

(2001) 07 MAD CK 0022
In the Madras High Court

A. Tamilselvan

APPELLANT

Vs

Senthil Constructions and Another

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Citation : (2003) 1 ACC 218

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Judgement

K.P. Sivasubramaniam, J.—The petitioner who was a minor on 5.12.1989, was travelling along with his father and mother in their car and

proceeding towards Tirupathi. The car met with an accident at Pudur Village. While the petitioner and his father sustained injuries, the mother died.

The petitioner's father filed three claim petitions. First one for injuries on the minor, second one for injuries on himself and the third one for the

death of his wife. The said claim petitions were filed on 11.1.1991 beyond the period of limitation of one year as provided under the Motor

Vehicles Act, 1988 and hence in M.C.O.P. SR. Nos. 337, 339 and 341 the petitioner's father had also filed petitions u/s 5 of the Limitation Act

to condone the delay in filing the claim petition. The Tribunal dismissed the petition namely, I.A. Nos. 337, 338 and 339 of 1991 on the ground

that the Court had no jurisdiction to condone the delay in filing the claim petition under the Motor Vehicles Act, 1988 beyond the prescribed

period. Three revision petitions were filed before this Court and the same were dismissed by this Court on 6.7.1992. No further steps were taken

before the Supreme Court and hence those proceedings became final.

2. Subsequently, Section 166 of the Motor Vehicles Act, 1988 was amended with

effect from 14.11.1994 deleting the period of limitation. In

Dhannalal Vs. D.P. Vijayvargiya and Others, the Supreme Court had occasion to deal with the scope of the amendment and it was held that the

benefit of deletion of the limitation should be available to all cases which were pending as on the date, considering the beneficial object behind the amendment.

3. The petitioner attained majority on 10.12.1992. He filed M.C.O.P.SR. No. 4129 of 1993 claiming compensation for the injuries sustained by

him and M.C.O.P.SR. No. 4266 of 1993 for compensation for the death of his mother. Though learned Counsel for the petitioner states that they

were filed on 18.5.1993 and according to learned Counsel for the respondent on 31.3.1994, a perusal of the records shows that they were filed

on 7.6.1993, the petitioner also filed I.A.SR. Nos. 4131 and 4170 of 1993 respectively u/s 6 of the Limitation Act praying for taking up the claim

petition on file, contending that the delay in filing the claim petition was caused by his father and that for the mistake of his father, the petitioner had

suffered loss.

4. By order dated 15.11.1994, the Tribunal rejected both the claim petitions after holding that the minor had not produced any document to show

that he was a minor as on the date of the accident and that the claim petition filed by his father having been already rejected, the petitioner cannot

file one more petition and for a single claim there cannot be two different period of limitation. Hence, the above revision petition.

5. Learned Counsel for the petitioner contends as follows:

(1) Section 6 of the Limitation Act enables the petitioner to institute proceedings after attaining majority.

(2) The failure on the part of the father in not filing the claim petition was due to his own negligence for which the minor cannot be penalised. The

failure to agitate the matter further before the Supreme Court was a further act of the negligence on the part of the father of the petitioner.

(3) The petitioner is also entitled to the benefit of the interpretation of the Supreme Court as regards the amendment which was carried out to

Section 166 of the Motor Vehicles Act, 1988 holding that the benefit would be available to pending proceedings also. The rejection of the

petitions having been ordered on 15.11.1996 only, the petition should be treated

as pending when the judgment of the Supreme Court was delivered namely, on 7.5.1996.

(4) The plea of res judicata will not be available to the present case considering that the petitioner had invoked Section 6 of the Limitation Act.

6. Per contra, learned Counsel for the respondents contends that Section 6 of the Limitation Act cannot at all be invoked because of the claim of

the minor had already been raised and rejected. The said order had become final and binding on the minor. If the minor is properly represented

and the proceeding had come to an end, there is no question of fresh proceedings being initiated by the minor again. She would further contend

that the protection u/s 44 of the Evidence Act was also not available in the present case considering that there is no allegation of any fraud or

collusion against the father. In the absence of the said allegation Section 44 of the Evidence Act cannot at all be invoked. The unsuccessful minor

was actually indulging in a second round of litigation which was not permissible and was also barred by res judicata. She would further submit that

the law of limitation creates certain valid and vested rights on the parties and when once a claim is beyond the period of limitation, the same was

liable to be rejected in limine as provided u/s 3 of the Limitation Act. It would not be also fair to expect the respondents to be able to face the trial

and produce the evidence relating to an accident which took place about 12 years back.

7. Learned Counsel also refers to a judgment of this Court in G. Gopalaswami Vs. G. Navalgarra and Others, , and relies on the observation that a

decision rendered in a petition to condone the delay in filing the claim petition, would be an award and only an appeal would lie against the said

decision. This decision would establish that the earlier decision dismissing the petition to condone the delay would operate as res judicata. To the

same effect is the judgment of another learned Judge of this Court in S. Thangavelu Pillai v. E.M. Mani 1969 ACJ 10.

8. In support of her contention that when once the suit is filed on behalf of the minor and is properly represented by guardian, a decision rendered

in those proceedings would operate as res judicata and that the protection afforded to the minor u/s 44 of the Evidence Act would not be available

in the absence of specific allegations of fraud or collusion, reference is made to

the judgment of Privy Council in AIR 1937 1 (Privy Council) . It is further stated that the said ruling thus makes it clear that the allegation of negligence by the guardian would be irrelevant.

