

(2018) 05 PAT CK 0012

In the Patna High Court

Case No : Miscellaneous Appeal No.499 of 2013

National Insurance Company Ltd., Chas Bokaro & Anr.

APPELLANT

Vs

Raja & Ors

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279

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

Citation : (2018) 05 PAT CK 0012

Hon'ble Judges : PRAKASH CHANDRA JAISWAL

Bench : Single Bench

Advocate : Ashok Priyadarshi, Ganpati Trivedi, Madan Mohan, Pallavi Pandey

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellants and learned counsel for the respondents on this Miscellaneous Appeal.

2. This Miscellaneous Appeal has been preferred against the judgment dated 30.03.2013 and award dated 04.05.2013 passed by Adhoc Additional

District and Sessions Judge-III cum Motor Vehicle Accident Claim Tribunal, Bhagalpur in Motor Vehicle Accident Claim Case No. 26 of 2009

whereby the learned Tribunal allowing the claim petition of the respondents directed National Insurance Company Limited- appellants to make

payment of compensation to the tune of Rs. 11,06,500/- along with interest at the rate of 6% per annum from the date of filing claim case.

3. Factual Matrix of the case is that respondent nos. 1 to 4 filed Motor Vehicle Claim Case No. 26 of 2009 against the appellants and others for

awarding compensation to the tune of Rs. 11,56,500/- along with interest at the rate of 12% per annum on account of death of son of respondent nos.

1 & 2 and father of respondent nos. 3 and 4, namely, Kaushal Kishore Singh in the motor vehicle accident with the case in succinct that on

26.01.2003, Kaushal Kishore Singh was proceeding to take a scooter mechanic for repair of the scooter of his brother Subodh Kumar Singh which

had developed some snag near Chakrawadhi Temple. In the meantime, at 1 PM, one Tata 407 bearing registration no. JH 09B6021 being driven from

the side of Gola to Bokaro rashly and negligently arrived there and dashed said Kaushal Kishore Singh on the road located near Hemantpur

Raghmatawadi chauk resultantly said Kaushal Kishore Singh died on the spot and his bullet motorcycle was also damaged. The aforesaid accident

took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Regarding the aforesaid accident,

Gola P.S. Case No. 06 of 2003 was instituted under Sections 279 and of the Indian Penal Code against the driver of the aforesaid vehicle and after

investigation of the said case, I.O. submitted chargesheet against the aforesaid driver. Further case of the respondents-claimants is that the deceased

was working as supervisor in M/s Kumar Brothers located on plat no. D-43/100, phase-I in Balidih, Bokaro. He used to get salary of Rs. 8000/- per

month from the said vocation.

4. Respondent no.5 Rupam Devi happens to be wife of the deceased and after his demise, she has remarried with Saroj Mahto while respondent no.6

happens to be owner and respondent no.7 driver of the offending vehicle. The case proceeded ex-parte against respondent nos. 5, 6 and 7 while

appellants appearing in the aforesaid suit filed written statement. Both the parties adduced ocular as well as documentary evidence in buttress of their cases.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, opposite party nos. 4 and 5-National Insurance Company Limited have preferred the present miscellaneous appeal.

7. The appellants have assailed the aforesaid judgment and award mainly on three grounds. Firstly, as the aforesaid accident took place on 26.01.2003

and the claim case was filed after more than 6 years on 20.03.2009, 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 and the appellants 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, as per the case of the claimants-respondents, the deceased was working in M/s Kumar Brothers as supervisor and used to earn Rs. 8000/- per month as salary. The deceased was working in the said firm since 01.09.2002 and the respondents-claimants have filed certificate of the aforesaid firm to the effect that the deceased was working in the said firm from 01.09.2002 to 26.01.2003 and the said certificate is dated 10.04.2008. But as per the Survey Report of the Surveyor of the appellants marked as Exhibit-A and photographs annexed to the said report marked as Exhibit-B series and also as per the case of the appellants, the said firm was winded up 10 -12 years back of the date of survey and sign board of another firm, namely, "Kumar Industrial Works" was found hanging in the aforesaid premises. As the aforesaid firm was winded up 10-12 years back, so the aforesaid certificate dated 10.04.2008 issued by the said firm is fake one and as the claimants-respondents have filed this certificate to establish the income of the deceased, so the quantum of compensation ought not have been calculated on the basis of the aforesaid income of the deceased as claimed by the claimants - respondents rather treating the deceased as unemployed person and considering notional income of the deceased to the tune of Rs. 30000/-per annum. Thirdly 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.

8. On the other hand, learned counsel for the claimants-respondents vehemently opposing the aforesaid argument of the appellants submitted that the limitation of six months with further extension of six months on showing sufficient cause in filing claim petition as provided under Section 166(3) of the Motor Vehicles Act, 1988 has now been deleted by way of amendment by Act 54

of 1994 w.e.f. from 14.11.1994 and now there is no limitation for filing the claim petition. Hence, the aforesaid claim petition filed by the claimants-respondents six years later to the date of accident of the deceased is not hit by Article 137 of the Limitation Act, 1963 and as the vehicle in question was insured by the appellants-Insurance Company and the insurance policy was valid at the time of accident, hence Insurance Company is liable to pay compensation indemnifying the owner of the vehicle and it cannot be absolved from its liability in this regard. It is further submitted that the claimants happen to be destitute and helpless dependents of the deceased and living in the rural area, so they were unaware of any period of limitation for filing claim petition and moreover the aforesaid claim petition has been filed by them within reasonable period. It is further submitted by the claimants-respondents that as per the survey report of the appellants (Exhibit-A and B) itself, M/s Kumar Brothers in which the deceased was working as supervisor on the salary of Rs. 8000/- Per month was running on the said plot at the relevant time and the certificate issued by the said firm and filed by the appellants marked as Exhibit-1 is genuine.

