

(2002) 08 DEL CK 0115

In the Delhi High Court

Case No : F.A.O. No's. 120 of 1994 and 191 of 2000 & F.A.O. No's. 120/94 and 191 of 2000 and C.Ms. 1689 of 1994 and 892 of 2000

United India Insurance Co. Ltd.

APPELLANT

Vs

Din Dayal and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166(3)

Citation : (2004) ACJ 414

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; Sheetal Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Kapoor, J.—Heard.

2. This order shall dispose of the above two appeals u/s 173 of the Motor Vehicles Act as well as the applications under Order 41, Rule 5 read with Section 151 of the Code of Civil Procedure, 1908.

3. An interesting question has arisen in both these matters: "What shall be the impact of repealed law on the question of limitation (repealed by the Act 54 of 1994) in filing motor accident claim petitions"?

4. The relevant facts are that an accident took place on 31.3.1988. Under the then existing law, in view of proviso to Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 (hereinafter called "the Act" for short), the petition was to be filed within six months and it should be filed with an application for condensation of delay within six months thereafter as well but with the permission of the learned Tribunal. In the case in hand, the petition was filed on 17.3.1990 nearly after two years. The learned Tribunal vide its order dated 16.4.1994, condoned the delay in filing the petition and awarded interim compensation of Rs. 12,000 in favor of Din Dayal. F.A.O. No. 120 of 1994 was

filed against that order. On 26.2.2000, the matter was decided finally by the learned Tribunal awarding compensation total amounting to Rs. 92,000 with interest at the rate of 12 per cent per annum from the date of filing of petition till its realisation, including the amount of Rs. 12,000, which was awarded as interim compensation (challenged in F.A.O. No. 120 of 1994). Against that final order F.A.O. No. 191 of 2000 was filed by the insurance company on the ground of limitation.

5. Having heard learned counsel for the parties, it appears that the learned Tribunal would have been justified in dismissing the petition on the ground of limitation on the date of filing the petition in terms of the judgment in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, . The petition remained pending. So far as application u/s 140 of the Act was concerned, it was decided on 16.4.1994. An appeal is pending against that order as well. In the meanwhile, by an amendment which came into force on 14.11.1994, Sub-section (3) of Section 166 of the Act relating to limitation has been omitted.

6. In Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, , the following observations relating to impact of this repeal were made by the Apex Court in para 13 which reads as under:

"Having actually initiated the proceeding when the old Act covered the field a claimant could say that his right which had accrued on filing of the petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condensation of delay can be governed only by the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes applicability of the enactment when the need arises to take its benefit. In the present case the occasion to take the benefit of the provision for condensation of delay in filing the claim arose only after repeal of the old law. Obviously, the ground for condensation set up as "sufficient cause" also relates to the time after the repeal. The benefit of the repeated law could not, Therefore, be available simply because the cause of action for the claim arose before repeal. "Sufficient cause" as a ground of condensation of delay in filing the claim is distinct from "cause of action" for the claim itself. The question of condensation of delay must, Therefore, be governed by the new law. We accordingly hold that the High Court was right in its view that the case was covered by the new Act and delay for a longer period than six months should not be condoned."

7. The Apex Court had another occasion more or less in a similar situation in Dhannalal Vs. D.P. Vijayvargiya and Others, . In that case the accident took place on 4.12.1990 and the claimant's petition was filed on 7.12.1991. While dealing the question of limitation in the light of the amendment in paras 7 and 8 of the judgment the Supreme Court made following observation:

"In this background, now it has to be examined as to what is the effect of omission of Sub-section (3) of Section 166 of the Act. From the Amending Act, it

does not appear that the said Sub-section (3) 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 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of Sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose, an accident had taken place two years before 14.11.1994 when Sub-section (3) was omitted from Section 166. For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when Sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of Sub-section (3) of Section 166 w.e.f. 14.11.1994? According to us, the answer should be in negative. 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. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force. It need not be impressed that Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs if the victims die.

If a victim of the accident or heirs of the deceased victim can prefer the claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condensation of delay in filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court, The present appeal is one such case. The appellant has been pursuing from Tribunal to this court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990, in view of the Amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this court cannot be thrown out on the ground of limitation.

The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by Claims 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, High Court or this court. In such cases, the benefit of

amendment of Sub-section (3) of Section 166 should be extended."

8. A similar view was taken by a Division Bench of Himachal Pradesh High Court in *Sadh Ram Vs. State of Himachal Pradesh and Another*, wherein it was held that the appeal is a continuation of the suit and a change in law during the pendency of the appeal has to be taken into consideration and will govern the rights of the parties; the court is bound to take into consideration the subsequent events; the law of limitation is a procedural law and no person has got any vested interest in the procedure and the Act, being a welfare legislation, is to be interpreted not as a penal law to deprive the beneficiaries instead of extending the protection.

9. I think I need not burden this judgment with any further observations of any other court but to say that the benefits of the omission of the provisions relating to limitation stand automatically extended to the pending matters which could not be finally disposed of either before the learned trial court or before the High Court.

10. For the aforesaid reasons, I do not find any force in these two appeals and dismiss them along with the application filed therein.

11. Learned counsel for the respondent is justified in making a submission that the appellant should be directed to deposit the entire amount including the amount in the interim award. The appellant is directed to deposit the entire unpaid amount of award within six weeks.

12. A copy of this judgment be placed on the file of F.A.O. No. 120 of 1994.