

(2000) 11 KL CK 0080

In the High Court Of Kerala

Case No : O.P. No"s. 4450,7284 of 1992 and M.F.A. 82 of 1992

Balakrishnan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-11-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166, 166(3)

Citation : (2001) 1 KLJ 93

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : Grashious Kuriakose, Tomy Sebastian and T.I. Abdul Salam, for the Appellant; P.V. Madhavan Nambar, K.V. Gopinathan Nair, Thomas Mathew Nellimoottil and C.K. Pavithran, Govt. Pleader, for the Respondent

Judgement

Radhakrishnan, J.—In all these cases a common question arises for consideration. Petitioners in the Original Petitions and appellant in the M.F.A. were claimants before various Motor Accidents Claims Tribunals. They filed applications for compensation u/s 166 of the Motor Vehicles Act, 1988. All the applications were dismissed by the Tribunals stating that they were barred by law of limitation. Applications were dismissed on the basis of statutory provision, which is extracted below:

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—

(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.

In all these cases, applications were preferred after the period of one year. Consequently, all the applications were dismissed stating that they were out of time. Aggrieved by those orders, Writ Petitions and M.F. Appeal are preferred.

In the Writ Petitions, petitioners challenge the constitutional validity of the above mentioned provision. They sought for a declaration that the proviso to sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 (Central Act 59/ 88) in so far as it takes away the powers of the Claims Tribunals under the Act, to entertain application for compensation submitted beyond the period of one year from the date of occurrence of the accident, is unconstitutional. Learned single Judge referred all these Writ Petitions to a Bench by a reference order dated 23.7.1992.

2. When the matter came up for hearing, counsel for the petitioner in O.P. No. 4450 of 1992, Shri. George Sebastian, pointed out that the above provision was subsequently deleted from the statute book by Act 54 of 1994 with effect from 14.11.1994. In view of the said circumstance, we need not go into the constitutional validity of the said provision. However, the question which remains to be considered is whether the applications preferred before the coming into force of Act 54 of 1994, by which Section 166(3) was deleted, could be considered by the Tribunal since no time limit has been prescribed for preferring applications u/s 166 of the Act, after the amendment which was effected by Act 54 of 1994.

3. We may in this respect examine the reasons which prompted the Parliament to delete those provisions as per Act 54 of 1994. The Statement of Objects and reasons which resulted in the Motor Vehicles (Amendment) Act, 1994 (Act 54 of 1994) shows that after coming into force of the Motor Vehicles Act, 1988, the Central Government received a number of representations and suggestions from the State Governments, transport operators and members of public regarding the inconvenience faced by them because of the operation of some of the provisions of the 1988 Act. Accordingly the Government of India constituted a Review Committee in March, 1990 to examine and review the 1988 Act. The recommendations of the Review Committee were forwarded to the State Governments for comments and they generally agreed with the recommendations of the Review Committee. The Central Government also considered a large number of representations received, after finalisation of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendation of Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The Transport Development Council made various suggestions one of which suggestion was to remove the time limit for filing of application by road accident victims for compensation. The said suggestion was subsequently accepted by the Central Government, which resulted in a legislation which was published in the Gazette of India Extra. Part II dated 12.9.1994, which received

the assent of the President on 10.9.1994. The amendment was necessitated so as to ameliorate the difficulties experienced by the motor accident victims. In very many cases, due to various reasons, including the injuries sustained by the victims, applications could not be made in time. Consequently, on the ground of limitation, applications were to be dismissed. There are many cases where victims were hospitalised for a number of years and in the cases of death and permanent disability, even legal representatives also due to the unfortunate accident occurred to the victims, were not in a state of mind to prefer applications in time. All those factors probably weighed with the Review Committee to remove the time limit for filing of application by road accident victims for compensation.

4. Question arose as to whether the benefit of deletion of the provision, Section 166(3), would enure to the benefit of those persons who have challenged the order of dismissal of the application on the ground of limitation. This pointed has come up for consideration before the Apex Court in *Dhannalal Vs. D.P. Vijayvargiya and Others*, . With regard to the cases where parties are litigating, and pending before various forums, the Apex Court opined as follows:

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 Motor Vehicles (Amendment) Act 1994, which came into force with effect from 14.11.1994. The effect of the Amendment Act is that with effect from 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 the 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 hospitalised 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.

With regard to cases where the application for compensation was dismissed on the ground of delay, and the applicants have been agitating before the Courts, the Apex Court held as follows:

In this background, the deletion of sub-section (3) from Section 166 should be given full effect so that the objection 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 filing 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 filing 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.

At the same time, the Apex Court also cautioned that in a case where the petition having been filed beyond time, and which has been rejected by the Tribunal or the High Court, if the claimant does not challenge the same, the same would become final. The Apex Court stated as follows:

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 petitioner 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.

5. The above mentioned Supreme Court decision was followed by one of us, Sasidharan, J., in the decision in *PRADEEP KUMAR v. KESAVAN KUTTY NAIR*, 2000 (3) KLT 460. Learned Judge opined that no fresh petition need be filed if petition is already pending consideration before: this Court, as if the provision has been deleted, the Tribunal has got power to entertain the said application. In view of the above mentioned judicial pronouncements, though the petitioners' applications were dismissed by the Tribunal on the ground of limitation, they are entitled to have their applications considered by the Tribunal. Accordingly all the Writ Petitions and the Appeal are disposed of directing the respective MACT to entertain petitions preferred by the parties and pass appropriate orders in accordance with law without delay.