

(1996) 12 MAD CK 0046

In the Madras High Court

Case No : C.R.P. No. 3021 of 1996 and C.M.P. No. 16513 of 1996

The New India Assurance Company Ltd.

APPELLANT

Vs

C. Padma and Another

RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Limitation Act, 1963 — Article 137, 4, 5
Motor Vehicles Act, 1988 — Section 166(3)

Citation : (1997) 1 CTC 761 : (1997) 1 LW 243

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : R. Vedantham, for the Appellant;

Final Decision : Dismissed

Judgement

AR. Lakshmanan, J.—Heard Mr. R. Vedantham, learned counsel for the revision petitioner/insurance company.

2. The revision is directed against the order passed by the Motor Accident Claims Tribunal/Principal District Judge. Tirunelveli. in M.C.O.P.GL.No. 7455 of 1995 (Unnumbered M.C.O.P.) dated 9.7.1996. whereby the Tribunal has entertained the claim petition filed by the 1st respondent/claimant on 2.11.1995, seeking compensation for the injuries sustained by the claimant in an accident that took place on 18.2.1989. The Tribunal entertained the claim petition on 2.11.1995. the accident took place on 18.2.1989 i.e., prior to the coming into force of the amended Motor Vehicles Act (Act 59 of 1988), which came into force with effect from 1.7.1989. The Tribunal over-ruled the objection raised by the insurance company that the claim petition was wholly barred by limitation inasmuch as the claim petition has been filed only on 2.11.1995 in respect of the accident that took place on 18.2.1989. i.e., nearly after six years and ten months from the date of the accident.

3. It is useful to extract the order of the Tribunal, which is impugned in this

revision. It runs as follows :-

"The counsel for the claimant submitted that as per the ruling in Wilfred Vs. Maniyar, there cannot be a limitation under the new Motor Vehicles Act to file a claim petition and therefore even though the accident took place on 18.2.1989 the claim of the petitioner is not barred by limitation and the petition has to be admitted. The counsel who appeared on behalf of the insurance company submitted that even though there is no limitation under the new Motor Vehicles Act, the General Clauses Act would prescribe the limitation as three years when no limitation is prescribed under any other Act, and therefore the claim ought to have been filed within three years from the date of the accident. Since the same has not been filed within a period of three years, it is barred by limitation.

On a careful consideration of the arguments advanced by the learned counsel for both the parties, I am of the view that the submission made on behalf of the respondent does not appear to be acceptable. The provisions of the Motor Vehicles Act have been liberalised so far as awarding compensation to the claimants who were either injured or died in the same. When the new Motor Vehicles Act had chosen to prescribe no limitation and the provisions have been given retrospective effect, the said provisions would stand defeated if the argument put forward on behalf of the respondents is accepted. Hence, on the basis of the principles of law reported in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, and Wilfred Vs. Maniyar, , the petition is ordered to be numbered if otherwise in order."

4. It is contended by Mr. R. Vedantham that the Tribunal, on an erroneous interpretation of the law governing the provisions of the Motor Vehicles Act applicable on the date of the accident, allowed the claim petition to be numbered without reference to the number of days of delay in filing the same. At the time of hearing, the learned counsel made the following submissions:

(i) The Tribunal failed to see that the application for compensation was filed by the 1st respondent/claimant on 2.11.1995 whereas the accident had taken place as early as 18.2.1989. i.e., almost after a period of six years and ten months from the date of the accident.

(ii) The tribunal has erred in holding that since the Amending Act viz., Motor Vehicles Act, 1988 (amending Act 54 of 1994) did not specify any period of limitation in respect of filing of an application for compensation, the 1st respondent/claimant cannot be denied the right to file an application in view of the provisions of the Amending Act. The Tribunal has further erred in holding that no limitation is prescribed for the claimant to prefer the application for compensation.

(iii) The Tribunal has further mis-directed itself in law in misinterpreting the decision rendered by the Supreme Court in Wilfred Vs. Maniyar, that there is no time limit for filing the application for compensation by an accident victim and therefore, however belated the application may be, the compensation application

cannot be rejected.

(iv) The Tribunal further failed to see that the accident had taken place on 18.2.1989 and therefore, Section 110(A)(3) of Act 4 of 1939 as amended, makes it incumbent on the part of the applicant to file application to condone the delay if the same had been filed beyond six months from the date of the accident.

