

(2018) 05 PAT CK 0017

In the Patna High Court

Case No : Miscellaneous Appeal No.15 of 2005

National Insurance Co.Ltd.

APPELLANT

Vs

Uttam Paswan & Ors

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279

Motor Vehicles Act, 1988 — Section 110A(3), 166(3), 53

Citation : (2018) 05 PAT CK 0017

Hon'ble Judges : PRAKASH CHANDRA JAISWAL

Bench : Single Bench

Advocate : Arun Kumar Singh, Abdul Mannan Khan, Binay Kumar

Final Decision : Disposed of

Judgement

1. Heard learned counsel for the appellant and learned counsel for the respondents-claimants on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the appellant-National Insurance Company Limited (hereinafter in short referred to as the

Insurance Company) against the judgment dated 08.10.2004 and award dated 24.06.2005 passed by the Additional District Judge-I-cum-

Motor Accident Claim Tribunal, Khagaria (hereinafter in short referred to as the Tribunal) in Claim Case No.16 of 1997, whereby the learned

Tribunal allowing the claim petition directed the appellant-Insurance Company to pay compensation to the tune of Rs.1,34,500/- to the claimants from

the date of order.

3. Factual matrix of the case is that claimant-respondent nos.1 to 4 filed Claim Case No.16 of 1997 for awarding compensation to the tune of

Rs.2,29,500/- on account of death of Gajendra Paswan, son of respondent nos.1

& 2 and brother of respondent nos.3 & 4 with the case in succinct

that on 14.03.1990 at around 2:30 PM while Gajendra Paswan was regressing from Nanihal located in Maheshkhunt and arrived at Parmanandpur

Dhala a Tata Maxi bearing registration No. BE I-3181 proceeding from Khagaria to Mansi being driven rashly and negligently by its driver, dashed

him resultantly he died on spot. Regarding the said accident Khagaria P.S. Case No.94 of 1990 was instituted under Section 279 and 304-A of the

Indian Penal Code against the driver of the offending vehicle. Further case of the claimants-respondents is that the deceased was a student and was

unmarried at the time of accident. The offending vehicle was insured by the National Insurance Company Limited.

4. The Insurance Company put their appearance in the case and filed written statement. The claimants adduced ocular as well as documentary

evidence in buttress of their case.

5. After hearing the parties and perusing the record, learned Tribunal passed the aforesaid judgment and award as detailed in earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the Insurance Company has preferred this appeal.

7. The appellant has assailed the aforesaid judgment and award mainly on three grounds. Firstly, the accident took place on 14.03.1990 while the claim

petition was filed on 02.07.1997 i.e. after more than seven years from the date of accident, hence it is hit by Article 137 of the Limitation Act. As if no

period of limitation is prescribed by the Legislature, Article 137 of the Limitation Act may be invoked, otherwise stale claims would be encouraged

leading to multiplicity of litigation for non-prescribing the period of limitation. The aforesaid claim petition is barred by limitation as provided under the

Old Motor Vehicles Act, 1988 which was in vogue at the time of accident. As per the old Motor Vehicles Act, 1988 the period of filing of the claim

petition was six months from the date of accident with further extension of six months i.e. total twelve months on showing the sufficient cause in

preferring the appeal within six months. Though the aforesaid limitation has been omitted by the Motor Vehicles Amendment Act, 1994 with effect

from 14.11.1994 but the claimants are not entitled to get the benefit of the aforesaid omission for filing the claim case as the said has not retrospective

effect. The appellant being the insurer of the offending vehicle is not liable to pay

any compensation to the claimants indemnifying the owner of the offending vehicle in the case filed beyond the stipulated period of limitation as prescribed under Article 137 of the Limitation Act. Secondly the Insurance Company is not liable to pay any compensation as per Article 44 of the Limitation Act as the insurance policy had expired after one year from the date of issue and it was not enforceable at the time of filing of the claim petition. Thirdly as the claimants happen to be parents and sisters of the deceased, hence they are not entitled to get any consortium as the loss of consortium is awarded only to the spouse of the deceased and not to anyone else.

