(1992) 03 GUJ CK 0032

In the Gujarat High Court

Mer Ramdas Bejanand Bhai APPELLANT

Vs

Harshad Bhai Mala Bhai RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5, 5
Motor Vehicles Act, 1988 — Section 166(3), 166(3)

Citation : (1992) 1 ACC 717

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—Does the proviso to Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 restrict/limit the power of the Claims

Tribunal to condone the delay caused in filing application for compensation to a period of 12 months from the date of occurrence of accident?

Does the proviso exclude expressly or otherwise the application of Section 5 of the Limitation Act, 1963 or principle underlying said Section 5 to

an application for condemnation of delay caused in filing the application for compensation?--These are the twin questions posed for consideration

in these petitions under Article 227 of the Constitution of India.

2. These two petitions under Article 227 of the Constitution of India are directed against the judgment and order of the Motor Accident Claims

Tribunal, Porbandar, dated 18th July 1991 passed in Motor Accident Claim Petition Nos 56/91 and 60/91 respectively. By the said impugned

judgment and order the Tribunal has rejected the applications of the petitioner in each case on the ground that such petition is filed beyond the

prescribed period of limitation and since it is filed beyond six months after expiry of prescribed period of six months, the Tribunal has no authority

in law to condone the delay. In Special Civil Application No. 5806/91 the accident in question took place on 8th February 1990 and the petitioner

(original claimant) sustained injuries. The Motor Accident Claim Petition is filed on 1.4.91.

Since the petition for compensation was filed beyond prescribed period of limitation and the same was not numbered and application for

condonation of delay was numbered as Miscellaneous Claim Petition No. 561/91.

3. In Special Civil Application No. 5807/91 the accident in question took place on 8.2.90 and the Motor Accident Claim Petition came to the filed

on 9.4.91. Since the petition was filed beyond period of one-year application for condonation of delay was registered as Miscellaneous Claim

Petition No. 560/91.

4. In view of the fact that any decision the aforesaid question was likely to affect a large number of claimants, whose claim petitions were filed

beyond the period of 12 months from the date of occurrence of the accident after coming into force of the new Act, and in view of the fact that the

Insurance Companies would like to contend that proviso to Section 166(3) should be strictly construed so as to leave no scope for condonation of

delay beyond the period of 12 months from the date of the occurrence of the accident, this Court invited the members of the Bar to address the

Court at length on the effect of change in the language used in proviso to Sub-section (3) of Section 166 of the New Act.

5. Mr. C.D. Kakkad, Mr. T.S. Nanavaty, Mr. C.J. Vin and Mr. Mohit S. Shah have addressed the court at length to contend that even after the

enactment of the new Act and despite enactment of proviso to Sub-section (3) of Section 166 it should be held that the claims Tribunal has power

to condone delay beyond a period of six months by resort to Section 5 of Limitation Act because provisions of the Limitation Act are not

expressly excluded by Motor Vehicles Act, 1988. They have further submitted that Section 166 of the New Act is not a complete Code providing

the entire procedure for making an application for condonation of delay. They have further submitted that there is no express prohibition enacted

either u/s 166 or under any other provisions of the New Act prohibiting a Claims Tribunal from entertaining an application filed beyond the period of 12 months nor is there any provision which expressly excluded the application of the provisions of Limitation Act, 1963 to the proceedings

before a Claims Tribunal. The Learned Counsel have referred to Section 29(2) of the Limitation Act. Section 29(2) reads as under:

Section 29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period

prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the

purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained

in Section 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

6. By reference to the aforesaid provision, it is contended that the Motor Vehicles Act, 1988 is a Special Law, which prescribed a period of

limitation for making an application for compensation. Such period is prescribed by Section 166(3) and the period of limitation is six months from

the date of the occurrence of the accident. It is the submission that the limitation prescribed by Sub-section (3) of Section 166 is different from the

limitation prescribed by the Limitation act, 1963. They submitted that under Fatal Accident Act, the prescribed period of limitation is two years

under Article 82 of the Limitation Act or for any other application for compensation for injury, the Residuary Article 113 of the Limitation Act

would apply which prescribes a period of three years. Therefore, they submitted that the limitation prescribed by Section 166(3) for making an

application for compensation is different from the limitation prescribed by the schedule to the Limitation Act and, therefore, unless the provisions

contained in Section 4 to 24 (inclusive) of the Limitation Act are expressly excluded by the said law, the principle underlying the said provisions of

Section 4 to 24 of the Limitation Act would apply to an application for compensation filed before the Claims Tribunal. They further submitted that

there is no exclusion of Section 5 of the Limitation Act and, therefore, the Court could apply the provisions of Section 4 to 24 of the Limitation Act

to a proceeding before the Claims Tribunal so as to empower a Claims Tribunal to condone delay caused in filing the application for compensation

even beyond the period of 12 months from the date of the occurrence of the accident.

7. On the other hand, in response to the notice, Mr. Rajni H. Mehta, Mr. P.F. Makwana, Mr. Darshan Parikh and Mr. R.P. Waghela have

appeared on behalf of different Insurance companies and they have submitted that the Section 166 of the said Act is a complete Code and

legislature has purposively taken away the uncontrolled and unlimited power to condone delay which was hitherto conferred on a Claims Tribunal

u/s 110(A) of the old Act. Such deliberate purposive exercise undertaken by the legislature should not be rendered meaningless or otiose by

reference to Section 29(2) of the Limitation Act so as to make applicable underlying principle of Section 5 of the Limitation Act to a claim petition

which is filed beyond the prescribed period of limitation. In the alternative, they have submitted that by confining the power of Tribunal to condone

delay up to a period of 12 months only from the date of the occurrence of the accident the legislature has expressly excluded applicability of

Section 5 of the Limitation Act, 1963 to claim petition or the legislature has made applicable the provisions of Section 5 in its limited application for

a period of 12 months only from the date of the occurrence of the accident. The provisions to Sub-section (3) of Section 166, therefore, should be

read as a provision expressly excluding the unlimited scope of Section 5 of the Limitation Act and, therefore, a in their submission the Court should

not once again extend the power of the Tribunal to condone delay beyond the period of 12 months from the date of the accident which is sought to

be taken away deliberately and purposefully by the legislature. In their submission to accept the argument of the petitioners would amount to

making the legislature exercise futile and meaningless and court should accept that interpretation which would harmoniously construe the statute so

as not to render the statute in effective and in operative.