9.1 have considered the submissions of both sides. It is true that the Supreme Court in Dhannalal Vs. D.P. Vijayvargiya and Others, , had held that

the amendment to Section 166 of the Act which was carried out on 14.11.1994, would apply retrospectively to all pending cases. But it was also

specifically made clear that it will not apply to a case where the petition had been rejected and the claimant had allowed the same to become final.

But the contention of learned Counsel for the petitioner that considering that this petition is pending as on date, the judgment of the Supreme Court

would apply, cannot at all be accepted, unless he is able to satisfy the Court that the present petition is maintainable notwithstanding the fact that

the earlier petition filed by the father had been rejected. Learned Counsel for the respondents had relied on the following rulings.

10. In Sukh Rani v. Himachal Road Trans. Corporation 1989 ACJ 312, Punjab and Haryana High Court held that where a widow and minor

daughter had filed the claim petition after the prescribed period of limitation and the Tribunal dismissed the petition as time barred, and in appeal it

was held that the minor daughter could file the claim petition, within six months of attaining majority.

11. In Madhu Vs. Narendra Kumar and Others, , the Madhya Pradesh High Court held that the claim for injuries sustained by a minor filed

through her father as natural guardian four days after the period of limitation, it was held that no question of limitation would arise in the case of

minor since the minor could have filed an application even after attaining the majority.

12. In Jagvir Singh Vs. Dilawar Singh, , Punjab and Haryana High Court dealt with a situation where after the death of the father, the claimant's

mother, grandfather and grandmother passed away one after another, within a short span of six months. The guardianship of the minor was

changed from time to time and in the circumstances, the claim petition could not be filed in time. It was held that the delay in filing the claim petition

was not intentional and the claimant was handicapped to file the claim petition being a minor.

13. In the context of Section 6 of the Limitation Act, learned Counsel refers to the judgment of a Single Judge of Patna High Court in *Satyendra*

Narain Sinha and Others Vs. Pitamber Singh and Others, , holding that in a case where the application by the guardian of the minor for the

execution of the decree was dismissed as time barred, the minor was not precluded from applying for exclusion of the decree within the statutory

period of three years from the date of his attaining majority.

14. It is true that the attempt on the part of the minor in this case, to plead that the prior proceedings initiated by his father should be ignored,

cannot be sustained. I am in agreement with the contentions raised by learned Counsel for the respondents that it would amount to throwing aside

rule of *res judicata* and in all cases where the minors are parties, it would mean that they can reagitate the matter after they attain majority, by

ignoring decrees in which they had been represented by their guardians. It is also true that Section 44 of the Evidence Act is in the nature of

exception to the rule of *res judicata*, namely, minors can question earlier decrees on restricted grounds of fraud and collusion. Though the judgment

of the Privy Council in AIR 1937 1 (Privy Council) , had categorically laid down that negligence cannot be a ground u/s 44 of the Evidence Act,

yet certain later decisions of this Court, appear to lean in favour of including negligence as one of the grounds for interference in the case of minors,

subject to strictly proving negligence on the part of the guardian.

15. In matters relating to setting aside decrees at the instance of minors, a Division Bench of this Court had occasion to deal with the issue in

Chunduru Ponniyya and Others Vs. Rajam Viranna and Others, . That was a case where money borrowed by guardian for trade of the maternal

uncle of the minor was not for a necessary purpose and the mortgage by the guardian was held to be not binding on the minor's estate. It was held

that where the negligence of the guardian *ad litem* of minor is such as leading to the loss of a right which might have been successfully asserted if the

suit had been defended with proper care, the minor can get the decree set aside even without proof of fraud or collusion, also on the ground of

gross negligence on the part of his guardian in the suit.

16. In *Narayanan Nambooripad and Others Vs. Gopalan Nair and Another*, a Division Bench of the Kerala High Court held that a minor can

avoid decree passed against him on the ground of gross negligence of the guardian even if the minor could not succeed in proving fraud and collusion on the part of the guardian.

17. In the light of the above analysis of the law, having regard to the peculiar facts and circumstances of the present case, I am inclined to take a lenient view for the following reasons:

(i) The initial responsibility to file the claim petition within the period of limitation was not properly complied with by the father of the minor. He had a responsibility to do so within the period of limitation.

(ii) There is no trial or decision on merits in the claim petition so as to abhor one more opportunity being given to the minor to reagitate the matter

again. Here is a case where the petition filed by the father was rejected at the threshold itself with the petition to condone the delay being

dismissed. The question is should a minor who was injured and who had lost his mother, should be deprived of a proper remedy.

(iii) The law as on the date is that there is no period of limitation. The Supreme Court had also interpreted the provision liberally, though strictly

speaking this case may not fall under the category of pending cases. The minor has taken steps immediately after attaining majority.

(iv) The delay which has resulted in this case, as on date, is also due to the pendency of the proceedings initiated by the minor both before the

Tribunal and this Court.

18. At the same time, it is true that the interest of the respondents also should be protected and they should not be penalised for the delay at the

instance of the claimant. The interest of the respondents will be adequately protected by making it clear that the claimant will not be entitled to

interest for the intervening period.

19. Therefore, I am inclined to allow the revision petition with a direction to the Tribunal to number the petitions and to dispose them of on merits

within a period of four months from the date of receipt of a copy of this order. It is also made clear that the claimant would be entitled to interest

on the compensation only from this date, and not for the earlier period.

20. In the result, with the above observation, both the above revisions are allowed. No costs.