8. On the other hand, learned counsel for the claimants-respondents submitted that the limitation of 12 months as provided under the old Motor Vehicles Act, 1988 has now been omitted by the Motor Vehicles Amendment Act, 1994 and now there is no limitation for filing the claim petition and the Honâ??ble Apex Court in number of cases has held that the omission of period of limitation will also apply to the pending cases as the Motor Vehicles Act is a beneficial legislation and the destitute and helpless claimants cannot be deprived from making the claim mainly on the ground of limitation. It is further submitted by the learned counsel for the claimants-respondents that at the time of accident the insurance policy was enforceable and so the appellant Insurance Company is liable to pay the compensation to the appellant. The Honâ??ble Apex Court in the case of New India Assurance Co. Ltd. Versus C. Padma and another reported in (2003) 7 SCC 713 has also been pleased to direct the appellant-Insurance Company to pay the compensation to the claimants in the case of claim petition filed after more than six years.

9. For deciding this appeal properly and effectively, I hereby formulate following three points for consideration:

I. whether the claim petition filed by the claimants-respondents is barred by limitation?

II. Whether appellant-Insurance Company is not liable to pay compensation to the claimants indemnifying the owner of the vehicle?

III. Whether the claimants who happen to be parents and sisters of the deceased are entitled to get any consortium?

Point No.I

10. Regarding limitation for filing the claim petition, earlier Sub-Section (3) of Section 110-A of the Motor Vehicles Act, 1939 provided:

Section 110A(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 if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

Subsequently, Motor Vehicles Act 1988 came in force w.e.f. 01.07.1989 repealing the old Motor Vehicles Act, 1939 and the said new Act prescribed

the period of limitation for filing the claim petition in sub-section (3) of Section 166. Said Sub-section provided:

Section 166(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.”

11. As per the aforesaid provision, Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than

twelve months. Any application filed beyond the period of twelve months from the date of the accident cannot be entertained as no discretion had

been left with the Tribunal to consider the circumstances because of which the application for claim could not be filed within the period of twelve

months of the occurrence of the accident. But later on 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. As per the aforesaid Amending Act, there is no limitation for filing

claims before the Claims Tribunal in respect of any accident, as the parliament appears to have realized 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 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 escape death some of such victims are hospitalized for months if not for years.

12. The contention of the learned counsel for the appellants that since no period of limitation has been prescribed by the Legislature, Article 137 of the

Limitation Act may be invoked, otherwise, stale claims would be encouraged leading to multiplicity of litigation for non-prescribing the period of

limitation. But the aforesaid submission of learned counsel for the appellants does not appear to be convincing and plausible because Motor Vehicles

Act is a beneficial legislation to provide relief to the victims or their families if otherwise the claim is found genuine. It is a self-contained Act, which

prescribes the mode of filing the application, procedure to be followed and award to be made. Parliament, in its wisdom, realized the grave injustice

and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions

at the threshold on the ground of limitation, and purposely deleted sub-section (3) of Section 166, which provided the period of limitation for filing the

claim-petitions and this being the intendment of the Legislature to give effective relief to the victims and the families of the motor accidents

untrammelled by the technicalities of the limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the Legislature.

13. Honâ??ble Apex Court in New India Assurance Co. Ltd. Versus C. Padma and another reported in (2003) 7 SCC 713 has been pleased to rule

that when the claim petition was filed sub - section (3) of Section 166 of the Motor Vehicles Act, 1988 had been omitted. The period of limitation

having been deleted, the Tribunal was bound to entertain it without taking note of the date on which the accident took place. The claimant is entitled to

the benefit of amended provisions irrespective of the fact that the cause of action arose prior to the enforcement of the Amending Act or under Old

Act as in the present case.

14. In the said case, the claim petition was filed more than 6 years later to the date of accident which took place in the year 1989 i.e. prior to coming

into force of the New Act 54 of 1994. In the said case, Honâ??ble Apex Court has also been pleased to rule that as the Motor Vehicle Act is a

beneficial legislation, Article 137 of the Limitation Act 1963 is not applicable and by deleting sub-section (3) of the Section 166 by new Act, which

provided the period of limitation for filing the claim petitions, to give effective relief to the victims and the families of the motor accidents untrammelled

by the technicalities of the limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the legislature.

15. Honâ??ble Apex Court in Dhannalal v. D.P. Vijayvargiya reported in (1996) 4 SCC 652 has been pleased to observe that from the Amending

Act, it does not appear that the sub-section (3) of Section 166 of the Act has been deleted retrospectively. But at the same time, there is nothing in the

Amending Act to show that benefit of deletion of sub- section (3) of Section 166 is not to 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.