8. Mr. Rajni H. Mehta and Mr. C.J. Vin also referred to Maxwell on interpretation and pleaded that as per Golden rule of construction when two

interpretations of Statute are permissible, narrow interpretation should be avoided and interpretation which is nearer to the objective sought to be

achieved by the Statute should be accepted. Mr. Rajni H.Mehta has also invited attention of this Court to various other statutes, an identical

provision contained in such Statutes where power to condone delay beyond a specified time is taken away from the tribunal or quasi-judicial authority and by process of reasoning by analogy he has submitted that since the legislature has in the new Act specifically taken away the power

of the Claims Tribunal to condone delay in making application for compensation beyond a period of 12 months of the occurrence of the accident,

the court should not resort to any other provision so as to make the amendment made by the legislature ineffective or meaningless.

9. In order to appreciate and properly answer the questions raised in these petitions, it will be necessary to refer to old Section 110-A of the

Motor Vehicles Act, 1939 in juxtaposition with new provision in the Motor Vehicles Act, 1988, viz. Section 166 in a Tabular form:

____

110A of the Old Act 166 of the New Act

____

Application for compensation: Application for compensation:

An application for compensation (1) An application for compensation

arising out of an accident of the arising out of an accident of the

nature specified in Sub-section (1) nature specified in Sub-section (l)

of Section 110 may be made- of Section 165 may be made-

(a) By the person who has sustained (a) By the person who has sustained

the injury; or the injury; or

(aa) by the owner of the property; or (b) By the owner of the property; or

(b) here death has resulted from the (c) Whether death has resulted from

accident, by all or any of the legal the accident by all or any of the

representatives of the deceased; or legal representatives of the

deceased; or

(c) by any agent duly authorised by the (d) By any agent duly authorised

person injured or all or any of the by the person injured or also any

legal representatives of the deceased, of the legal representatives of

as the case may be: the deceased, as the case may be

Provided that where all the legal Provided that where all the legal

representatives of the deceased representatives of the deceased
have not joined in any such have not joined in any such appli-
application for compensation, cation for compensation, the appli-
the application shall be made cation shall be made on behalf of or
on behalf of or for the benefit for the benefit of all the
of all the legal representatives legal representatives of the
of the deceased and the legal deceased and the legal representatives
representatives who have not who have not so joined, shall be
so joined, shall be impleaded as impleaded as respondents to
respondents to the application. the application.
(2) Every application under (2) Every application under sub-
sub-Section (1) shall be made Section (l) shall be made to
to the Claims Tribunal having the Claims Tribunal having juris-
jurisdiction over the area in diction over the area in which the
which the accident occurred and accident occurred, and shall be
shall be in such form and shall in such form and shall contain
contain such particulars as such particulars as may
may be prescribed. be prescribed.
Provided that where any claim for Provided that where any claim
compensation u/s 92-A for compensation u/s 140
is made in such application, the is made in such application, the
application shall contain a separate application shall con-(sic) in a
statement to that effect separate statement to that effect
immediately before the signature immediately before the signature
of the applicant; of the applicant.
(3) No application for such (3) No application for such compe-
compensation shall be entertained nsation shall be entertained
unless it is made within six months unless it is made within six months
of the occurrence of the accident. of the occurrence of the accident.
Provided that the Claims Tribunal Provided that the Claims Tribunal

may entertain the application after the may entertain the application after

expiry of the said period of six months the expiry of the said period of six

if it is satisfied that the application months but not later than twelve

was prevented by sufficient cause from months if it is satisfied that the

making the application in time. applicant was prevented by sufficient

cause '' from making the

application in time.

---

10. The fundamental change brought about by the Act of 1988 is to be noticed in Sub-section (3) of Section 166 as compared to Sub-section (3)

of Section 100 A. Under the old provision of Section 110-A (3) no application for compensation shall be entertained unless it was made within six

months of the occurrence of the accident. The said provision is retained in Sub-section (3) of Section 166 of the new Act. However, proviso to

Sub-section (3) to Section 166 is materially different from proviso to Sub-section (3) of Section 110A. Under the old proviso to Section 110A(3)

the Claims Tribunal was empowered to entertain the application for compensation after the expiry of the period of six months if it was satisfied that

the applicant was prevented by sufficient cause from making the application in time. Having provided a substantive period of limitation of six

months for making the application for compensation from the date of occurrence of the accident the legislature left very wide power to the Claims

Tribunal to entertain even application filed beyond the period of six months provided the Tribunal was satisfied that the applicant was prevented by

sufficient cause from making the application in time. It was a very wide power to condone delay caused in filing application within the prescribed

time. Such power to condone delay on establishment of sufficient cause which prevented the applicant from making an application for

compensation was to be exercised by the Tribunal on application of well established principle of law for condonation of delay. The principle are

analogue to those which are applied by the court while condoning delay on sufficient cause being shown u/s 5 of the Limitation Act, 1963. It was

the exercise of the judicial discretion by application of factors relevant to condonation of delay u/s 5 of the Limitation Act that the Claims Tribunal

was expected to exercise the power of entertaining application for compensation which were preferred beyond the prescribed period of limitation.

