

(1997) 09 MP CK 0014
In the Madhya Pradesh High Court
Case No : MA No. 58 of 1995 (J)

United India Insurance Co.

APPELLANT

Vs

Bhagirath Vishwakarma

RESPONDENT

Date of Decision : 01-09-1997

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 140, 166(3)

Citation : (1999) 2 MPJR 113

Hon'ble Judges : Rajeev Gupta, J

Bench : Single Bench

Advocate : A. Ruprah, for the Appellant; U.K. Sharma, Advocate, For respondents 1 and 2 and Mr. Vinod Mehta, Advocate, For respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Gupta, J.

The only point raised in this appeal is whether the order passed u/s 140 of the Motor Vehicles Act by way of interim award, on the basis of no fault liability could not be passed because the petition u/s 166 of the said Act, as a whole was barred by time, being beyond one year of the accident.

The Motor Accidents Claims Tribunal, Damoh vide order dated 12.11.94 held that the petition u/s 166 (3) of the Motor Vehicles Act was barred by time. It had been filed on 7.5.93, while the accident and death occurred on 30.4.93 and the statute provides a bar against the condonation of delay. The deceased was wife of Bhagirath Vishwakarma Claimant No. 1 and the mother of Babli, minor, claimant No. 2 who was only aged about 5 years. The Tribunal observed that certain provisions have been made under the Motor Vehicles Act for condoning the delay in filing the petition upto six months after the expiry of the prescribed period of six months" limitation, therefor. No further time for condonation of delay on the principles of Sec. 5 of the Limitation Act could be granted. However,

it observed that the petition of Bhagirath Vishwakarma was barred by time and the petition on behalf of Babli, minor was also barred by time, though Babli herself, after becoming major, within six months, could file her own petition to claim compensation. The tribunal also observed that for "no fault liability" u/s 140 of the Motor Vehicles Act, no limitation has been prescribed and that it was not essential that a petition for that purpose should be separately filed and that such an order could be passed by the Tribunal suo-motu. The Tribunal, therefore, while dismissing the main petition, allowed the interim award of Rs. 25,000/-.

Insurance Company of the vehicle being aggrieved by the said order has approached this Court in appeal.

Learned counsel has asserted that the main petition was barred by time and the order under Sec. 140 of the Motor Vehicles Act could not and should not be passed, as it would amount to allowing the petition partly which is barred by time.

Limitation against the minor will start running after he or she becomes major and not prior to that. The Tribunal has wrongly observed that though the minor could file separate petition after becoming major, her present petition through next friend was barred by time, because the next friend could sue for himself and for her also, as any claim could be filed for all the persons entitled.

Sec. 29(2) of the Limitation Act 1963 provides as under-

29 (2) where any special or local law prescribes, for any suit, appeal or application, a period of limitation different from the period prescribed by the Schedule, the provisions of Sec. 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in secs. 4 to 24 inclusive shall apply only in so far as, and to the extent to which they are not expressly excluded by such special or local law.

The Motor Vehicles Act, In Its provision pertaining to a petition u/s 166 of the Act for claim has prescribed a period of six months for filing claim. This period can be extended for a further period of six months by the Tribunal, but no more. Period of limitation starts from the date of accident or from the date when the consequence of the accident takes place.

This means, for a petition u/s 166 of the Motor Vehicles Act, premissive period for condonation of delay would be six months after the original period and no more.

Section 5 of the Limitation Act deals with the condonation of delay which had taken place in filing the petition, but not in suit. A petition u/s 166 of the Motor Vehicles Act is not a suit. This section lays down to what extent the initial period of six months can be extended. That is for six months, further and no more. So there is embargo against further condonation. This is specific exclusion of

operation of Sec. 5 of Limitation Act. So by operation of Sec. 5 of Limitation Act, the period of delay beyond one year of the accident or the consequence of the accident cannot be condoned. That would be beyond the jurisdiction of the Tribunal. Petition will have to be dismissed, as per Sec. 3 of the Limitation Act, if it has been filed one year after the accident or its consequence, whichever is later.

However, this does not exclude the provisions other than Section 5 of the Limitation Act. Those other provisions are not the provisions for condonation of delay. Thus, taking into consideration section 6 of the limitation Act, it deals with the cases where the claimant is minor or child i.e. it has legal disability to file a suit or petition. Section 6 lays down that such person may institute a suit or make an application within the prescribed period after the disability ceases. So the Section provides that a minor can make an application within six months after his minority has ceased and may get condonation for a further period of six months, but no more.

The question is whether such a minor can file a petition through next friend during his minority or is precluded. Fair interpretation of this principle is that during the minority, next friend of the minor can file a petition on his behalf. That will enure for benefit of the minor, but if next friend does not come forward, then minor may himself or herself file a suit or petition within the prescribed Limitation till after the date of attaining of majority. Thus, the limitation for claimant No. 2 Babli was not barred. It could not be held as barred merely because her father's right to file a claim petition for himself has become barred by time. The Tribunal was not justified in saying that the right of the minor to file petition will arise after attaining the majority, unless the next friend or guardian sues on his behalf within six months of the accident or of the consequence petition of Bhagirath Vishwakarma himself or for his own benefit might have been barred, but not so, as far as the petition of Babli, minor, was concerned.

The net result is that the petition of Babli could continue and interim order could be passed in the petition u/s 140 of the Motor Vehicles Act. It was actually passed. It cannot be faulted on the ground of bar of limitation. The observation of Tribunal that the petition of Babli, minor, was barred by time or premature, is reversed. It is unnecessary to go into the question whether when a petition is totally barred by time, a claim for interim award u/s 140 of the Motor Vehicles Act could be passed or not, before the trial of the issue of limitation, and whether such an order would have to be reversed if the petition ultimately is held to be barred by time.

The appeal has no force and is dismissed. Since the claimant has not approached this Court in appeal, no further order is passed about continuance of petition. The appeal is, however, dismissed with costs on respondents in this appeal which I fix at Rs..2000/-.