

## **Dhannalal vs D.P. Vijayvargiya & Ors on 7 May, 1996**

**Equivalent citations: 1996 SCC (4) 652, JT 1996 (5) 601, AIR 1996 SUPREME COURT 2155, 1996 (4) SCC 652, 1996 AIR SCW 2617, 1996 SCC(CRI) 816, 1996 (0) ACJ 1013, 1996 ( ) ALL CJ 1347, (1996) 5 JT 601 (SC), (1996) 2 CTC 143 (SC), (1996) 2 KER LJ 328, (1996) 2 ACJ 1013, 1996 (114) PUN LR 656, (1996) 3 PUN LR 656, (1997) 1 MAD LW 190, (1996) 2 GUJ LH 459, (1997) 1 MAD LJ 15, (1997) 1 MAH LJ 487, (1996) 2 RAJ LW 119, (1996) 2 SCJ 466, (1996) 2 TAC 324, (1996) 3 RECCIVR 76, (1996) 3 ICC 578, (1996) 1 ACC 603, (1996) 3 CIVLJ 150, (1996) 2 CURCC 318, (1996) 2 KER LT 283, (1996) 87 COMCAS 240, (1996) JAB LJ 528, (1997) 1 MPLJ 195**

**Author: N.P Singh**

**Bench: N.P Singh**

PETITIONER:

DHANNALAL

Vs.

RESPONDENT:

D.P. VIJAYVARGIYA & ORS.

DATE OF JUDGMENT: 07/05/1996

BENCH:

SINGH N.P. (J)

BENCH:

SINGH N.P. (J)

FAIZAN UDDIN (J)

CITATION:

1996 SCC (4) 652 JT 1996 (5) 601

1996 SCALE (4) 458

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T N.P. SINGH. J Leave granted.

The appellant while going on road on 4.12.1990 became victim of an accident, because of the rash and negligent driving of the scooter by respondent No.1 (hereinafter referred to as the 'respondent'). The appellant suffered serious injuries and was admitted in Badwah Hospital, the same day. On 7.12.1990 he was shifted to M.Y. Hospital, Indore and was treated as an indoor patient till 27.9.1991. Because of the accident the appellant became permanently disabled, as his left leg above thigh and hip had been fractured. He also lost his services as a Driver. The claim petition for compensation was filed before the Additional Motor Accident Claims Tribunal, Badwah (hereinafter referred to as the 'Tribunal') on 7.12.1991 along with an application for condonation of delay which was of four days only. The Tribunal by its order dated 18.11.1993 condoned the delay in filing the claim petition. The validity of the said order was challenged by the respondent before the High Court of Madhya Pradesh at Jabalpur. The High Court by its order dated 31.7.1995 set aside the order of the Tribunal aforesaid condoning the delay saying that in view of sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') the power of condonation by the Tribunal has been withdrawn and any claim must be filed within the period prescribed therein. The High Court further observed that by prescribing the fixed period for filing the petition for claim, the intention was that the 'sword of liability of paying compensation in respect of accident caused by motor vehicle should not be permitted to hover on the head of the person owning the said vehicle and person driving such vehicle.' It was also pointed out that the position was different under the Motor Vehicles Act, 1939 in which sub-section (3) of Section 110-A although prescribed a period of six months for filing an application for compensation from the date of the accident, but vested power in Tribunal to entertain such application even after the expiry of the said period of six months, if the Tribunal was satisfied that the claimant was prevented by sufficient cause from making the application in time.

Sub-section (3) of Section 110-A of the Motor Vehicles Act, 1939 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 if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

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 subsection 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." According to the High Court, as proviso to sub-section (3) of Section 166 of the Act said that Claims Tribunal may entertain the application after the expiry of the said period of six months 'but not later than twelve months', any application filed beyond the period of twelve months from the date of the accident cannot be entertained as no discretion had been left with the Tribunal to consider the circumstances because of which the application for claim could not be filed within the period of twelve months of the occurrence of the accident.

Before the scope of sub-section (3) of Section 166 of the Act is examined, it may be pointed out that the aforesaid sub-section (3) of Section 166 of the Act has been omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 14.11.1994. The effect of the Amending Act is that w.e.f. 14.11.1994 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident, of the bread earner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escapes death some of such victims are hospitalized for months if not for years. In the present case itself the applicant claims that he met with the accident on 4.12.1990 and he was being treated as an indoor patient till 27.9.1991. According to us, in its wisdom the Parliament, rightly thought that prescribing a period of limitation and restricting the power of Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants. The present case is a glaring example where the appellant has been deprived by the order of the High Court from claiming the compensation because of delay of only four days in preferring the claim petition.

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 sub-section (3) has been deleted retrospectively. But at the sametime, 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 sub-section (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 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 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 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."

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 Tribunal having jurisdiction. A copy whereof 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 sub-section (3) from Section 166 should be given full effect so that the object of deletion of said section by the Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer 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 filling 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 respondents on the ground of delay in filling 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 upto this Court cannot be thrown out on the ground of limitation.

The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The aforesaid Amending Act shall be of no help to such claimant. The reason being that a judicial order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal, High Court or this Court. In such cases, the benefit of amendment of subsection (3) of Section 166 should be extended.

Accordingly, we allow this appeal and set aside the order passed by the High Court. We direct the Tribunal to entertain the petition for claim filed on behalf of the appellant and to dispose of the

same as early as possible in accordance with law. There shall be no order as to costs.