11. However, to the said position of law which was very much present before the Parliament when it enacted Motor Vehicles Act, 1988 and more

particularly Section 166 of the said Act, it enacted a different proviso to Sub-section (3) of Section 166. Under the new proviso, Claims Tribunal

is empowered to entertain the application after the expiry of the prescribed period of six months on it being satisfied that the applicant was

prevented by sufficient cause from making the application in time subject to one further restriction or limitation and that limitation is introduced by

the words ''but not later than 12 months''. By introducing said words the Parliament has substantially limited the power of the Claims Tribunal to

condone delay. A Claims Tribunal entertaining an application for compensation after Motor Vehicles Act, 1988 has come into force shall have to

act under amended proviso to Sub-section (3) of Section 166 and by such proviso it can condone delay in making an application for compensation

filed beyond the prescribed period of six months but up to a period of 12 months only. Therefore, it can in substance condone delay in preferring

an application for compensation up to a period of 12 months only from the date of the occurrence of the accident. In other words, the Tribunal has

jurisdiction to condone delay between the first day of seventh month and last day of 12th month. The duration of delay which could be condoned

by the Tribunal in making an application for compensation is thus additional period of six months only. From the date of occurrence of the accident

application for compensation shall have to be filed within six months and if there is delay in filing application for compensation, it can not be

entertained under any circumstances beyond 12 months from the date of the occurrence of the accident. In order to bring out the desired

curtailment on the power of condoning delay and in order to see that the Tribunal does not entertain the application for compensation filed beyond

the period of 12 months from the date of the occurrence of the accident the legislature has used negative phraseology by using following words

but not later than 12 months"". The Parliament has before it the proviso to Sub-section (3) of Section 110-A, the Parliament has not thought it fit to retain very proviso by enacting Section 166(3). The substantive provision prescribing limitation is retained by enacting Sub-section (3) of Section

166, which is identical to Sub-section (3) of Section 110-A of the old Act. The Parliament has, however, deliberately amended the proviso and as

against very wide power to condone delay in making an application for compensation which was hitherto conferred on Claims Tribunal under

unamended proviso to Section 110-AA(3), the Parliament has now by purposefully amending proviso, substantially restricted the said power of

Claims Tribunal to condone delay only ï¿½up to a period of 12 months from the date of the occurrence of the accident. Beyond the period of 12

months from the date of the occurrence of the accident, Claims Tribunal shall have no power to condone delay. Beyond 12 months from the date

of the occurrence of the accident, Tribunal will have no jurisdiction to condone delay. The proviso to Sub-section (3) of Section 166 thus curtails

hitherto wide power of condonation of delay beyond a period of 12 months from the date of the occurrence of the accident.

12. Very recently in the case of Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, , the Supreme Court as called upon to decide

the effect of proviso to Section 166(3) on the power of the Claims Tribunal. Before the Supreme Court, the appellant was injured in a road

accident, which took place on 22nd January 1989. The Motor Vehicles Act, 1939 was repealed by Section 217(1) of the Motor Vehicles Act,

1988. The New Act came into force on 1st July 1989. Thus the accident took place on a date on which the old act, the Motor Vehicles Act 1939

was in force. However, when the petition for compensation came to be filed, the new Act had come into force. The claim petition was filed on

15th March 1990 with a prayer for condonation of delay. The period of limitation for filing the claim petition both under the old Act and the new

Act was six months. The said period, therefore, expired on 22nd July 1989 and by that time on 1st July 1989 the new Act came into force.

Therefore, on the date on which the petition was filed, it was the new Act, which was in force. The question before the court was as to which

provision would apply to such claim petition and secondly as to whether it was competent for the Claims Tribunal to condone delay caused in filing

the application for compensation. While examining the aforesaid questions, the Supreme Court noticed that the period of limitation for filing the claim petition both under the old Act and the new Act is six months from the date of accident The difference in the two Acts is in regard to the

provisions relating to the condonation of delay. In view of proviso to Sub-section (3) of Section 166 of the new Act, the maximum period of delay

which can be condoned by a Claims Tribunal is six months. Therefore, if the new Act was held to be applicable the petition for compensation

preferred by the claimant in March, 1990 was one which was required to be dismissed because the Claims Tribunal had no power or authority to

condone delay beyond the period of six months. However, under the old Act no restriction was placed on the power of the Tribunal to condone

delay and under proviso to Sub-section (3) of Section 110A unconfined and unlimited power was given to a Claims Tribunal to condone delay on

sufficient cause being shown. While negativing the contention that the old Act would apply since the accident has occurred on 22nd January, 1989,

date on which the old Act was applicable, the Supreme Court held that the appellant before it has not been deprived of an accrued right or

privilege to claim the compensation which the claimant was entitled to, by reason of the accident and it was certainly enforceable as a right. The

Court thereafter observed as under:

So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act

subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same can

not be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new

enactment leaves the claimant with such a short period for commencing the legal proceedings so as to make it unpractical for him to avail of the

remedy.

After undertaking an exhaustive analysis of various decisions dealing with period of limitation and curtailment thereof by a subsequent statute, the

court held as under:

There is a vital difference between an application claiming compensation and a prayer to condone the delay in filing such an application. Liberty to

apply for a right is not in itself an accrued right or privilege.

13. The Court found that in the case before it, the period of limitation for

condoning the delay under the old as well as the new Act was of six

months which expired three weeks after coming into force of the new Act. It was therefore, open to the claimant to file his claim within the said

period or even latest by July 22, 1989 with a prayer to condone delay. The right of the claimant to claim compensation was not affected at all by

the substitution of one Act for another. Since the period of limitation remaining the same, there was no question of the claimant being taken by

surprise. So far as the question of condonation of six months delay was concerned, there was no change in the position under the new Act. The

court found that the proceedings were actually initiated when the old Act covered the field. A claimant could say that his right being accrued on

filing of the petition could not be taken away. However, in the case on hand, the court found that the right or privilege to claim benefit of a

provision for condonation of delay can be governed only by the law in force at the time of delay. Even the hope or expectation of getting the

benefit of an enactment presupposes applicability of the enactment when the need arises to take its effect. The Court, therefore, ruled that benefit

of the repealed law could not be available to the appellant because the question for the first time arose only after the repeal of the old law and

therefore benefit of the repealed law was not available. The court, therefore, ruled that the question of condonation of delay must be governed by

the new law and since the application for condonation of delay was filed beyond the period of 12 months from the date of the occurrence of the

accident, such delay could not be condoned. The court thus virtually accepted the effect of the new proviso to Sub-section (3) of Section 166. The

court also accepted that under the new Act there is no power in the Claims Tribunal to condone delay for the period beyond 12 months from the

date for the occurrence of the accident.

