

(2017) 03 AHC CK 0198
In the Allahabad High Court
Case No : 1713 of 2017

Sangam Lal Kesarwani And Another

APPELLANT

Vs

Smt. Soghra Devi And 3 Others

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Constitution of India, Article 227, Article 137 - Power of superintendence over all courts by the High Court - Review of judgments or orders by the Supreme Court
Code of Civil Procedure, 1908, Order 9Rule 4 -
Limitation Act, 1908, Section 5 - Motor Vehicles Act, 1994, Section 166(3)

Citation : (2017) 03 AHC CK 0198

Hon'ble Judges : Manoj Misra

Bench : Single Bench

Advocate : Deepali Srivastava Sinha, Amit Kumar Sinha

Judgement

1. Heard learned counsel for the petitioners and perused the record.
2. The facts of the case which have given rise to the present petition under Article 227 of the Constitution of India are as follows:- A motor accident claim petition was filed by the claimant-respondents along with an application under Section 5 of the Limitation Act, which was assigned Misc. Case No.687 of 1993. The application under Section 5 of the Limitation Act as well as all pending applications in the said proceeding came to be dismissed for non prosecution by order dated 23.04.1999 passed by the Tribunal presided over by Additional District Judge, XVI, Allahabad. Thereafter, the claimant-respondents filed a fresh claim petition No.132 of 1999. In the fresh claim petition, an ex-parte award was passed on 18.08.2001 against which an application was filed for recall of the ex-parte award. The said application was allowed and the ex-parte award was set aside. Since then the proceedings are pending before the Motor Accident Claims Tribunal/Additional District Judge, Court No.5, Allahabad as M.A.C.P. No.132 of

1999. In these pending proceedings, an application 83-Ga was filed by the petitioners for dismissal of the claim petition as not maintainable on account of earlier dismissal of Misc. Case No.687 of 1993.

3. By the impugned order dated 11.01.2017, the Additional District Judge, Court No.5, Allahabad/M.A.C.T. rejected the application 83-Ga.

4. Assailing the impugned order, the learned counsel for the petitioners has submitted that although by amendment, subsection (3) of Section 166 of the Motor Vehicles Act, which provided for a period of limitation for filing a claim petition, has been deleted but since the delay condonation application filed earlier by the petitioners was rejected, in view of the law laid down by the Apex Court in *Dhannalal v. D.P. Vijayvargiya, and others* (1996) 4 SCC 652, the subsequent claim petition was barred. It has been submitted that the court below therefore committed manifest error of law by rejecting the application 83-Ga.

5. I have considered the submissions of the learned counsel for the petitioners and have perused the judgment of the Apex Court rendered in *Dhannalal's* case (*supra*).

6. Before analysing the submissions it would be useful to examine the provisions of Section 166 of the M.V. Act, 1989.

7. Prior to amendment carried out by M.V. (Amendment) Act, 1994, w.e.f. 14.11.1994, Section 166(3) provided that no application for such compensation shall be entertained unless it is made within six months of the occurrence of 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.

8. By Section 53 of the Motor Vehicles (Amendment) Act, 1994, which came into effect from 14.11.1994, the aforesaid subsection (3) has been omitted. The effect of the Amending Act is that w.e.f. 14.11.1994 there is no limitation for filing claims before the Tribunal in respect of any accident.

9. Interpreting the impact of omission of sub-section (3), the apex court in *Dhannalal's* case (*supra*) held that 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 and that the claim petitions cannot be thrown out on the ground that such claim petitions were barred by the time when sub-section (3) of Section 166 was in force. It was observed by the apex court that deletion of sub-section (3) from Section 166 should be given full effect so that the object of deletion of the said section by Parliament is not defeated. It was observed that if a victim of the accident or heirs of the deceased victim can prefer claim for compensation, if not preferred earlier, post amendment, how can the victim or the heirs of the deceased be in a worse position if an application for condonation of delay in filing the claim petition is

pending since before the amendment. After holding, as above, in paragraph 8, the apex court observed as follows:- "The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The aforesaid amending Act shall be of no help to such claimant. The reason being that a judicial order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal, the High Court or this Court. In such cases, the benefit of amendment of sub-section (3) of Section 166 should be extended."

10. It is this observation made in paragraph 8 of the judgment that the learned counsel for the petitioner relies upon to contend that the second claim petition was not maintainable upon rejection of the application for condonation of delay.

11. From a bare perusal of the observations made by the Apex Court in its judgment in Dhannalal's case it is clear that after the deletion of sub-section (3) of Section 166 of the Motor Vehicles Act, 1994, with effect from 14.11.1994, there is no limitation for filing claims before the Tribunal in respect of any accident and even in pending claim petition which may have been filed after expiry of the period of limitation, the benefit of omission of sub-section (3) would be available to the claimant. However, where a claim petition is filed before the deletion of sub-section (3) of Section 166 of the Act with an application to condone the delay, then rejection of the delay condonation application would render the subsequent claim petition not maintainable because the judicial order saying that such petition of claim was barred by limitation has attained finality. The Apex Court's judgment is silent as to what would be the position where the rejection of delay condonation application is not on merit but for non prosecution.

12. In *New India Assurance Co. Ltd. v. C. Padma*, (2003) 7 SCC 713, the apex court following the decision in Dhannalal's case had observed that the Motor Vehicles Act is a beneficial legislation and is a self-contained Act which prescribes the mode of filing the application, procedure to be followed and award to be made. It was observed that since the object is to give effective relief to the victims and the families of the motor accidents, untrammelled by the technicalities of limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the legislature. It was observed that the claimant was entitled to the benefit of deletion of sub-section (3) of section 166 of the M.V. Act irrespective of the fact that the cause of action arose prior to the enforcement of the Amending Act.

13. In the above background, it has to be seen as to whether rejection of an application for condonation of delay on nonprosecution would bar filing of a fresh claim petition, in the light of observations made in paragraph 8 of the apex court's decision in Dhannalal's case (*supra*).

14. Where an application under Section 5 of the Limitation Act is rejected on merit, then the decision, if not challenged, would bind the parties by the principle of res judicata. But, where the application under Section 5 of the Limitation Act is not rejected on merit but for non prosecution then principle of res judicata would not apply. An aggrieved party may either seek for restoration of his application or may file a fresh application, if otherwise not prohibited by any law, like in a case where a suit is dismissed for non-prosecution. Regard may be had to the provisions of Order 9, Rule 4 CPC. Order 9, Rule 4 CPC provides that where a suit is dismissed under Rule 2 or Rule 3 Order 9, the plaintiff may (subject to the law of limitation) bring a fresh suit. Therefore, once the law of limitation does not apply there is no fetter on the claimant to file a fresh claim petition except in a case where there is adjudication on merit in the previous proceeding because then the parties would be bound by the principle of res judicata.

15. In the instant case, admittedly, on the date when the previous claim petition and the application for condonation of delay was rejected by the Tribunal, none of the parties were present and the merit of the delay condonation application was not adjudicated upon.

16. Under the circumstances, depriving the claimant of his right to present a fresh claim petition under Section 166 of the Motor Vehicles Act, would negate the legislative intent reflected by deletion of sub-section (3) of Section 166 from the Statute Book.

17. In view of the discussion made above, this Court is of the view that the subsequent claim petition is maintainable and the Tribunal rightly held it to be so. The petition is dismissed.