

**(2003) 04 RAJ CK 0090**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 708 of 1997

Hazna (Smt.) and Others

APPELLANT

Vs

Prabhu Lal and Others

RESPONDENT

**Date of Decision :** 16-04-2003

**Acts Referred:**

Limitation Act, 1963 — Article 137

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

**Citation :** (2004) 2 RLW 800 : (2003) 4 WLC 234

**Hon'ble Judges :** H.R. Panwar, J

**Bench :** Single Bench

**Advocate :** B.K. Bhatnagar, for the Appellant; A.K. Rajwanshi, for Respondent Nos. 1 and 2 and Anil Bachhawat, for the Respondent

**Final Decision :** Allowed

## Judgement

Panwar, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short, "the Act") is directed against the judgment and Award dated 26-8-97 passed by the Motor Accident Claims Tribunal, Dungarpur (for short, "the Tribunal"), whereby the Tribunal dismissed the claim petition filed by the appellant- claimants (for short, "the claimants"). Aggrieved by the judgment and Award impugned, the claimants have filed the instant appeal.

2. I have heard learned counsel for the Parties, perused the judgment and Award impugned and also gone through the record of the Tribunal.

3. Briefly stated, the facts and circumstances, which are relevant and necessary to decide this appeal are that on 19-2-90, at about 1:30 P.M. deceased Kana was hit by a bus bearing No. RSG 2814 which was being driven at a great speed rashly and negligently by its driver, respondent No. 1 Prabhu Lal. Due to this accident, Kana was grievously hurt and succumbed to the injuries instantaneously. Claimants, who are the parents of deceased Kana, filed a claim petition for compensation before the Tribunal on 20-9-96. The plea of limitation was raised before the Tribunal. The learned Tribunal, on appreciation of the

evidence produced before it, came to the conclusion that the said accident resulted due to rash and negligent driving of the bus by its driver and held him responsible therefor. The said bus was owned by respondent No. 2 at the relevant time and it was insured with respondent No. 3. While making computation of the amount of compensation, the Tribunal computed it to the tune of Rs. 92,500/-. However, on the issue of limitation, the Tribunal held that the claim petition was barred by limitation and dismissed the same.

4. In the instant case, the claim petition was filed on 20-9- 96, i.e. after coming into force of the Amendment Act (No. 54 of 1994), which came into force w.e.f. 14-11-94, by which Sub-section (3) of Section 166 of the Act was omitted and as such, on the date of filing of the claim petition, i.e. on 20-9-96, Sub-section (3) of Section 166 of the Act was not on the statute. Before the Amendment Act (No. 54 of 1994) came into force, Sub-section (3) of Section 166 of the Act was operative, which provided six months' limitation for filing a claim and the outer limit was that of one year. Before Sub-section (3) of Section 166 was omitted by the Amendment Act, the period of limitation was six months and not later than one year. The Legislature realised that the great injustice and injury, was being occasioned to the heirs and legal representatives of the victims dying in accidents due to by rejection of their claim petitions only on the ground of limitation and, therefore, by the Amendment Act No. 54 of 1994, it omitted Sub-section (3) of Section 166 of the Act from the Statute. Thus, on the date of filing the claim petition on 20-9-96, in the instant case, there was no bar of limitation operating against the claimants in law as no period of limitation was prescribed for filing the same.

5. Moreso, it is settled law that the Law of Limitation is a procedural law and the provisions existing on the date of filing the claim petition must apply to it. In *C. Beepathuma and Ors. v. Velasari Shankaranarayana Kadambolihaya and Ors.* (1), the Hon'ble Apex Court held that there is no doubt that the Law of Limitation is a procedural law and the provisions existing on the date of suit shall apply to it. Thus, on the date of filing of the claim petition in the instant case, the provisions of the Amendment Act, 1994 shall be applicable and as such no period of limitation was prescribed on the date of filing the claim petition.

6. The learned Tribunal dismissed the claim petition on the ground that after omission of Sub-section (3) of Section 166 by the Amendment Act, 1994, the general provisions of the Limitation Act, 1963 shall apply and the Tribunal proceeded with the premises that Article 137 of the Limitation Act provides the period of limitation of three years in those cases where no period of limitation is provided elsewhere in this Division. The view taken by the Tribunal cannot be sustained for the reason that the Motor Vehicles Act is a "special statute" and the claim for compensation is governed by the special statute and if the Legislature, in its wisdom, has omitted the clause of limitation from the said statute then the provisions of the Law of Limitation cannot be made applicable thereto. The provisions of Article 137 of the Limitation Act do not apply in the claim cases filed

u/s 166 of the Act and the provisions of Article 137 of the Limitation Act govern the applications filed under the CPC only.