14. In view of clear pronouncement of the Supreme Court on the amended proviso, there was very little scope to contend that the Claims Tribunal

acting under the Motor Vehicles Act, 1988 can still condone delay caused in filing the application for compensation beyond the period of 12

months from the date of the occurrence of the accident as it used to do under the old act.

15. Effect of Section 29(2). The provision of Section 29(2) of the Limitation Act,

1963 are set out here in above. The said Section embothed the

general principle initiated in the well known Maxim-generalia specialibus non-derogate"". The said Maxim means that general words do not

derogate from the special. From the language of Section 29(2) of the Limitation Act, it becomes clear that in order that Section 29(2) may apply

firstly a period of limitation has to be prescribed for any suit, appeal or application under a special or local law and secondly the said period of

limitation must be different from the period prescribed by the schedule to the Limitation Act. It is only if both these conditions are satisfied that the

provisions of Section 3 of the Limitation Act will apply as if such period were the period prescribed by the said Schedule. It is only then that for the

purpose of determining the period of limitation prescribed for any suit, appeal or application by the special or local law, the provisions of Sections

4 to 24 (inclusive) will be made applicable in so far as and to the extent to which they are not expressly excluded by much special or local law.

16. In Kaushalya Rani Vs. Gopal Singh, while dealing with Sub-section (2) of Section 29 of the Limitation Act, the Supreme Court found that in

enacting Sub-section (2) of Section 29, the intention of the legislature was not to enlarge the scope of any provision of the Limitation Act which has

been made applicable by virtue of that sub-Section. This Sub-section is supplemental in its character insofar as it provides in the application of

Section 3 to such cases as would not come within its purview for this provision. For the purposes of determining any period of limitation prescribed

by any special or local law, it is made provision of the Limitation Act viz. Sections 4 to 24 (inclusive) applicable to such cases to the extent to

which they are not expressly excluded by such special or local law. However, the decision of the Supreme Court in Kaushalya''s (Supra) was

considered once again in the case of Mangu Ram Vs. Municipal Corporation of Delhi, , the Supreme Court held that the ratio of the decision in

Kaushalya Rani''s case (supra) can:

have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section

5 was excluded by reason of Section 29(2) (b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically

made applicable by Section 29, Sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or

local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the

special or local law expressly excludes the applicability of Section 5 that it would stand displaced. Here, as pointed out by this Court in Kaushalya

Rani''s case AIR 1964 SC 260 : 1964 (1) Cr. LJ 152 the time limit of sixty days laid down in Sub-section (4) of Section 417 is a special law of

limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of Sub-

section (4) of Section 417 is a mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave

from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that

would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond he

period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be

entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace

the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order

of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he

had sufficient cause for not preferring the application within the time limit of sixty days prescribed in Sub-section (4) of Section 417, the application

would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it.

17. Applying the aforesaid ratio it shall have to be stated that Section 166(3) of the Motor Vehicles Act, 1988 is a special law which prescribes a

period of six months from the date of he occurrence of the accident as a period within which petition for compensation is to be filed before a

Claims Tribunal. This special law prescribes a period of limitation different from the period prescribed by the Schedule to the Limitation Act, 1963.

The question, however, is as to whether Sections 4 to 24 (inclusive) of the Limitation Act, 1963 shall apply to such claim petition filed u/s 166(3) of the Motor Vehicles Act, 1988. to be precise the question is as to whether Section 5 of the Limitation Act, 1963 shall apply to a Claims Tribunal

acting u/s 166 of the Motor Vehicles Act, 1988. The immediate question which shall have to be met by this Court is as to whether Section 5 of the

Limitation Act, 1963 is expressly excluded by such special law, viz. Motor Vehicles Act, 1988. It shall have to be stated that Section 166(3)

prescribes a period of limitation within which an application for compensation can be filed before a Claims Tribunal being a period of six months

from the date of the occurrence of the accident. This provision of special law like any other provision prescribing a period of limitation in no

uncertain terms provide that no application for compensation shall be entertained unless it is made within six months of the occurrence of the

accident. The said provision creates a bar or prohibits against entertainment of an application beyond the period of limitation. However, it is

because of this bar or prohibition created by special law that it becomes necessary to in voke the aid of Section 5 of the Limitation Act, 1963. The

question, as to whether the applicability of Section 5 is in anyway displaced or is in anyway restricted. Proviso to Section 166(3) restricts the

power of the Claims Tribunal to entertain the application after the expiry of the said period of six months but not later than 12 months, if it is

satisfied that the applicant was prevented by sufficient cause from making the application in time. Section 5 of the Limitation Act enables the Court

to hear any appeal or application after the prescribed period of imitation if the appellant or applicant satisfies the Court that he had sufficient cause

for not preferring the appeal or making an application within the said period. More or less identical phraseology is employed by the legislature

while enacting proviso to Section 166(3) and the Claims Tribunal is empowered to entertain a claim petition which is filed beyond the prescribed

period of six months but not later than 12 months from the date of the occurrence of the accident if it is shown by the applicant that he was

prevented by sufficient cause from making the application in time. It is thus clear that underlying spirit of Section 5 in its limited application for a

period of 12 months only from the date of the occurrence of the accident is made applicable by the legislature to a claim petition. Thus, in my

opinion, not only Section 5 is expressly excluded by special law, i.e. Section 166(3) proviso to Motor Vehicles Act, and 1988 but by the said provision Section 5 of the Limitation Act, 1963 has its limited application as contemplated by proviso to Sub-section (3) of Section 166. The

power to condone delay when sufficient cause is shown in not making an application for compensation within the prescribed period of limitation is

conferred to the Claims Tribunal, but such power is not unlimited power which a Claims Tribunal hitherto possessed prior to coming into force of

the new Act, but it is a limited power of condonation of delay between six months to 12 months from the date of the occurrence of the accident

provided sufficient cause is shown by the applicant which prevented him from making an application for compensation.