(v) The Tribunal has also failed to see that the decision rendered by the Supreme Court is in respect of the accident that took place during the currency of the Amending Act of 1988 (Act 59 of 1988), and therefore, the Tribunal cannot ignore the mandatory provisions of Section 110(A)(3) of Act 4 of 1939.

(vi) The Tribunal further failed to see that Act 54 of 1994 is only amending Act 59 of 1988 and therefore, the cause of action having arisen when Act 4 of 1939 was in force, the non-providing of limitation under Act 54 of 1994 cannot be taken advantage of by the claimant to seek remedy under the Amending Act 54 of 1994.

(vii) The Tribunal failed to see that the Limitation Act specifically provides for the period of three years in case where the statute does not provide for any period of limitation and therefore, in conjunction with the provisions of the General Clauses Act, the claimant/1st respondent cannot be given the benefit to file the application for compensation beyond the period of three years as per the provisions of the Limitation Act as well as the General Clauses Act.

5. Mr. R. Vedantham, learned counsel for the petitioner, in support of his contention, has sought support from the decision of the Supreme Court reported in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, wherein the Supreme Court while considering the applicability of Article 137 of the Limitation Act, observed as follows:-

"The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of *ejusdem generis* to be applications under the CPC other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application during such period. Article 137 will apply to any petition or application filed under any Act to a Civil Court. It is not confined to applications contemplated by or under the Code of Civil Procedure... Where by statutes, matters are referred for determination by a

Court of Record with no further provision the necessary implication is that the court will determine the matters as a Court... The changed definition of the words "applicant" and "application" contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis is not applicable with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other Articles in Part I of the third division. Article 137 includes petitions" within the word "applications". These petitions and applications can be under any special Act... Where the petition was filed before the District Judge u/s 16(3) of the Telegraph Act claiming enhanced compensation beyond three years from the date of service of notice intimating fixing of compensation by the State Electricity Board, that the petition was to the District Judge as a Court, that the petition was one contemplated by the Telegraph Act for judicial decision and the petition was an application falling within the scope of Article 137 and therefore the petition was barred by time."

6. Mr. R. Vedantham, learned counsel for the revision petitioner has also relied on a passage at page 575 in Salmond and Heuston on the Law of Torts, Twentieth Edition, which runs as follows:

"Section 2(1) of the Law Reform (Limitation of Actions, etc.) Act 1954, now Section 11(3) of the 1980 Act, amended the Limitation Act 1939 by reducing from six years to three years the period of limitation for actions for damages for negligence, nuisance or breach of duty (Whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision), where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person. The reason for this change is that it is desirable in the interests of justice that actions for personal injuries should be brought to trial quickly, while the evidence is still fresh in the minds of parties and witnesses. The Court of Appeal has held in *Letang v. Cooper*, 1965 (1) Q.B. 232 that the words "breach of duty" are wide enough to include causes of action for personal injuries which are framed in trespass as distinct from case. This is to be welcomed on the ground that it is undesirable that a plaintiff should be able to avoid the three year period of limitation by taking advantage of the technicalities of the forms of action. Still, on the other side it may be said that the distinction between trespass and case has not yet been expressly abolished, that the Limitation Acts have not impliedly done so, and that a plaintiff is entitled to the period of limitation appropriate to his cause of action until Parliament otherwise determined. So if the action is for breach of contract for failing to effect an insurance policy to cover personal injuries, the period is six years and not three *Ackbar v. C.F. Green & Co., Ltd.*, 1975, Q.B. 582".

7. I am unable to countenance the arguments of the learned counsel for the petitioner in view of the decision rendered by me on 29.10.1996 in C.R.P.Nos.

1820 of 1992 and 431 of 1996, following the recent decision of the Supreme Court reported in Dhannalal Vs. D.P. Vijayvargiya and Others, . In that case, applying the principles laid down by the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, , the accident claim of the petitioner in C.R.P.No. 1820 of 1992 was originally rejected by me on 20.9.1996. On coming to know of the recent decision of the Supreme Court in Dhannalal Vs. D.P. Vijayvargiya and Others, I suo mom re-opened that case and heard the arguments of the learned counsel for the petitioner in C.R.P.No. 1820 of 1992 and the learned counsel for the insurance company in C.R.P.No. 431 of 1996. which was directed by the insurance company against the order made in I.A.No. 539 of 1991 in M.C.O.P.S.R.No. 707 of 1991 on the file of the Motor Accidents Claims Tribunal/District Judge, Pudukkottai, condoning the delay of 213 days in filing the Motor Accident Claim Petition.