16. Honâ??ble Apex Court in Purohit and Company v. Khatoonbee and another reported in (2017) 4 SCC 783 has been pleased to observe that a

claim raised before the Motor Accidents Claims Tribunal, can be considered to be genuine, so long as it is a live and surviving claim. It is not as if, it

can be open to all and sundry, to approach a Motor Accidents Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident

had taken place. The individual concerned, must approach the Tribunal within a reasonable time even when there is no period of limitation prescribed.

The question of reasonability would naturally depend on the facts and circumstances of each case. A delay of 28 years, even without reference to any other fact, cannot be considered as a prima facie reasonable period, for approaching the Motor Accidents Claims Tribunal. The only justification indicated by the respondents, for initiating proceedings after a lapse of 28 years, emerges from para 4, contained in the application for condonation of delay, filed by the claimants, before the Tribunal. Para 4 aforementioned is extracted hereunder:

“4. That the petitioners are poor person and they have no knowledge about the Law. Also the respondent has not paid the single pie towards any compensation.”

The explanation tendered, cannot be accepted. Undoubtedly, the claim (pertaining to an accident which had occurred on 2-2-1997), in the facts and circumstances of the instant case, was stale, and ought to have been treated as a dead claim, at the point of time, when the respondents approached the Tribunal by filing a claim petition, on 23-2-2005.

17. In the case under hand, there is delay of around seven years in filing the claim petition. From perusal of the record, it appears that respondent nos.1 and 2 happen to be parents of the deceased while respondent nos. 3 and 4 minor sisters of the deceased. Record further indicates that the aforesaid respondents are resident of village “Parmanandpur, P.S. + District-Khagaria which means that the said respondents happen to be gullible, nave, rustic and illiterate persons living in rural area and they cannot be expected to be aware of the prescribed period of limitation for filing claim petition. The aforesaid respondents happen to be dependents of the deceased and after the death of the deceased, bread earner of the family due to accident, they are virtually on the streets. Hence, considering the facts and circumstances of the case, in my considered opinion, claim petition appears to have been filed by the claimants within reasonable period of around seven years from the date of death of the deceased. Present case is a glaring example where claimants-respondents would be deprived from the benefit of the beneficial Act, if the claim petition filed by them is declared time barred.

18. In the aforesaid facts and circumstances of the case, I find and hold that the

claim petition filed by the claimants - respondents is not barred by limitation and the same has been filed by them within reasonable period of time and as per the provision of Amending Act 54 of 1994.

Point No.II

19. From perusal of the record, it appears that the accident had taken place on 14.03.1990 on which date the Insurance Policy was effective and

enforceable while the claim petition was filed on 02.07.1997 i.e. after more than seven years but as the insurance policy was admittedly enforceable

on the date of accident though not on the date of filing claim case, hence, in my considered opinion, the Insurance Company is liable to pay

compensation to the claimants and is not absolved from the aforesaid liability. The Honâ??ble Apex Court New India Assurance Co. Ltd. Versus C.

Padma and another (Supra) has also been pleased to held the Insurance Company liable to pay compensation to the claimants in case of filing the

claim case after more than six years from the date of accident.

Point No.III

20. From perusal of the record, it further appears that claimant nos.1 & 2 are parents of the deceased and claimant nos.3 & 4 are his sisters, hence

the claimants are not entitled to get any consortium as the consortium is awarded only to the spouse of the deceased. The learned lower Court has

wrongly awarded consortium amount to the tune of Rs.5000/- to the claimants.

21. In the aforesaid facts and circumstances of the case, discussions made by me hereinabove and in view of the aforementioned case laws, I find

and hold that the claim petition filed by the claimants-respondents is not hit by Article 137 of the Limitation Act and has been filed within reasonable

period and as per the amended provision of Act 54 of 1994 and the appellant is liable to pay the compensation to the claimants-respondents

indemnifying the owner of the vehicle and the claimants are not entitled to get any consortium as the consortium is awarded only to the spouse of the deceased.

22. This appeal stands disposed of with the aforesaid modification in the impugned judgment. The Insurance Company is directed to make payment of compensation to the claimants within two months from the date of this judgment.

23. Let the statutory amount deposited by the appellant be sent down to the

learned Tribunal in the name of the claimants through cheque for its adjustment towards the aforesaid amount of compensation.