18. It will not be out of place to mention that the expression ""provision contained in Section 4 to 24(inclusive) shall apply only in so far as and to

the extent to which they are not expressly excluded by such special law or local law"" used in Section 29(2) of the Limitation Act, 1963 did come

up for interpretation before the Supreme Court in the case of Mangu Ram Vs. Municipal Corporation of Delhi, . In the said decision the Supreme

Court took the view that the expression ""expressly excluded"" would mean exclusion by express words i.e. by express reference to the Section of

the Limitation Act and not exclusion as a result of logical process of reasoning. Justice J.M. Panchal of this Court while following the aforesaid

decision of the Supreme court in the case of Manguram (supra) taken the same view in the case of Gunvantlal Manekch and v. Atul kumar and

Co. reported in 1991 (2) G.L.R. 1000 and has held that unless there is an express exclusion of any of the provisions of Sections 4 to 24 of the

Limitation Act by special reference to said provision in the special or local law, the said provision of the Limitation Act would apply by virtue of

Section 29(2) of the Limitation set, 1963.

19. In the case of Hukumdev Narain Yadav Vs. Lalit Narain Mishra, Supreme Court was called upon to decide the question as to whether

provision of the Limitation Act more particularly Sections 4 & 5 of the Limitation Act would apply to an Election Petition filed under

Representation of the People Act, 1951. Answer to the said question obviously depended upon Section 29(2) of the Limitation Act and more

particularly as to what meaning the Court would give to the expression ""expressly excluded by such special or local law"".

In that connection, the Supreme Court observed as under:

It is contended before us that the words ""expressly excluded"" would mean that there must be an express reference made in the special or local law

to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the dictionary has been

relied upon, but what we have to see is whether the scheme of the special law, that is, in this case, the Act, and the nature of the remedy provided

therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on

an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded then the benefits conferred

therein can not be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the

provision of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to

what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation.

(Emphasis supplied)

The court further observed as under:

It was sought to be contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act,

unless expressly excluded, would be attracted. But this is not what Section 29(2) of the Limitation Act says, because it provides that Sections 4 to

24 (inclusive) shall apply only in so far as, and to the extent to which, they arc not expressly excluded by such special or local law. If none of them

are excluded, all of them would become applicable. Whether those Sections are applicable is not determined the terms of those Sections, but by

their applicability to inapplicability of the proceedings under the special or local law. A person who is a minor or is insane or is an idiot can not file

an election petition to challenge an election, nor is there any provision in the Act for legal representation of an election petitioner or respondent in

that petition who the, in order to make Section 16 of the Limitation Act applicable. The applicability of these provisions has, therefore, to be

judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of an of the provisions of the Limitation Act mentioned in Section

29(2) of the Act.

From the aforesaid observation it becomes clear that if the scheme of special law i.e. Section 166(3) of Motor Vehicles Act, 1988 and the nature

of the remedy provided there in viz proviso to Sub-section (3) of Section 166 amount to a complete code in itself, it alone is intended to apply

which the legislature provided in the special law by enacting new proviso to Section 166(3) and hence the provision of the Limitation Act must be

held to be necessarily excluded. I am of the opinion by proviso to Sub-section (3) of Section 166 negative phraseology is employed by the

legislature by use of the words ""hut not later than 2 months"" which leaves no room for doubt that the legislature intended the Claims Tribunal to

entertain an application for condonation of delay only up to 12 months from the date of the occurrence of the accident. The legislature intended

principle of Section 5 of the Limitation Act to apply, but it wanted to restrict such application of Section 5 to a period of 12 months only from the

date of the occurrence of the accident. The legislature, therefore, wanted to exclude applicability of Section 5 of the Limitation Act beyond the

period of 12 months from the date of occurrence of the accident. Therefore, in my opinion, the provision of Section 166 and more particularly

proviso to Sub-section (3) of Section 166 now no.longer permits a Claims tribunal to entertain a petition for compensation beyond the period of

12 months from the date of the occurrence of the accident. There is exclusion of the provision of Section 5 of the Limitation Act and I am fully

fortified in my conclusion by the aforesaid judgment of the Supreme Court.

20. While dealing with closely identical provision to the proviso to Section 166(3) of the Motor Vehicles Act, 1988 a three member Bench of the

Supreme Court of India in the case of The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, has taken the view

which fully fortifies the conclusions reached by me. In the aforesaid case, Section 10 of U.P. Sales Tax Act prescribed a period of limitation within

which revision can be filed. Section 10(3) reads as under:

(3B) The Application under Sub-section (3) shall be made within one year from the date of service of the order complained of, but the Revising

Authority may on proof of sufficient cause entertain an application within a further period of six months.

Under Sub-section (3) of Section 10 of the U.P. Sales Act, 1948 Revision petition before the Revising Authority would have been filed but the

same were filed more than 18 months after the dismissal of the appeals. The revisions were thus time barred. The revisions were accompanied by

two applications in which the assessee prayed for exclusion of time spent by him in prosecuting the application, proceedings under Rule 68(6) for

setting aside the dismissal of his appeal, the Revising Authority excluded the said time spent in those proceedings by applying Section 14 of the

Limitation Act. However, on the motion of the Commissioner of Sales Tax, two references were made to the High Court and the question was as

to whether time spent in prosecuting the application for setting aside the order of dismissal of appeals in default can be excluded for computing the

period of limitation in filing the revision by applying the principle underlying Section 14(2) of the Limitation Act. The High Court of Allahabad

answered the question in affirmative. In appeal the Supreme Court found that three features of the scheme of Section 10 of U.P. Sales Tax Act

were noteworthy. The, first was that no limitation was prescribed for the suo motu exercise of its jurisdiction by the Revising Authority. The second

was the period of one year was prescribed as limitation for filing an application for revision by the aggrieved party and that was unusually long

period. The third was that the revising authority has no discretion to extend that period beyond a further period of six months even on sufficient

cause shown. The revising authority could have at the most on sufficient cause being shown extended the period for filing revision application for a

further period of six months only. The court, thereafter observed as under:

The three stark features of the scheme and language of the above provision, unmistakably show that the legislature has deliberately excluded the

application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embothed in Sub-

section (3-B) of Section 10 of the Sales Tax Act., Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the

financial stability of the State. Section 10 is therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time scheduled.