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 the certificate issued by M/s Kumar Brothers regarding serving the deceased as supervisor in the said firm from 01.09.2002 till his death

i.e. 26.01.2003 and earning of Rs. 8000/- per month by him as salary is a forged and fake document?

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

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 case under hand, there is delay of around six years in filing claim petition. From perusal of the record, it appears that earlier respondent no.1

Awadh Prasad Singh @ Abhiram Singh (now dead) happens to be father and earlier respondent no.2 Hemlata Devi (now dead) mother of the

deceased while present respondent no.1 Raja and present respondent no.2 Rajmani, son and daughter respectively of the deceased. Both the

respondent nos. 1 and 2 are minors and as the deceased was aged about 28 years at the time of accident, earlier respondent nos.1 & 2 (now dead)

must be old fellow. Record further indicates that respondents are resident of village "Nayagaon Kumaitha, P.O.-Kumaitha, P.S.-Bath, District-

Bhagalpur which means that the respondents happen to be gullible, nave, rustic and illiterate persons living in the rural area and they cannot be

expected to be aware of the prescribed period of limitation for filing claim petition. The claimants being the old parents and minor children of the

deceased happen to be dependents of the deceased and after the death of the deceased, bread earner of the family due to accident, claimants 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 six 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. Regarding salary certificate dated 10.04.2008 filed by the claimants-

respondents marked as Exhibit-1 issued by M/s Kumar Brothers to the effect that he was working as supervisor in the said firm since 01.09.2002 till 26.01.2003 and used to get salary of Rs. 8000/- per month. Appellants, by filing Exhibit-A and B, have submitted that the aforesaid salary certificate is fake one as aforesaid firm was closed in the year 2001 as per the locals and the report submitted by its surveyor Ranjeet Kumar (DW-1). But from perusal of the evidence of DW-1 Ranjeet Kumar, it appears that in Para-10 of his cross-examination, he has himself stated that he got firm of M/s Kumar Brothers on the plot No. D-43/100, but he could not contact with anyone. He also tried to contact the owner of M/s Kumar Brothers, but in vain. From perusal of Exhibit-A, it appears that DW-1 had made survey of the plot in question in the year 2011. From perusal of the aforesaid evidence of DW-1, it appears that firm of M/s Kumar Brothers was found in existence at the time of survey made by him, but he did not find anyone in the said firm and he also could not contact its owner. Though in his report (Exhibit-A), he has stated that on enquiry from the locals, they informed him that aforesaid firm has been closed for past 10-12 years, but he had not disclosed the identity and genuiness of the source of aforesaid information. Moreover, appellants have also not examined any locals in corroboration of the aforesaid report and statement of the surveyor. Though in Para-11 of his cross-examination, the said surveyor has stated that he enquired from the Industry located in the vicinity of M/s Kumar Brothers. He made enquiry from Sanjeev Kumar Singh who is running the firm in the name of Sanjeev Steel Firm, but he did not record his statement and he had also not obtained his signature. The appellants have also not examined said Sanjeev Kumar Singh in corroboration of aforesaid report and evidence of DW-1. Thus, the aforesaid report and evidence of DW-1 does not stand corroborated by any locals or even by aforesaid Sanjeev Kumar Singh. As as per the aforesaid statement of DW-1, he had found the firm M/s Kumar Brothers on the plot in question in the year 2011, so the Office of the said firm must be there in the year 2008 and hence certificate (Exhibit-1) issued by the said firm in the year 2008 does not appear to be fake rather genuine one. Moreover, partner of the said firm, namely, Vinay Kumar examined by the claimant as CW-3 has deposed before the Court that the deceased used to work in his firm as supervisor since 2002 and he used to get salary of Rs. 8,000/- per

month. Learned lower court appears to have calculated the quantum of compensation rightly relying upon the aforesaid salary of the deceased.

Point No.III

20. From perusal of the record, it appears that the accident had taken place on 26.01.2003 on which date the insurance policy was effective and

enforceable but the claim petition was filed on 20.03.2009 i.e. after more than six 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 in New India Assurance Co. Ltd. Versus C. Padma and

another (Supra) has also been pleased to hold 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.

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 deceased was supervisor in M/s Kumar Brothers and used to get Rs. 8,000/- lump

sum per month as salary and the appellant is liable to pay the compensation to the claimants-respondents indemnifying the owner of the vehicle.

Hence, the impugned judgment and award passed by the learned Tribunal is not suffering from any infirmity, illegality and impropriety warranting

intervention of this Court in the appeal. Hence, the aforesaid Judgment and Award passed by the learned Tribunal is hereby upheld and present

miscellaneous appeal filed by the appellants-Insurance Company is dismissed.