8. In that case, learned counsel for the insurance company has challenged the Tribunal's order on the ground that the Tribunal has grossly erred in condoning the delay, which is contrary to Section 166(3) of the Motor Vehicles Act, 1988, and opposed to the decision of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, . The learned counsel for the insurance company also cited a number of decisions of the Apex Court and contended that if a claim had already become time barred under the earlier enactment, then, even if the new enactment suggests a longer period of limitation, then it would not have the effect of reviving such claims already time barred unless the new enactment so suggests. The learned counsel for the insurance company cited the decision reported in Syed Yousuf Yarkhan and Others Vs. Syed Mohammed Yarkhan and Others, and C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others, . An argument was also advanced by the learned counsel for the insurance company in that case relating to the effect of Section 6(a) of the General Clauses Act. 1897 and the observations of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, on the effect of Section 6 of the General Clauses Act, 1897. It is also not out of place to mention herein that the judgment of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, . was not cited before the Supreme Court in Dhannalal Vs. D.P. Vijayvargiya and Others, .

9. Considering the entire argument of the learned counsel for the insurance company, this court (AR. Lakshmanan. J) held in paragraph 31 of the order in C.R.P.Nos. 1820 of 1992 and 431 of 1996 as follows:

"In so far as the time barred aspect of the claim is concerned, let us see how the Supreme Court in Dhannalal Vs. D.P. Vijayvargiya and Others, has held in paragraph 7. It runs thus: "From the Amending Act, it does not appear that the Sub-section (3) of Section 166 of the Act has been deleted retrospectively. But at the same time there is nothing in the Amending Act to show that benefit of deletion of Sub-section (3) of Section 166 of the Act is not to be extended to pending claim petitions where a plea of limitation has been raised."

10. In paragraph 34 of that order, this Court, while considering the argument of the learned counsel for the insurance company on the plea of limitation has observed as follows: -

Dhannalal Vs. D.P. Vijayvargiya and Others, being on the same provision viz., Section 166(3) of the Motor Vehicles Act, 1988, in my opinion, nothing much survives in C.R.P.No. 431 of 1996. However, the effect of Section 6(a) of the General Clauses Act, 1897, may lead to a different conclusion read with the provision that time barred claims cannot be revived unless the new enactment so suggests. However, this question can be decided only by the Hon"ble Supreme Court and a verdict pronounced on the sustainability of these points now raised by the learned counsel for the insurance company. However, one cannot lose sight of the fact that the legislation being a beneficial one intended to provide succour and relief to innocent motor accident victims, the welfare orientation given to the bestowal of benefits under Act 54 of 1994, vis-a-vis a removal of Section 166(3) of the Motor Vehicles Act, 1988, may be in keeping with it."

11. In paragraph 36 of the said order, this Court has observed as follows:-

"Learned counsel for the insurance company, in conclusion said that it is for this Court or the Supreme Court to pronounce on these interesting possibilities, as he calls them, while disposing of these revisions. According to the learned counsel, the points raised by him may at least be referred while disposing of these two revisions. Accordingly I referred to his arguments in paragraphs supra. However, the question has now become academic so far as these revisions are concerned since Dhannalal Vs. D.P. Vijayvargiya and Others, has been decided on a consideration of the very provision of Section 166(3) of the Motor Vehicles Act, 1988, or the effect of its removal as of 14.11.1994, which too is the subject matter of dispute in C.R.P.No. 431 of 1996. nothing much may be left to be heard or decided. Where there is a direct conflict betwixt two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. As the judgment reported in Dhannalal Vs. D.P. Vijayvargiya and Others, has been decided later in point of time and it also stated the law with particular reference to the very provision in Section 166(3) of the Motor Vehicles Act, 1988, and the effect of its removal as of 14.11.1994. this later decision of the Supreme Court is followed by me."

12. In view of the pronouncement of the law on the very provision in Section 166(3) of the Motor Vehicles Act, 1988, and the effect of its removal as of 14.11.1994 in Dhannalal Vs. D.P. Vijayvargiya and Others, , I have no hesitation to hold that the present revision is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. Consequently. C.M.P.No. 16513 of 1996 is also dismissed as no longer necessary.