It can not be said that by excluding the unrestricted application of the principles of Sections 5 & 14 of the Limitation Act, the Legislature has made

the provisions of Section 10, unduly oppressive. In most cases, the discretion to extend limitation, on sufficient cause being shown for a further

period of six months only given by Sub-section (3-B) would be enough to afford relief.

The observations made by the Supreme Court in paras 11, 12, 17 and 18 of the said report are more pertinent to be reproduced in so far as they

are relevant in appreciating the ratio decidend of the said case:

11. Be that as it may, from the scheme and language of Section 10, the intention of the Legislature to exclude the unrestricted application of the

principles of Sections 5 & 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due

application of mind, incorporate in the Sales Tax Act, can not be imputed into it by analogy. An enactment being the will of the legislature, the

paramount rule of interpretation, which overrides all others, is that a statute is to be expounded ""according to the intent of them that made it"". ""The

will of the legislature is the supreme law of the land, and demands perfect obethence"". ""Judicial power is never exercised"", said Marshall C.J of the

United States, ""for the purpose of giving effect to the will of the judges; always for the purpose of giving effect to the will of the Legislature, or in

other words, to the will of the law"" (see. Maxwell on Interpretation of Statutes, 11th Edn. Pp. 1, 2 and 251.).

12. If the legislature willfully omits to incorporate something of an analogous law in a subsequent stature, or even if there is a casus omissus in a

statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or

introducing in it, under the guise of interpretation by analogy of implication, something what it thinks to be a general principle of justice and equality.

To do so"" (at p.65 in Prem Nath L. Ganesh v. Prem Nath L. Ramnath) ""would be entrenching upon the preserves of Legislature"", the primary

function of a court of law being jusdicere and not jus dare.

17. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular

application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only up to

a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond

such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on

the analogy of Section 14(2) of the Limitation Act.

18. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is

the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which

is not congenial to or consistent with such expressed intent of the law-giver, more so if the statute is a taxing statute.

21. From the aforesaid very emphatic observations of the Supreme Court it becomes abundantly clear that while drafting Section 166(3) and more

particularly its proviso the legislature, in my opinion, intended to exclude the unrestricted application of the principles of Section 5 of the Limitation

Act. These provisions of Limitation Act which the legislature did not, after due application of mind, incorporate in the Motor Vehicles Act, 1988

can not be imported into by analogy. Section 166(3) is a special law prescribing a period of six months from the date of the occurrence of accident

as a period of limitation for filing the claim petition before a Claims Tribunal. The proviso to Sub-section (3) of Section 166 in no unclear terms

provides that such period of six months, on sufficient cause being shown, may be extended, in the maximum, only up to a period of 12 months and

no further, from the date of the occurrence of the accident. The Claims Tribunal has no jurisdiction to treat within limitation, an application filed

before it beyond such maximum time limit of 12 months from the date of the occurrence of the accident.

22. Once again, while dealing with another analogous provision contained in Section 58 of the Motor Vehicles Act 1939 in the case of Mohd.

Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, , two Judge Bench of the Supreme Court speaking through P.N.

Bhagwati, J. (as he then was) considered the effect of Section 29(2) and Section 5 of the Limitation Act, 1963. The main question posed for consideration before the Supreme Court was as to whether the time limit prescribed by the proviso to Sub-section (2) of Section 58 apply in case

of an application or renewal of a permit under the proviso to Sub-section (1D) of Section 68-F. The proviso to Sub-section (2) required that an

application for renewal of a permit should be made not less than 120 days from the date of expiry of the permit. However, Sub-section (3) of

Section 58 vested a discretion in the Regional Transport Authority to entertain an application for renewal of a permit even if it is beyond the time

but in that case the delays should not be of more than 15 days. The word used in Sub-section (3) of Section 58 was ""may"" and not ""shall"". The

Regional Transport Authority was thus given discretion to entertain an application for renewal or a permit even where it was beyond the time,

though not more than 15 days. It can thus condone delay depending on the circumstances of each case and can condone delay for a period of 15

days only. It was contended before the Supreme Court that by virtue of Section 29(2) of the Limitation Act, 1963 provision of Section 5 of the

Limitation Act would become applicable in the case of an application for renewal of a permit. In this context Honorable Justice P.N. Bhagwati of

the Supreme Court made following most pertinent observations:

It is, therefore, clear that Sub-section (3) of Section 58 confers a discretion on the Regional Transport Authority to entertain an application for

renewal when it is made beyond the time limit specified in the proviso to Sub-section (2), but not more than 15 days late and the discretion is to

exercised in favour of entertaining the application for renewal then it is shown that there was sufficient cause for not making it in time. Now the

question which arises is: Does Section 5 of the Limitation Act, 1963 apply so as to empower the Regional Transport Authority, for sufficient cause

to entertain an application for renewal even where it is delayed by more than 15 days? Section 29, Sub-section (2) of the Limitation Act, 1963

makes Section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision

of the Act. The only provision of the Act sought to be pressed into service for this purpose was Sub-section (3). Does Sub-section (3) expressly

exclude further extension of time u/s 5? If it does, then Section 5 can not be availed of by the appellant for condonation of the delay. Sub-section

(3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on

merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days,

the Regional Transport Authority shall not be entitled to entertain it, or in other words, it shall have no power to condone the delay. There is thus,

an express provision in Sub-section (3) that delay in making an application for renewal shall be condonable only if it is not more than 15 days and

that expressly excludes the applicability of Section 5 in cases where an application for renewal is delayed by more that 15 days. This provision may

seem harsh, but it has been deliberately and advisedly made because the question of renewal of a permit must obviously be decided before the

expiration of the Period of the permit and in view of the elaborate procedure set out in Section 57 for dealing with an application for renewal, a

certain minimum period before the expiration of the period of the permit must be provided within which this procedure can be completed so that

the renewal can, if an all, be granted well in time before the permit expires.

