petition in view of the deletion of sub-section (3) of section 166 of the Act could not have been given in a writ petition under Article 227 of the Constitution of India. It was submitted that only an appeal in the High Court u/s 173 of the Act could have been treated as a pending matter in which the benefit of deletion of sub-section (3) of section 166 of the Act could have been given. He also submitted that there is a limitation prescribed for filing an appeal u/s 173, which had expired. The Apex Court has held as follows:

"In our opinion, these are mere procedural or technical objections which should not frustrate the course of justice. The object of omitting sub-section (3) of section 166 of the Act to remove the bar of limitation for a claim petition is obvious. This being so, a matter which was pending in the High Court when this change was brought about, should be governed by the effect of omission of sub-section (3) of section 166. In the present case, the petition under Article 227 of the Constitution is deemed

to be an appeal to the High Court u/s 173 of the Act and condoning the delay in filing the appeal (Sic. claim application), the benefit of omission of sub-section (3) of section 166 is granted to the claimants. The High Court's order directing the claim petition to be entertained and decided on merits is sustained on this basis."

9. In the case of [S. Palakondarayudu Vs. Vice-Chairman-cum-Managing Director, A.P.S.R.T.C.](#), Andhra Pradesh High Court under similar circumstances held as follows:

"As the appeal is a continuation or a part of cause, and the intention of the legislature in deleting section 166(3) is to obliterate the fetter imposed u/s 166(3), and apart from that subsection (6) of section 158 is amended stating that the Officer-in-charge of the police station after completion of investigation shall forward a copy of the same within 30 days from the date of recording of the information or, as the case may be, on completion of such report to the Claims Tribunal, and a copy thereof to the concerned insurer and when a copy is made available to the Claims Tribunal, under sub-section (4) of section 166, the Claims Tribunal shall treat the report of accident forwarded to it under sub-section (6) of section 158 of Motor Vehicles Act, as an application for compensation under this Act.

In view of the same, I hold that the amendment of section 166 of Motor Vehicles Act is retrospective in operation and governs the proceedings including the appeal and the petitioner is entitled for the benefit of the amendment."

10. In the case of [Pradeep Kumar Vs. Kesavan Kutty Nair](#), the claim petition was filed beyond time by two and half years, which was rejected by the Tribunal on the ground that they have no power to condone the delay beyond one year. The appeal was filed before the Kerala High Court. During the pendency of the appeal in 1994 subsection (3) of section 166 was omitted. Under the circumstances, the Kerala High Court has held as follows:

"The effect of deletion of sub-section (3) of section 166 of the Act was considered by the Supreme Court in the case of [Dhannalal Vs. D.P. Vijayvargiya and Others](#), The effect of the amendment which came into force from 14.11.1994 is that from the above date, there is no limitation for filing claims before the Tribunal in respect of any accident. Noting that there is nothing in the amending Act which would show that sub-section (3) has been deleted retrospectively the Supreme Court had observed that 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 the plea of limitation has been raised. In the above decision, it was observed that when a claimant filed a claim petition beyond time and that petition had been rejected by the Claims Tribunal or by the High Court and the claimant does not challenge the same allowing of the judicial order to become final, that benefit cannot be extended. What is to be understood from the above position is that when the judicial order which says that the claim petition was barred by limitation has not become final, the benefit sought to be given to the persons who approach the

Claims Tribunal by filing claim petitions as a result of deletion of sub-section (3) of section 166 has to be extended to the persons against whom the judicial order was made. In the decision of the Supreme Court stated supra, it was observed that since the matter regarding limitation which came up for consideration of the Apex Court was pending decision, the benefit of deletion of sub-section (3) of section 166 could be extended to that case. Here also, even though the order challenged is one which was made by the Claims Tribunal before the amendment by which sub-section (3) of section 166 was deleted, the benefits sought to be given by way of amendment can be extended to the petitioner for the reason that the order of the Claims Tribunal is under challenge."

11. In view of the law laid down by the Hon"ble Apex Court and Hon"ble High Courts in the above cases the benefit of deletion of section 166(3) is available to the pending cases and even if the claim petition was filed beyond the period of limitation as contemplated u/s 110-A of the Act it has to be treated as maintainable in view of appeal being pending before this court against the order of the District Judge rejecting the application for condonation of delay and the claim petition cannot be thrown on the ground of limitation.

12. Learned counsel for the appellant also contended that the sufficient reasons have been given for condonation of delay and the learned District Judge has rejected the application for condonation of delay in a pedantic manner.

13. I have perused the reasons given for the delay in filing the claim petition stated in the affidavit. The reasons cannot be said to be without any basis. The learned District Judge has taken a pedantic view while rejecting the application for condonation of delay. It is settled principle of law that in the matter of condonation of delay, a liberal view should be taken by the court so that the justice may not be denied to the party.

14. In the circumstances, the appeal is allowed. The order dated 5.11.1979 passed by the District Judge, Allahabad is set aside. The District Judge, Allahabad is directed to decide the claim petition under the Motor Vehicles Act filed on 13.12.1978 on merit after hearing both the parties. It is further directed that the claim petition may be disposed of expeditiously preferably within a period of six months.