

(1992) 02 KL CK 0039

High Court Of Kerala

Case No: None

D. Asokan

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Feb. 27, 1992

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 158, 165, 166

Citation: (1992) 2 ACC 230 : (1992) KLJ 553

Hon'ble Judges: K.A. Nayar, J

Bench: Single Bench

Judgement

K.A. Nayar, J.

This writ petition is to quash Ext.P2 order of the second respondent. The petitioner sustained injuries on 11-11-1989 when he was hit by an auto rickshaw driven by the 4th respondent. The 5th respondent and the 6th respondent are the owner and the insurer of the offending vehicle KLY 5960. The petitioner filed a claim petition before the Motor Accident Claims Tribunal, Alappuzha. 2nd respondent on 16-1-91. That application was dismissed by the second respondent. Ext.P2 in the order. The accident admittedly occurred on 11-11-1989. Any petition will have to be filed within six months. There is power for the Tribunal to condone the delay. That power is only for six months. In short the application had to be filed within one year from the date of accident.

2. Admittedly application was filed on 16-3-91 and therefore u/s 166 of the Motor Vehicles Act, the application is barred by limitation. Hence the application was liable to be dismissed, and that is what the Motor Accident Claims tribunal has done. Section 166 is extracted hereunder.

166 Application for compensation (1) An application for compensation arising out of an accident of the nature specified in Sub section (1) of Section 165 may be made.

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident by all or any of the legal representatives of the deceased; or.

(d) by an agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every Application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred and shall be in such form and shall contain such particulars as may be prescribed.

Provided that where any claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

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

(4) Where a police officer has filed a copy of the report regarding an accident to Claims Tribunal under this Act, the Claims Tribunal may, if it thinks necessary so to do, treat the report as if it were an application for compensation under this Act

The application can be filed by a person who has sustained the injury or by the owner of the property or, where death has resulted from the accident, by all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased. Therefore, the fact that the person is immobilised or is in hospital is immaterial, as there are other persons who can file the petition. Sub-Section (3) of Section 166 says that no application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident. The proviso gives power to claims Tribunal to 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. But beyond twelve months, that power also is not there. There is justice on one side and finality on the other side and the limitation is also part of the law of the land. The legislature thought

that there must be finality for the claim and therefore, it is provided that claim with respect to accident must be filed within six months. If the claim is filed after the expiry of first six months, but within one year, the tribunal is given power to condone the delay, in appropriate cases. In other words after one year there is no power for condonation of delay. The possibility of a person who sustained the injury become disabled to file claim also is remedied, and taken care off in Section 166(1) vesting power for making claim petition on any agent duly authorised by the person injured or all or any of the legal representatives of the deceased. Therefore, Ext. P2 dismissing the claim petition filed more than one year after the date of accident cannot be faulted.

3. But the petitioner urged before me a new ground that is u/s 166(4) of the Motor Vehicles Act. where as police officer has filed a copy of the report regarding an accident to a Claims Tribunal, the Claims Tribunal may, if it thinks necessary to do so, treat the report as if it were an application for compensation under the Act. There is no case before me that such a report has not been filed. The contention is that there is a duty u/s 158(6) of the Motor Vehicles Act to the police officer incharge of the police station to forward a copy of the First Information Report to the Claims Tribunal then the Tribunal could have considered that as a claim petition, in which case there would not have been any delay, is the submission. Such a case has not been placed before the Tribunal and Ext. P2 cannot be faulted on such a consideration. Ext P-2 is not liable to be quashed. Therefore, I do not find any merit in the original petition.

4. But the petitioner now pointed out that Section 158(6) given a valuable right to all persons who sustained injury in motor accident. Sub-section (6) of Section 158 says that" as soon as any information regarding any accident involving death or bodily injury to any person is recorded of 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 copy thereof to the concerned insurer. This is a valuable right and there is a statutory duty on the police officer investigating the accident to send the report to the Tribunal having jurisdiction. Such a report gives jurisdiction to claims Tribunal. If it is so inclined, to treat the report as if it is an application for compensation under the Act. In this case, if such a course had been adopted by the police officers. It is the contention of the petitioner that the said report being taken as a claim, the bar of limitation would not have been there. But this submission will not make any difference in this case. Since it gives an important right to persons who sustained injury, it will be better that this matter is brought to the notice of the authorities for strict compliance in future I make it clear that dismissal of this writ-petition will not bar the petitioner for taking appropriate steps for vindicating his rights, if any, under Sections 158(6) and 166(4) of the Motor Vehicles Act.

The Original Petitions is disposed of as above.