(emphasis supplied)

23. From the aforesaid observations, it becomes clear that Section 5 of the Limitation Act can not be availed of by the petitioners for condo nation

of the delay. Proviso to Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 in so many terms says that the Claims Tribunal may

entertain the application after the expiry of the prescribed period of six months but not later than 12 months if it is satisfied hat the applicant as

prevented by sufficient cause from making the application in time. This would clearly mean that if the application for compensation is filled beyond

the period of 12 months from the date of the occurrence of the accident, the Claims Tribunal shall have no power to entertain it, or in other words,

it shall have no power to condone delay. There is thus express provision in proviso to Sub-section (3) of Section 166 that delay in making an

application for compensation shall be condonable not later than 12 months from the date of the occurrence of the accident and that expressly

excludes that applicability of Section 5 of Limitation Act in cases where an application for compensation is delayed by more than 12 months from

the date of the occurrence of the accident. The submission that such a provision is harsh or may adversely affect large number of claimants can not

find favour with the court. It shall have to be noted that the Legislature has by enacting new legislation i.e. the Motor Vehicles Act, 1988 and while

retaining provision analogous the Section 110A of the Motor Vehicles Act 1939 by enacting Section 166 and also while retaining the period of

limitation for filing an application for compensation has deliberately and purposively enacted proviso to Sub-section (3) of Section 166 so as to

limit the powers of a Claims Tribunal to condone delay only upto a period of 12 months from the date of the occurrence of the accident. The

aforesaid decision of the Supreme Court thus fully supports my conclusion.

24. It will not be out of place to mention that in Section 20 of the Coal Mines (Nationalization) Act, 1973, Section 23 of the Coking Coal Mines

(Nationalization) Act, 1972, in Section 16(3) of Plantation Labour Act, 1981, Section 10F of Companies Act, 1956, Section 7(7) of Payment of

Gratuity Act, Section 35 of Central Excise of Salt Act, 1944, Section 6(7) of qua Rem uneration Act, 1976 and in Section 5(c) of Cinematograph

Act, 1952 provision identical to or analogous to Section 166(3) proviso of the Motor Vehicles Act 1988 are enacted. By reference to the said

provisions and various decisions dealing with such provisions it was contended by the Counsels appeared for the Insurance companies that Section

166(3) proviso enacts a complete code for making an application for compensation by enacting proviso to Sub-section (3) of Section 166, the

Legislature has made its intention manifest that beyond the period of 12 months from the date of the occurrence of the accident there will be no

power in the Tribunal to condone delay.

25. Mr. Mohit Shah has strenuously urged before me that Section 166 of the Motor Vehicles Act, 1988 is not a self--Contained code of limitation

nor does it expressly exclude the applicability of the provisions of the Limitation Act to a petition for compensation filed before a Claims Tribunal.

He further submits that Section 166 of the Act finds it place in chapter XII. The caption of the said chapter is ""Claims Tribunal"". He submits that

unlike Section 144 which finds its place in Chapter X, the Legislature has not given any overï¿½ riding effect to the provisions of Section 166. He

submits that when the Legislature wanted to give overï¿½Riding effect, it has by Section 144 of the Act enacted that the provisions of Chapter X shall have effect notwithstanding anything contained in any other provision of the said Act or of any other law for the time being in force. Such a

provision giving overï¿½ Riding effect to Chapter XII or any of its provisions is not to be found in Chapter XII of the said Act. He, therefore,

submits that Legislature never wanted to restrict the power of Claims Tribunal to condone delay caused in filing petition for compensation. In my

opinion, the argument is misconceived and shall have to be rejected on the ground that Chapter X of the said Act deals with liability without fault in

certain cases. Ordinarily, liability to pay compensation is at common law based on negligence. Since the Legislature wanted to give effect to the

observation of Supreme Court, in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, ,

to the effect that in view of vast increased volume of traffic, the Motor Vehicles upon the roads may be regarded to some extent as coming within

the principle of liability defined in Raylands v. Fletcher as roads of the country from the pedestrians point of view have been rendered highly

dangerous. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents, there has been a

continuous agitation throughout the world to make the liability for damages arising out of motor vehicles as a liability without fault. In order to meet

the above social demand on the recommendation of the Indian Law Commission, this Chapter X was introduced in the new Act. This part of the

Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner of the Motor

Vehicles in order to make the said provision more effective, Section 144 is enacted. In my opinion, the said provision can not be pressed into

service to construe the chapter which deals with the Claims Tribunal. The very purpose of Chapter XII of the said Act is to prescribe the

machinery of making an application for compensation before the Claims Tribunal and the procedure to be followed by the claims Tribunal. Chapter

XII of the said Act contains a self--contained code and more particularly Section 166 deals exhaustively with filing of an application for

compensation before the claims Tribunal and jurisdiction of the claims Tribunal to deal with such application for compensation. It is to be noted that

period of limitation for filing an application for compensation which was prescribed by Section 11 OA(3) has retained by Sec. 166(3) of the Motor

Vehicles Act, 1988. However, proviso to Sub-section (3) of Section 110A of the Act of 1939 is substantially amended by substitution of a new

proviso to Sub-section (3) of Section 166 of Motor Vehicles Act, 1988. By enacting the new proviso, the unrestricted power to condone delay

which was given to the claims Tribunal by the provision of the old Act is substantially curtailed and it is now restricted to a period not beyond 12

months from the date of the occurrence of the accident. Such a provision, as interpreted by the Supreme Court in the aforesaid two cases has the

effect of expressly and/or by necessary implication excluding the applicability of Section 5 of the Limitation Act. lam not called upon to decide in

this case as to whether other provisions of the Limitation Act are excluded. However, exclusion of Section 5 of the Limitation Act beyond the

period of delay of six months, in my opinion, is very specific and express and, therefore, I do not find any substance in this submission of Mr.