7. In *Ajaib Singh v. The Sir Hind Co-operative Marketing-cum Processing Service Society Ltd. and Anr.* (2), the Hon'ble Apex Court, while interpreting the provisions of Article 137 of the Limitation Act, held that regard must be had to the provisions contained in all the earlier Articles. The other Article in the Third Division to the Schedule refers to the application under the CPC with the exception of applications under the Arbitration Act and also in the cases of applications under the Code of Criminal Procedure. It was further held by Their Lordships of the Hon'ble Supreme Court that one factor atleast remains constant and that is that the applications must be to courts to be governed by the Articles in this division. The scope of various Articles in this division cannot be held to be so enlarged as to include within them the applications to bodies other than courts, such as a quasi-judicial Tribunal or even an Executive Authority.

8. In *Sakura v. Tanaji* (3), the Hon'ble Apex Court held that the provisions of the Limitation Act applied only to proceedings in courts and not to appeals or applications before the bodies other than the courts such as quasi-judicial Tribunals or the executive authorities, notwithstanding the fact that such bodies or authorities may be vested within them certain specified powers conferred on the courts under the Codes of Civil or Criminal Procedure. Similar view has been taken by the Apex Court in *Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli* (4), and *Nityanand M. Joshi v. Life Insurance Corporation of India* (5).

9. In *Ajaib Singh* (supra), the issue of limitation came to be considered by the Hon'ble Apex Court with regard to the disputes referred under the Industrial Disputes Act, 1947 and Their Lordships held that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act.

10. In the instant case, the proceedings before the Tribunal were under the Motor Vehicles Act as amended by Act No. 54 of 1994 and, therefore, Article 137 of the Limitation Act had no application before the Tribunal. Moreso, because the Law of Limitation, being procedural law, applies only to those provisions which are applicable on the date of filing the claim petition. Obviously, on the date of filing the claim petition, i.e. on 20-9-96, no period of limitation was provided by the Statute and, therefore, the finding of the Tribunal, based on Article 137 of the Limitation Act, 1963, cannot be sustained in the eye of law and the same deserves to be set-aside.

11. In *Dhannalal v. D.P. Vijayvargiya and Ors.* (6), the Hon'ble Supreme Court observed as under:-

"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 Amendment 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 dies 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 hospitalised for months if not for years."

Their Lordships further held as under:-

"..... .there is nothing in the Amending Act to show that benefit of deletion of Sub-section (3) of Section 166, is not 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."

12. The Hon"ble Apex Court, in *New India Assurance Co. Ltd. v. Ramesh Bhai C. Patel and Ors.* (7), held as under:-

"In our opinion, these are mere procedural or technical objections which should not frustrate the course of justice. The object of omitting Sub-section (3) of Section 166 of the Act to remove the bar of limitation for a claim petition is obvious. This being so, a matter which was pending in the High Court when this change was brought about, should be governed by the effect of omission of Sub-section (3) of Section 166."

13. A Division Bench of this Court, in *Man Singh v. Gamer Rebari and Anr.* (8), held as under:-

"The Motor Vehicle Act is a special statute in which earlier, there was a provision of limitation u/s 166 of the Act. Once that has been omitted from the statute,

then in our considered opinion, the learned Tribunal was wholly in error in applying the general law of limitation under the Limitation Act. If the view taken by the learned Tribunal is upheld, then the very purpose of Parliament in deleting the provisions of Section 166(3) of the Act from the statute would stand totally frustrated."

14. In view of the above settled proposition of law, the finding of the Tribunal, holding the claim petition barred by limitation, cannot be sustained and the same is hereby set-aside.

15. Before me, the quantum of compensation is not under challenge, The Tribunal computed the compensation to the tune of Rs. 92,500/- to which the claimants are held entitled.

16. Consequently, the appeal is allowed. The judgment and Award impugned is set aside. The claim petition filed by the claimants is allowed to the extent that they are entitled for the compensation to the tune of Rs. 92,500/- (Rs. Ninety-two thousand five hundred only) from the respondents jointly and severally. The aforesaid amount shall carry interest @ 9% per annum from the date of application till realisation. Since the vehicle in question was insured at the relevant time with respondent No. 3, the United India Insurance Company Ltd., the insurance company is directed to deposit the amount of compensation alongwith interest with the Tribunal and on such deposit being made, the Tribunal shall disburse the compensation in favour of the claimants. In the facts and circumstances of the case, there shall be no order as to costs.