

(2000) 07 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 1721 of 1993

Pradeep Kumar

APPELLANT

Vs

Kesavan Kutty Nair

RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2001) ACJ 1349

Hon'ble Judges : G. Sasidharan, J

Bench : Single Bench

Advocate : Ajay Krishnan Nair and Narayanan Nagaraj, for the Appellant; S.P. Aravindakshan Pillai, Pirappancode V. Sreedharan Nair and George Cheriyan, for the Respondent

Final Decision : Allowed

Judgement

G. Sasidharan, J.—Petitioner suffered injuries in a road traffic accident which took place on 29.8.1987. Petition claiming compensation was filed in the Motor Accidents Claims Tribunal, Trivandrum on 23.8.1990. Along with the claim petition, LA. No. 486 of 1990 was filed for condoning the delay of 2 years 5 months and 24 days in filing the claim petition. The Motor Accidents Claims Tribunal dismissed the application on finding that as per Section 166(3) of the Motor Vehicles Act, 1988, the Tribunal had no power to condone the delay beyond a period of one year. Exh. P3 is the copy of the order of the Motor Accidents Claims Tribunal in the interlocutory application which is now under challenge.

2. On 14.11.1994 Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 was omitted. The question which arises for consideration is the effect of deletion of Sub-section (3) of Section 166 from the Motor Vehicles Act, 1988. At the time when Exh. P3 order was made, the above Sub-section was there in the Act and the Motor Accidents Claims Tribunal dismissed the application for condoning the delay in the light of what is stated in the above Sub-section of Section 166 of the

Motor Vehicles Act.

3. In *Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others*, it was held by the Apex Court that when a claim petition is filed after the repeal of the old Act in respect of an accident which took place when the old Act was in force, the question of condonation of delay will be governed by the new Act. Sub-clause (3) of Section 166 of the Act provides that no application for compensation shall be entertained unless it is made within six months of the occurrence of the accident. The proviso states 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. It is in the light of what is stated in the proviso that the Claims Tribunal observed that the Tribunal had no power to condone the delay beyond one year from the date of accident.

4. The effect of deletion of Sub-section (3) of Section 166 of the Act was considered by the Supreme Court in *Dhannalal Vs. D.P. Vijayvargiya and Others*. The effect of the amendment which came into force from 14.11.1994 is that from the above date, there is no limitation for filing claims before the Tribunal in respect of any accident. Noting that there is nothing in the amending Act which would show that Sub-section (3) has been deleted retrospectively the Supreme Court observed that there is nothing in the amending Act to show that benefit of deletion of subsection (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. In the above decision, it was observed that when a claimant filed a claim petition beyond time and that petition had been rejected by the Claims Tribunal or by the High Court and the claimant does not challenge the same allowing of the judicial order to become final, that benefit cannot be extended. What is to be understood from the above position is that when the judicial order which says that the claim petition was barred by limitation has not become final, the benefit sought to be given to the persons who approach the Claims Tribunal by filing claim petitions as a result of deletion of Sub-section (3) of Section 166 has to be extended to the person against whom the judicial order was made. In the decision of the Apex Court stated *supra*, it was observed that since the matter regarding limitation which came up for consideration of the Apex Court was pending decision, the benefit of deletion of subsection (3) of Section 166 could be extended to that case. Here also, even though the order challenged is one which was made by the Claims Tribunal before the amendment by which Sub-section (3) of Section 166 was deleted, the benefits sought to be given by way of amendment can be extended to the petitioner for the reason that the order of the Claims Tribunal is under challenge.

5. In the result, Exh. P3 order is quashed directing the Motor Accidents Claims Tribunal to take back the claim petition to its file and to dispose of the same in accordance with law. The original petition stands allowed. Considering the fact that this claim petition is one filed in 1990 the Motor Accidents Claims Tribunal

will have to dispose of the same as early as possible.