Mohit S. Shah.

26. Mr. C.J. VIN and Mr. Mohit Shah have also referred to Sub-section (4) of Section 166. The said provision reads as under:

166(4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal, under this Act, the Claims Tribunal may, if

it thinks necessary so to do, treat the report as if it were an application for compensation under this Act.

By the said sub-Section, a Claims Tribunal is empowered in its suo moto jurisdiction to treat a report from the police officer regarding an accident

as an application for compensation. Such a provision was not there in Section 110-A. By enacting such a provision, the Legislature has permitted a

Claims Tribunal to treat the report received from the police as an application for compensation. For filing such a report before a Claims Tribunal no

time limit is prescribed under the provision of the Motor Vehicles Act, 1988. As and when the report is made by the police about the occurrence

of a motor accident, a Claims Tribunal is empowered to treat such a report as an application for compensation. Based on this provision, they

submitted that a person who has failed to file an application for compensation within the prescribed period of limitation may get the report filed

through police before the claims Tribunal and the Claims Tribunal may thereupon treat he said report an application for compensation and such a party may thereby avoid the prescribed period of limitation and may get his application for compensation entertained. It is further submitted that

something that can not be done directly can thus be got done indirectly by getting the report of police submitted to the Claims Tribunal. It is

undoubtedly true that power given to the Claims Tribunal to Sub-section (4) of Section 166 is very widely worded and the report received from

the police can be entertained by the Claims Tribunal as an application for compensation. However, I am of the opinion that the provision of Section

166(4) does not militate against the interpretation which I have given to Section 166(3) and its proviso. Section 166(4) is merely enabling

provision. It simply enables the Tribunal to treat the report of the Police as an application for compensation. In harsh cases when there is no one to

make application for compensation and where the victim of the accident has either died or has received serious injuries and when no one has made

an application for compensation, the Tribunal is enabled to treat the report of the police as an application for compensation. This, however, does

not in any way militate against the interpretation of Section 166(3) and its proviso given by me here in above. I, therefore, do not find any

substance in this submission of Mr. C.J. Vin.

27. No other submissions were made.

28. From the aforesaid discussion the following clear principles emerge:

(1) Section 166(3) of the Motor Vehicles Act, 1988 prescribes the same period of limitation for making an application for compensation to Claims

Tribunal which was prescribed by Section 110-A of the Motor Vehicles Act, 1939.

2. The proviso to Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 restricts the power of the Claims Tribunal to condone delay in

making application for compensation on sufficient cause being shown to a period not above 12 months from the date of the occurrence of the

accident. In other words, a Claims Tribunal can condone delay in making an application for compensation up to a period of 12 months only from

the date of the occurrence of accident. This is quite in contrast to the power given by the proviso to Section 110-A (3) of the Motor Vehicles Act,

1939 which did not in any way restrict the power of the Claims Tribunal to condone delay in making an application for compensation on sufficient

cause being shown.

3. The Legislature while enacting the new Act i.e. the Motor Vehicles Act, 1988 has deliberately and purposively introduced a new proviso to

Sub-section (3) of Section 166 while otherwise retaining the substantive provision by enacting Section 166(1), (2), and (3) which are verbatim the

same as Section 110-A(1), (2) and (3).

4. Consistent with the principle enunciated by the Supreme Court in the case of Parson Tools and Plants (supra) it shall have to be held that the

provision of Section 166(3) and its proviso unmistakably show that the Legislature has deliberately excluded the application of the principle

underlying Section 5 of the Limitation Act, 1963 except to the extent of its operation for a period of 12 months from the date of the occurrence of

the accident.

5. Since the Legislature has willfully committed to incorporate the provision identical to Section 110-A(3) proviso of the Act, 1939 and since the

Legislature has instead enacted the proviso to Sub-section (3) of Section 166 which is plain and unambiguous, it is not open to the Court to supply

the omission by engrafting in it or introducing in it, under the guise of introduction by analogy or implication, something what the Court thinks to be

a general principle of justice and equity.

6. Section 29(2) of the Limitation Act, 1963 makes Section 5 of the said Act applicable in the case of an application for compensation filed before

a Claims Tribunal to a period of 12 months from the date of the occurrence of the accident. Proviso to Sub-section (3) of Section 166 of Motor

Vehicles Act, 1988 in so many terms provided that of a claims Tribunal can entertain an application for compensation not above the period of 12

months from the date of the occurrence of the accident provided sufficient cause is shown. This clearly means that if an application for

compensation is filed beyond a period of 12 months from the date of the occurrence of the accident, the Claims Tribunal shall not be entitled to

entertain it, or in other words, it shall have no power to condone the delay. There is thus an express provision in proviso to Sub-section (3) of

Section 166 that delay in making an application for compensation shall be condonable only if it is not beyond 12 months from the date of the

occurrence of the accident and that provision expressly excludes the applicability of Section 5 in cases where an application for compensation is delayed by more than 12 months from the date of the occurrence of the accident (see Supreme Court decision in Mohmmad Ashfaq (supra).

7. Though not expressly by necessary implication, the Supreme Court of India has in its recent decision in the case of Vinod Gurud has Raikar

(Supra) has supported the view that the Claims Tribunal acting under the Act of 1988 has no jurisdiction to condone delay beyond the period of

12 months from the date of the occurrence of accident and such an application for compensation is liable to be dismissed.

29. In view of the aforesaid discussion, the petitions are bound to fail and the same are, therefore, dismissed. Rule is discharged in both the

petitions. There shall be no order as to costs.

