

**(1999) 06 GAU CK 0024**

**Gauhati High Court**

**Case No:** Civil Revision No. 71 of 1995

Binita Sarma

APPELLANT

Vs

Biren Kumar and Others

RESPONDENT

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**Date of Decision:** June 28, 1999

**Acts Referred:**

- Limitation Act, 1963 - Section 5
- Motor Vehicles Act, 1988 - Section 158, 166

**Citation:** (2000) ACJ 417

**Hon'ble Judges:** Sujit Barman Roy, J

**Bench:** Single Bench

**Advocate:** N.S. Deka, D. Das Roy and J. Talukdar, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

S. Barman Roy, J.

This revision petition is directed against the order dated 24.7.1992 passed by the learned Member, Motor Accidents Claims Tribunal, Guwahati, in MAC Case No. 41(K) of 1992 dismissing the claim petition of the petitioner under the Motor Vehicles Act, 1988 and also the subsequent order dated 10.2.1995 passed by the same Tribunal in the same case rejecting the prayer of the petitioner under Order 9, Rule 9, CPC for setting aside the order of dismissal and for restoration of her claim case.

2. The case, in short, is that late Nagen Sarma was the husband of the petitioner and he died in a motor accident, as stated in the petition. The accident in question took place on 13.5.1990. Late Nagen Sarma at the time of his death left behind him the present petitioner being his wife and his two minor sons, who were then aged about 4 and 10 years respectively. Nagen Sarma at the time of his death was aged about 42 years. He was the sole bread-earner in the family. The petitioner is a rustic widow. She is virtually semi-literate. Further case of the petitioner is that she was completely ignorant that in case of such motor accident she is entitled to claim the

compensation and for that purpose she is required to file a claim petition before the appropriate Tribunal. Because of her ignorance she did not file any claim petition initially. However, on 11.2.1992 she filed the aforesaid claim petition before the learned Motor Accidents Claims Tribunal, Guwahati. It is true that such claim petition was filed more than a year beyond limitation. Along with the said claim petition, petitioner also filed an application for condonation of delay u/s 5 of the Limitation Act for condoning the delay in filing the claim petition. After the case was adjourned on several dates, learned Tribunal finally passed the following order on 24.7.1992:

Claimant is absent without steps. OP National Insurance Co. Ltd. is present. In the case in hand the date of occurrence was 13.5.1990 and the case is filed on 11.2.1992, that is, after a lapse of 1 year 3 months. The case is dismissed.

3. Further case of the petitioner is that her residence was situated at a distance of about 50 km. from the office of the said Tribunal. She had virtually no means of livelihood and in such condition she was to maintain two minors. Her lawyer also did not inform her that her claim petition was dismissed. However, on 19.11.1994 petitioner came to Guwahati to enquire about her case in the court of the Motor Accidents Claims Tribunal. From the office of the learned Tribunal petitioner could learn that her case was dismissed way back on 24.7.1992. Then she met the learned Member of the Tribunal and narrated her problem. Learned Member advised her to file an appropriate application for restoration of her case. Accordingly, petitioner filed an application for restoration of her claim petition along with an application u/s 5 of the Limitation Act for condonation of the delay. In fact, the petitioner filed the aforesaid application for restoration of her case along with the application for condonation of delay on 17.12.1994. Ultimately, on 10.2.1995 learned Tribunal passed the following order:

Petitioner is represented by advocate. Notice to the OP insurance company returned after service, he has not filed any objection. Heard learned advocate and perused the case record.

The petitioner filed this miscellaneous petition on 17.12.1994 for restoration of M.A.C. Case No. 41 of 1992 that was dismissed on 24.7.1992. Petitioner avers that she had engaged Dr. Haren, Advocate in her MAC Case No. 41 of 1992 but she was not informed about the fate of her case and ultimately she discovered that her case was dismissed on 24.7.1992. She was not aware of her claim case, that it was dismissed for the fault of her Advocate Dr. Haren Das.

