

(1997) 11 BOM CK 0004
In the Bombay High Court

Shyam

APPELLANT

Vs

Iqbal Ahamad Alamkhan and Others

RESPONDENT

Date of Decision : 03-11-1997

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1998) 1 ACC 542

Hon'ble Judges : V.S. Shirpurkar, J

Bench : Single Bench

Judgement

V.S. Shirpurkar, J.—Heard finally with the consent of parties:

2. The applicant herein not with an accident on 15.6.1989 and sustained various injuries. He claims that he was in the hospital, after the accident, and was an indoor-patient till 4.9.1989 and subsequently was referred to the Medical College and Hospital, Nagpur, and was there till 10.1.1990. He claimed that during this period, he was not moving and was confined to bed. The applicant thereafter, after collecting the documents, etc., and after getting legal advice, filed a claim petition on 7.7.1990. That was clearly beyond the period of twelve months which was an outer limit as per the Motor Vehicles Act, 1989 ("the Act of 1988" for short).

However, this claim petition was accompanied with by an application u/s 5 of the limitation Act, for condonation of delay in filing the claim petition, and that application was separately registered as Misc. Civil Application No. 97 of 1990. This application has been rejected by the Accident Claims Tribunal. Amravati on the ground that there is no jurisdiction in the Courts as per the law as it existed at the time of incident to condone the delay which was beyond 12 months.

3. Mr. Khubalkar, learned Counsel appearing on behalf of the applicant, contends that this case is squarely covered by a decision reported in Dhannalal V.D.P. Vilaywargia 1997 (1) MLJ 487. The learned Counsel is at pains to point out mat the claim petition as well as the application for condonation of delay, which were

filed on 7.7.1990, were pending on 14.11.1994 when the motor vehicles Act was amended and Sub-section (3) of Section 166 was deleted, whereby the concept of limitation for filing an accident claim was removed altogether. He points out that actually his application has been disposed of on 31.1.1993 and as such the claim petition as well as the application for condonation of delay were pending on the day when the amending Act came into force. He accordingly, further argues that this being the position, the applicant should have been given the advantage of the amending Act and there would really be no necessity of applying the bar of limitation. The position, according to the learned Counsel, is completely covered in the Apex Court's judgment mentioned above.

4. Mr. Thakur, learned Counsel appearing on behalf of Respondent No. 3, opposes this contention, on the ground that the Division Bench of this Court has taken a view that where the petition is covered and governed under the Act of 1988, any application made beyond the period of 12 months would be of no consequence and had to be dismissed as there would be no power in the Court to condone the delay.

5. My attention was, however, invited to the contents of paragraph 8 of the abovesaid decision which runs as under:

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 petitions 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 pending consideration either before the Tribunal, High Court or this Court. In such cases, the benefit of amendment of Sub-section (3) of Section 166 should be extended.

This observations would squarely show that where a petition and/or the condonation of delay application are pending on the day when the last Amending Act came into effect, i.e. on 14.11.1994, the advantage of the Amending Act would be extended to such petitions also. The observations by the Apex Court, therefore, clearly cover the present case, as in the present case, the matter was pending before the Tribunal on 14.11.1994 end, in fact, the learned Member of the Accident Claims Tribunals has disposed of the matter on 31.1.1995. Once this position is clear, there is no question of any bar of limitation applying to the petition. The order, refusing to condone the delay is set aside. It is held that the bar of limitation will not be applicable to the pending claim petition. The member of the Accident Claims Tribunal is directed to dispose of the claim petition on its merits, as early as possible.

6. In the result, the Civil Revision Application is allowed, but without any order as to the costs.