
(1996) 10 KAR CK 0053
In the Karnataka High Court
Case No : M.F.A. No. 3981 of 1996

Chaluva

APPELLANT

Vs

C.H. Mahadeva and Others

RESPONDENT

Date of Decision : 25-10-1996

Acts Referred:

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

Citation : (1996) 10 KAR CK 0053

Hon'ble Judges : S. Rajendra Babu, J;Kumar Rajaratnam, J

Bench : Division Bench

Advocate : K.T. Gurudeva Prasad, for the Appellant; Hegde Associates, for the Respondent

Final Decision : Allowed

Judgement

S. Rajendra Babu, J.—Though this matter is listed for admission, notices have been issued to the respondents also. After admitting, the matter is taken up for final disposal with the consent of the learned Counsel on both sides.

2. This appeal arises under the Motor Vehicles Act. An application u/s 166 of the Motor Vehicles Act was presented before the Motor Accidents Claims Tribunal at Mysore along with an application for condoning the delay in filing the claim petition. The accident in question is said to have taken place on 14.1.1988. The petition came to be filed on 26.4.1990. The Tribunal dismissed the said petition on the ground that the same is barred by limitation in the light of the decision of this Court in National Insurance Co. Ltd. Vs. Lachha, . It was held in that decision that, if an accident took place prior to the 1988 Act came into force and claim petition is filed after 1.7.1989 when the Act had come into force, u/s 110-A of the 1939 Act it is barred by limitation because it is presented after one year from the date of the accident. When a somewhat similar question came up for consideration before the Supreme Court in Dhannalal Vs. D.P. Vijayvargiya and Others, , the effect of repeal of Sub-Section (3) prescribing limitation for filing claim petition before the Tribunal has been considered. When this Court in

National Insurance Co. Ltd. v. Lachha (supra) considered the provisions, Sub-section (3) was available. The said provisions had stood repealed by the time the Supreme Court decided the matter in Dhannalal's case (supra). Considering the effect of the same, it was noticed that the effect of the amending Act is that, there is no limitation for filing claim before the Tribunal in respect of any accident. It was noticed that Parliament realising the grave injustice and injury which have been caused to the legal heirs of the victim who died in the accident or claimants who sustained injury should not suffer rejection of their claim only on the ground of limitation, repealed Sub-section (3) of the Act. It is a matter of common knowledge that majority of claimants for such compensation are ignorant of the period during which such claims should be preferred. The Supreme Court noticed that in the wisdom of Parliament, it was rightly thought that prescribing the period of limitation restricting the power of the Tribunal to entertain any claim petition beyond the period of 12 months from the date of accident was harsh, inequitable and in many cases was likely to cause injustice to claimants. With that object Sub-section (3) of Section 166 of the Motor Vehicles Act was deleted.

3. In this case, the accident took place prior to repeal of Motor Vehicles Act, 1939 and that Act enabled a claimant to seek condonation of delay in preferring a claim. The claim petition was pending as on 14.11.1994 when Motor Vehicles (Amendment) Act, 1994 came into force repealing provision of Section 166(3). The said provision stood repealed before disposal of the matter. Sub-section (3) of Section 166 having been deleted, it was no longer open to the Tribunal to consider applying the said provision and reject the claim on the ground of limitation following the decision of this Court in National Insurance Co. Ltd. Vs. Lachha, to which we have referred earlier. The law available as on the date of the decision if applied, would not bar the claim on the ground of limitation. If the provision deleting Section 166(3) of the Motor Vehicles Act, 1988 is not retrospective, the law applicable is under Motor Vehicles Act, 1939 which enabled the claimant to seek condonation of delay in not preferring the claim in time prescribed by law. Even on that basis, appellant has to succeed. The appellant has set out the circumstances in which he could not prefer the claim petition within the time allowed by law at that time. We are satisfied with the grounds set forth by him and the delay in preferring the claim petition should be condoned. Hence, IA No. 1 is allowed. We are of the view that the Tribunal was not justified in rejecting the claim of the appellant only on the ground of limitation. The order made by the Tribunal on IA No. 1 stands set aside and the matter shall stand remitted to the Tribunal for fresh consideration in accordance with law.

Appeal is allowed accordingly.