It appears from the record that M.A.C. Case No. 41 of 1992 was dismissed on 24.7.1992 not for the fault of advocate for the claimant-petitioner but on the point of limitation. The claim case was filed beyond 1 year 3 months from the date of the alleged accident. It is true that when the claim case came up for hearing on 27.7.1992 claimant or her advocate was not present, but on that ground the case

was not dismissed as alleged. The petitioner could have preferred a revision or appeal against the said order but she remained unconcerned and came up with this revisional petition more than two years after the order of dismissal was passed on merit.

The revisional petition has no merit and it is dismissed.

4. In the circumstances, petitioner has filed the instant revision petition against the aforesaid order dated 24.7.1992 and the order dated 10.2.1995.

5. I have heard Mr. N.S. Deka, learned counsel for the petitioner. Despite service of notice upon the respondents, none including the National Insurance Co. Ltd. turned up before the court.

6. Mr. Deka, learned counsel for the petitioner, in short, submitted that Sub-section (3) of Section 166 as it was prior to 1994 amendment of the Motor Vehicles Act, 1988 stood as follows:

No application for such compensation shall be entertained unless it is made within 6 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.

7. It is, therefore, apparent that when the case was filed it was hopelessly barred by limitation in view of what is provided by Sub-section (3) of Section 166 of the Act. But legislature in its wisdom thought that such a provision prescribing limitation for filing a claim petition under the provisions of the Act may actually defeat the ends of justice and, therefore, thought it expedient to omit the said provision altogether from the statute and accordingly the legislature has done it. Mr. Deka further submits that it would, therefore, be evident that such omission of limitation has left no limitation in the statute book so far as claim petition is concerned. He also submits that if the petitioner did not file any claim petition, she could have filed a fresh claim petition even today and in such a case the claim petition would not have been barred by limitation as there is no limitation prescribed under the law as it stands today since the amendment of the Act in 1994. He, therefore, submits that if the case is not remanded to the learned Tribunal for decision of the case on merit, it will cause immense injustice to an illiterate, rustic widow like the petitioner. The petitioner is burdened with the responsibility to maintain two minor sons though she has no means of livelihood practically. Another provision in this connection appears to me to be quite relevant in the context. Sub-section (6) of Section 158 of the Act as it stood prior to 1994 amendment of the Act provides that as soon as information regarding any accident involving death of or bodily injury to any person is recorded or a 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 also to the

Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer. This provision, namely, Sub-section (6) of Section 158 of the Act has to be read along with Sub-section (4) of Section 166 thereof. Sub-section (4) of Section 166 of the Act provides that where a police officer has filed a copy of the report regarding an incident, the Claims Tribunal under this Act may if it thinks necessary so to do treat the report as if it were an application for compensation under this Act.

