

(1996) 12 GAU CK 0002
In the Gauhati High Court
Case No : Misc.Appeal (First) No. 58 of 1991

Phuleswari Barman

APPELLANT

Vs

New India Assurance Company Ltd.and Ors.

RESPONDENT

Date of Decision : 16-12-1996

Acts Referred:

Assam Motor Accidents Claims Tribunals Rules, 1960 — Rule 20, 20
Civil Procedure Code, 1908 — Order 2 Rule 2, 11
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11
Motor Vehicles (Amendment) Act, 1994 — Section 53, 53
Motor Vehicles Act, 1988 — Section 166(3), 166(3)

Citation : (1997) 1 GLJ 426

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : S.Kataki, N.Sharma, K.Basar, J.Singh, D.C.Mahanta, Advocates
appearing for Parties

Judgement

1. Earlier a claim petition was filed for the death of one Basiram Barman who dies in an accident on 2.12.81 that claim application was filed before the Motor Accident Claim Tribunal at Dhubri. That petition was filed only by die wife Smti Phuleswari Barman, That petition was dismissed for default on 17.8.82. Thereafter this application was filed. Present application was filed on 27.3.89 before the Member, Motor Accident Claims Tribunal at Goalpara and that was registered as MAC Case No. 171 of 1989. An application for condonation of delay was also filed. At that point of time section 166 (3) was in force in the Motor Vehicles Act, 1988 and section 166 (3) provide a period of one year as limitation only for such an application. That section existed at that point of time. The Motor Accident Claims Tribunal rejected the application of the petitioner by the impugned order dated 15.3.91 holding it to be barred by limitation, the main grounds for rejecting mat application were (1) limitation (2) claim also must be deemed to be barred by principles fo res judicata. Hence this appeal.

2. I have heard Mr. DC Mahanta learned counsel for the appellant and Mr. J.

Singh learned Advocate for the respondent No. 1 The New Indian Assurance Company. None appears for other respondents. This question regarding limitation has been clinched now by a Single Judge decision of this Court as well as by the recent decision of the Apex Court in (1996) 4 SCC 652, Dhannalal vs. DP Vijayvargiya & others wherein it was pointed out by the Apex Court that subsection (3) of section 166 of the Act has been amended by section 53 of the Motor Vehicles Act (Amendment) Act, 1994 which came into force with effect from 14.11.94. The Supreme Court further pointed out that the effect of the Amending Act is that it laid down that from 14.11.94 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and injury Which was being caused to the heirs and legal representatives of the victim who died in the accident rejecting their claim petition only on the 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 the victims are hospitalised for months or for years. Parliament rightly thought that prescribing a period of limitation and restricting the power of the Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimant. From the Amending Act it does not appear that the said subsection (3) has been deleted retrospectively. But at the same time there is nothing in the Amending Act to show that the benefit of deletion of subsection (3) of section 166 is not to be extended to the pending claim petitions where the plea of limitation has been raised. When subsection (3) of section 166 has been omitted the Tribunal has to entertain a claim petition without taking note of the date on which such accident took place. The claim petition cannot be thrown out on the ground that, such claim petition was barred by time when subsection (3) of section 166 was in force. So the Supreme Court pointed out that no such provisions have been deleted during the pendency of the petition before the Tribunal or the High Court or the Supreme Court, the claimant is entitled to the benefit of the amended provisions. Accordingly I hold that in this particular case also the claimant shall be entitled to the benefit of the amended provisions and it cannot be said that the claim which was made in the year 1989 shall be deemed to be barred by limitation, so the first ground on which this petition has been thrown out is not tenable. The next question is that whether the finding arrived at by the Tribunal holding that the claim is barred by the principles of res judicata and or hit by Order 2 Rule 2 can be said to be a correct decision. Order 2 Rule 2 of the CPC does not apply to a claim petition. In the earlier petition the minor daughter was not a petitioner. Her petition made in the year 1989 the minor daughter was a petitioner. Further when a claim matter is dismissed for default the question of res judicata cannot arise, it can arise only when a matter is decided on merit. The dismissal for default cannot be considered to be a ground of res judicata. After the earlier claim, petition was

dismissed for default to take steps Order 9 Rule 4 shall apply. Order 9 of the Code of Civil Procedure has been made applicable to the claim petition by Assam Motor Accident Claims Tribunal Rules, 1990 and Rule 20 provides that Order 9 as a whole applies to such a proceeding. The Order 9 of the Code of Civil Procedure shall apply to such proceeding (so far as may be). As the claim was dismissed for default Order 9 Rule 4 gives the right to the party either to bring afresh claim or to apply before the Court to restore the earlier claim petition. The petitioner herein wanted to bring fresh claim petition. From that angle also the second petition is not barred. Accordingly the impugned order dated 15.3.91 passed by the Member, Motor Accident Claims Tribunal snail stand quashed and MAC Case No.71 of 1989 shall go back to him to be decided in accordance ; with law. This disposes the appeal.