

Sonma Devi Vs. Branch Manager, Oriental Insurance Co. and ors.

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Court : Patna

Decided On : Oct-22-1997

Judge : Gurusharan Sharma, J.

Appeal No. : Appeal from Original Order No. 319 of 1993

Appellant : Sonma Devi

Respondent : Branch Manager, Oriental Insurance Co. and ors.

Prior history : Gurusharan Sharma, J. 1. Against the order dated 18.2.1993, passed by the District Judge, Nawadah in Motor Vehicle Act Case No. 1 of 1993, whereby and whereunder the petition under Section 166(3) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), wrongly labelled as under Section 5 of the Limitation Act, 1963 filed along with the claim application under Section 166 of the Act was rejected and consequently the claim application was dismissed as barred by time, the claimants

Judgement :

Gurusharan Sharma, J.

1. Against the order dated 18.2.1993, passed by the District Judge, Nawadah in Motor Vehicle Act Case No. 1 of 1993, whereby and whereunder the petition under Section 166(3) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), wrongly labelled as under Section 5 of the Limitation Act, 1963 filed

along with the claim application under Section 166 of the Act was rejected and consequently the claim application was dismissed as barred by time, the claimants have filed this Appeal under Section 173 of the Act.

2. In fact the alleged accident took place on 16.4.1991 at village Orahampur within Nawadah district and the claim application was filed on 6.1.1993 i.e. after more than two years and three & half months.

3. Under Section 166(3) of the Act, no application for compensation was to be entertained unless it was made within six months of the occurrence or the accident. However, under proviso thereto, the claim tribunal on being satisfied that the applicant was prevented by sufficient cause from making the application in time, in its discretion, may entertain claim application after the expiry of such period of six months, but not later than twelve months.

4. By the impugned order dated 18.2.1993 the tribunal came to the conclusion that it was not empowered to entertain the application after a period of twelve months from the date of occurrence.

5. This appeal was filed on 22.9.1993 and thereafter during the pendency of this appeal the Motor Vehicle (Amendment) Act, 1994 came into force on 14.11.1994 and in Section 166 of the Principal Act certain amendments were made and Sub-section (3) of Section 166 was omitted.

6. The counsel for the appellant submitted that the amendment referred to above has retrospective effect. On account of amendment the claimant can file a claim petition at any time since there is no period of limitation. Now the claimant can file a fresh claim application. Hence on the same principle the pending matters in respect of claim, which was dismissed on the ground of limitation should be remanded to the claim tribunal for fresh decision on merits.

7. In *Dhannalal v. D.P. Vijay Vargia and Anr.* 1 (1996) ACC 603 (SC). It was held that benefit of deletion of Section 166(3) of the Act can be given to pending claim cases and the delay should be condoned in such cases and the claim be pursued.

8. Following the said decision of the Apex Court in Dhannalal (Supra), I allow the appeal and set aside the impugned order dated 18.2.1993, whereby the claim application was dismissed as barred by time. The case is remanded to the District Judge-cum-Motor Vehicles Claim Tribunal Nawadah with a direction to decide the claim on merits within a period of six months from the date of receipt of a copy of this order. The parties are directed to appear before the concerned Court on or before 8th September, 1997 along with a copy of this order. However, there shall be no order as to costs.

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