

Basu Vs. Madhya Pradesh State Road Transport Corporation and anr.

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Court : Madhya Pradesh

Decided On : Sep-28-2005

Reported in : I(2006)ACC572; 2007ACJ129

Judge : N.K. Mody, J.

Appellant : Basu

Respondent : Madhya Pradesh State Road Transport Corporation and anr.

Judgement :

N.K. Mody, J.

1. Being aggrieved by the order dated 26.2.1998 passed by Third Motor Accidents Claims Tribunal, Khargone in Claim Case No. 6 of 1998, whereby the claim petition has been dismissed, the present appeal has been filed.

2. Short facts of the case are that on 25.2.1979, an accident took place by bus bearing No. MPC 7658 which was owned by respondent No. 2. A number of claim petitions were filed on account of the same accident which were disposed of vide award dated 24.9.1979 passed in Claim Case No. 61 of 1979, whereby award was passed in favour of 5 injured persons and 24 dependants of those who died in accident. The present claim petition has been filed on 23.7.1996 by the appellant wherein it was alleged that her date of birth is 28.7.1978 and at the time of accident, she was of 6 months. The claim petition has been dismissed by learned

Tribunal on the ground that there is a delay of more than 15 years. This appeal has come up for hearing after 8 years. Unfortunately, there is nobody to press the appeal.

3. Mr. S.H. Karanjawala, the learned Counsel for respondent No. 1 submits that claim petition was filed after lapse of 15 years, therefore, learned court below has rightly dismissed the claim petition.

4. Undisputedly the accident took place on 25.2.1979 and award has been passed in favour of number of persons, as is evident from the impugned award. The list of persons who died in the accident was filed in Claim Case No. 61 of 1979 in which the name of the father of the appellant has also been shown. Since the appellant was of the age of six months at the time of accident, therefore, it was not expected from the appellant to file the claim petition. She has filed the claim petition immediately after attaining the age of majority. Section 166(3) of the Motor Vehicles Act provides the limitation for 6 months for filing the claim petition.

5. Whether a claim case which ought to have been filed within limitation prescribed under Section 166(3) of the Motor Vehicles Act will be treated as barred by law of limitation or not has been considered by Hon'ble Apex Court in the case of Dhannalal v. D.P. Vijayvargiya, : AIR 1996 SC2155 , wherein the Hon'ble Supreme Court has observed that 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 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. Claim petitions cannot be thrown on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force,

6. In view of this, the impugned award passed by the learned Tribunal deserves to be set aside and is set aside. The case is remanded back to the court below for disposal on merits. Since the appellant is unrepresented, therefore, learned Tribunal shall issue a fresh notice to both the parties and shall dispose of the case at the earliest preferably within a period of six months. Learned Tribunal shall see that appellant is getting the proper legal assistance.

7. With the aforesaid observations, the appeal stands disposed of. No order as to costs. C.C. as per rules.

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