

(1997) 03 PAT CK 0033
In the Patna High Court
Case No : Misc. Appeal No. 88 of 1995 (R)

Ambika Prasad

APPELLANT

Vs

Ranki Tirkey and Others

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1988 — Section 140, 166, 173, 217

Citation : (1997) 2 BLJR 1108

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prasun Kumar Deb, J.—This appeal has been preferred against the order dated 5.6.1995 passed by the Motor Accident Claims Tribunal cum-3rd Additional District Judge, Chaibasa, in Compensation Case No. 92 of 1990 whereby the application filed by the applicant-respondent No. 1 u/s 140 of the Motor Vehicles Act has been allowed and the appellant has been directed to pay a sum of Rs. 25,000/- as an interim compensation.

2. The short point involved in this appeal is with regard to the limitation. The applicant Ranki Tirkey filed Compensation Case No. 92 of 1990 on account of the death of her husband who died in the motor vehicle accident on 2.5.1990 while he was travelling from Gua to Manoharpur. During the pendency of the claim case, a petition was filed on 22.1.1994 u/s 140 of the Act for payment of interim compensation under no fault liability. The petition has been filed definitely beyond the period of three years from the date of accident and the amendment of the Act deleting Sub-section (3) of Section 166 of the Act has come into force on 14.11.1994 i.e. the amendment came in force when the matter was under consideration by the tribunal. A plea of limitation was taken by the appellant-opposite party i.e. the owner of the vehicle before the tribunal also but no specific plea was there.

3. Mr. P.K. Prasad, appearing for and on behalf of the appellant submits that when the amendment has no retrospective effect then the amendment shall take effect from the date of its promulgation i.e. 14.11.1994. His further submission is that if the petition dated 22.1.1994 filed u/s 140 of the Act would have been decided before the Amendment Act came into force then the petition would be considered as hopelessly barred by limitation and no interim compensation could be awarded in favour of the claimant-respondent. Because of no fault of the parties when the case was under adjudication before the court, the amendment came in force and as such it cannot be held that New Act of the amendment would be enforced retrospectively while adjudicating the petition when it was filed under then amended Act. In this connection, Mr. P.K. Prasad, learned Counsel for the appellant has referred two decisions of the Supreme Court, in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, and Ramesh Singh and another Vs. Cinta Devi and others, . In the first case, the amended Act of 1988 was considered. Therein the petition for claim case was filed u/s 166 of the New Act although the accident occurred when the old Act was enforced. The claim petition being filed after repeal of the Old Act and when the New Act came into force, then it was held that the condonation of delay must be governed by the New Act and not by the Old Act. Practically this ruling goes in favour of the claimant-respondent although it appears that the Apex Court considered the repealing provision of the New Act u/s 217 read with Section 6 of the General Clauses Act. The other judgment of the Apex Court relates to the deposit statutorily made u/s 173 of the New Act at the time of filing of the appeal. It has been held by the Apex Court that whenever award had been passed under the Old Act and right of appeal has been accrued under the Old Act, then even after repealing by the New Act, the appellant is entitled to file appeal without depositing statutory amount u/s 173 of the Act. Another judgment has also been referred to by Mr. P.K. Prasad in M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, , wherein it was held that the application for renewal of permit u/s 58 of the Old Act was filed before the amendment came into force but renewal could be granted when the 1988 Act came in force and after considering the repealing provision, it is held that the petition filed under the Old Act would be continued to be determined under the Old Act itself when the amended Act came in the meantime. But the recent judgment of the Supreme Court which relates directly regarding compensation cases is in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, , wherein it was held that where the claim case was filed u/s 166 of the Act when the previous Act was in force without deletion of Sub-section (3) but during its pendency, the Amendment Act came in, deleting Sub-section (3), the petition should be governed under the new provision wherein the proposition of limitation had totally been withdrawn. The object behind such amendment on withdrawal of limitation has been discussed in this case. It was also observed that supposing that no petition was filed before the Amendment Act came into force, then after the withdrawal of limitation clause, at any time, the claim petition would have been filed then anomaly would arise in a pending case after the limitation is considered under

the unamended Act, then the petition would be barred by limitation while the same claimant would have waited till the amendment comes in then his petition would have been maintainable. In that analogy, it was held that when the amendment came in force and when the petition was pending for adjudication then the claim case should be decided as if no limitation was applicable under the amended Act.

4. Mr. P.K, Prasad has tried to distinguish the recent judgment by stating that the previous judgments of the Apex Court as referred to above had not been considered in the latest judgment and by referring to it the principle of per incuriam as decided by the Apex Court in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, should come in to play.

5. These compensation cases are governed by the socio economic legislation and the hardship created due to putting up of the period of limitation which caused many persons to come to the street when the sole bread earner of the family in the rustic society died in accident and due to ignorance of law, the family members could not come up in time for filing the claim case. u/s 140 of the Act, practically no limitation was ever prescribed either under the New Act or under the Old Act. This section had been enumerated on no fault principle for speeding up payment of compensation to the family members of the victims. This is a beneficial provision which entitles the legal representative of the victim to get the minimum statutory relief expeditiously besides the lingering process of enquiry u/s 166 of the Act. Here even the negligence or rashness are not required to be proved or alleged. Under this provision in the accident cases, legal representatives are entitled to get the amount of no fault liability besides the provision of hit and run compensation. This is a unique provision and completely a departure from the usual common law that the claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation. When there is no limitation provided then the repealing provisions as contemplated u/s 217 would not be applicable in the present case also on the analogy of Section 6 of the General Clauses Act as this provision is the unique provision and a complete departure from the usual common law. Law Commission has mentioned in the report regarding the difficulties creating bar of limitation in getting compensation by the family members of the victim of accident cases and then the deletion of limitation clause has been made in the Act.

6. Moreover, in the present case, it appears that the claim case was filed earlier and the petition u/s 140 of the Act was preferred during the pendency of the claim case filed u/s 166 of the Act. Three years limitation as per the saving provisions under the amended Act i.e. Section 217(4) would have no application in the present case because of the uniqueness of the provision itself. Moreover when it is socio economic legislation, always it should be construed in favour of beneficiaries without putting unnecessary hurdles and restrictions to give benefit to the legal representative of the victims. The same view has been expressed by

this Court also in the case of Dasrath Prasad and Ors. v. Catholic Charities, Daltonganj and Ors. (1996) 1 BLJR 44. Regarding the liability of the truck owner or the insurer of the truck at the relevant time or not have not been argued by the learned Counsel for the appellant and these matters can very well be construed at the time of full- fledged enquiry u/s 166 of the Act, but for no fault liability, the owner has rightly been ordered to pay the interim compensation of no fault liability.

7. For the reasons aforesaid, this appeal has got no force and hence the same is dismissed but without costs.