

(2012) 10 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48640 of 2012

Smt. Samla Devi Mishra

APPELLANT

Vs

National Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 3 ALJ 311

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Chandra Shekhar Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard learned counsel for the petitioners. Petitioners have invoked writ jurisdiction of this Court challenging the order dated 19.5.2012 of the Motor Accident Claims Tribunal rejecting their application u/s 5 of the Indian Limitation Act to condone the delay in filing the claim petition.

2. One Ram Lakhan Misra, husband of petitioner No. 1 and the father of petitioner Nos. 2 and 3 died in a motor accident on 5.11.1988. Petitioners preferred the Motor Accident Claim Petition in February 2005 along with an application to condone the delay in filing the claim petition. The application has been rejected.

3. The rejection is being impugned herein.

4. The submission of the learned counsel for the petitioners is that under the Motor Vehicles Act presently there is no provision laying down any limitation for making a claim petition and therefore the claim petition ought to have been entertained and the rejection of the delay condonation application is illegal.

5. In the year 1988 when the accident took place Motor Vehicles Act, 1939 was applicable. The Motor Vehicles Act, 1988 was enforced w.e.f. 1.7.1989. Both

under the old Act as well as in the new Act Section 163 (3) of the Act provided for a limitation of six months from the date of accident for filing the claim petition. It further provided that the delay of further six months in filing the claim petition is condonable on sufficient ground. Thus, at the relevant time the limitation for filing the claim petition was six months with a further grace period of six, months subject to the satisfaction of the tribunal.

6. The time limit prescribed for filing the claim petition was done away within the year 1994 by deleting sub-section (3) of the Section 163 of the Act. The said exclusion of limitation is only prospective in nature and would not cover the matters for which cause of action had arisen and expired before the aforesaid amendment.

7. In view of the aforesaid facts and circumstances, the claim petition filed about 17 years of the accident was certainly barred by limitation as was prescribed by Section 163(3) of the old Act which was applicable at the relevant time and such a long delay in filing the claim petition could not have been condoned in any case as per the provisions of the old Act.

8. In view of the above, the tribunal has not erred in rejecting the delay condonation application and in refusing to entertain the claim petition.

9. The fact that as on date no limitation is prescribed for filing the claim petition under the new Act, it would not give any right to the petitioner to revive an old dead matter in respect of which cause of action had arisen in 1988 and stood expired before the amendment of the Act. The writ petition as such has no merit and is dismissed.