8. From the aforesaid two provisions of the Act it is apparent that a rustic, illiterate person may not prefer any claim petition at all and yet duty has been cast upon the police officer concerned to forward a copy of the report to the Claims Tribunal having jurisdiction and the Claims Tribunal has further been enjoined that where a police officer files a copy of the report regarding accident to the Claims Tribunal under the Act, the Claims Tribunal may if it thinks necessary so to do treat the report as if it were an application for compensation under the Act. Therefore, even in the absence of a claim petition being filed by a party, he is not left by the statute without any remedy. The legislature in its wisdom thought it fit to incorporate the provisions like Sub-section (4) in Section 166 and Sub-section (6) in Section 158 of the Act prior to 1994 amendment to take care of such cases where a citizen due to poverty or illiteracy or total ignorance or backwardness was unable to approach the appropriate Tribunal for compensation in case of accidental death or bodily injury in such accident. In this context Sub-section (3) of Section 166 as it occurred prior to 1994 amendment of the Motor Vehicles Act seems to be inconsistent with Sub-section (4) of Section 166 and Sub-section (6) of Section 158 of the Act. I am not sure whether either the police officer or the officer-in-charge of the concerned police station performed their duty as enjoined by Sub-section (6) of Section 158 of the Act. Equally I do not know if any such report was at all forwarded to the concerned Tribunal, whether such Tribunal acted in accordance with the provisions of Sub-section (4) of Section 166 of the Act. Therefore, in view of the aforesaid provisions of law, I am constrained to observe that the claim petition of a rustic, semi-literate or illiterate widow like that of the petitioner should not have been defeated on the sole ground of limitation. If it is found that neither the concerned police station nor the concerned Claims Tribunal had acted with reference to the present case strictly in accordance with the mandate of the legislature as contained in Sub-section (6) of Section 158 and Sub-section (4) of Section 166 of the Act, failure of the petitioner to lodge a claim petition within time cannot be a ground to shield or cover the failure of the concerned police station or the Tribunal to act in accordance with the duties they are enjoined to do. It, therefore, seems to me that the inconsistency between the requirements as provided u/s 158 (6) read with Section 166 (4) on the one hand and the limitation as prescribed in Sub-section (3) of Section 166 prior to the 1994 Amendment Act is clearly too loud to miss our attention. Perhaps for this reason and for removing inconsistency these provisions have been amended by the 1994 Amendment Act. Section 49 of the Motor Vehicles (Amendment) Act, 1994 has amended Sub-section (6) of Section 158. Sub-section (6)

of Section 158 after the amendment now stands as follows:

(6) As soon as any information regarding any accident involving death of 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 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.

9. Likewise Sub-section (3) of Section 166 of the Act has been altogether omitted. Therefore, the Motor Vehicles Act now does not in any manner prescribe any limitation whatsoever for preferring a claim petition. Sub-section (4) of Section 166 has also been amended. This provision since the 1994 amendment, reads as under:

The Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act.

10. From the aforesaid it is clear that an illiterate or a rustic person may be totally ignorant about the fact that he is entitled to certain compensation under the Act and because of such ignorance or due to his poverty he may not be in a position to lodge his claim. Yet, in view of what is provided under Sub-section (6) of Section 158 read with Sub-section (4) of Section 166 of the Act it would be evident that when any such report is received by the Tribunal from the concerned police station, the Tribunal has to treat the same as a petition for compensation.

11. This being the position, I have no hesitation in my mind that as the petitioner filed subsequently the restoration petition after 1994 Amendment Act, it was the duty of the learned Tribunal to ascertain whether or not it acted in due compliance with the mandate of the legislature as provided u/s 158(6) and Section 166(4) of the Act. If it did not act in accordance with those provisions, it was its duty to restore the claim petition of the petitioner, as prayed for by her. In fact, I find sufficient support in this connection from the decision of the Karnataka High Court in [Wilfred Vs. Maniyar](#) .

12. In somewhat similar matter, though slightly different, the Rajasthan High Court also in [Radha Bai and Others Vs. Suresh Pal and Others](#) , held that in such circumstances claimants can even file fresh application for compensation and such application cannot be time-barred and accordingly Rajasthan High Court further held that when the claimants have a right to file a fresh claim application their right to get their claim decided under the present application cannot be denied.

13. In the aforesaid circumstances, I am constrained to observe that when the legislature was alive to the needs of the society and accordingly omitted the limitation prescribed under the Act before 1994 amendment and also suitably

amended Sub-section (6) of Section 158 and also Sub-section (4) of Section 166 of the Act, the learned Tribunal was completely oblivious about this development and most illegally and arbitrarily rejected the prayer of a poor, rustic, semi-literate widow to restore her claim petition after the same was dismissed on the ground of limitation. The technicalities of repealed laws have been allowed to stand in the way of the petitioner to get justice in the matter.

14. In view of the aforesaid reasons I am constrained to allow the petition and set aside the impugned orders and direct the learned Tribunal to decide the claim petition lodged by the petitioner in 1992 within a period of 6 months from the date of receipt of the copy of this order.

15. The petition is accordingly disposed of.