

Janaky Vs. Achuthan Nair

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SooperKanoon Citation : sooperkanoon.com/726929

Court : Kerala

Decided On : Dec-08-1997

Reported in : 1(1998)ACC345

Judge : A.R. Lakshmanan and; K.A. Abdul Gafoor, JJ.

Appellant : Janaky

Respondent : Achuthan Nair

Judgement :

A.R. Lakshmanan, J.

1. Heard learned Counsel for the appellant. This appeal has to be straight away allowed, in view of the amendment to Section 166 of the Motor Vehicles Act, 1988. Sub-section (3) of Section 166 was deleted by the amendment by Act 54 of 1994 which came into force on 14.11.1994. Under the old Section 166(3), no application for compensation shall be entitled to unless it is made within six months after the occurrence of the accident. The proviso to the said section also provides that the Claims Tribunal may entertain the application after the expiry of six months, but not later than 12 months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. The said section, as already noted, has been deleted. Therefore, there is no limitation in preferring the claim petition.

2. The Supreme Court also, in a recent decision reported in *Dhannalal v. D.P. Vijayavargiva* : AIR 1996 SC2155 , held that the benefit of the amending Act is also to be extended to pending cases where a plea of limitation has been raised.

3. Under the impugned order, the Tribunal has dismissed the claim petition as not entertainable under Section 166 of the Motor Vehicles Act since the same was filed after the expiry of 14 months. In view of the above decision of the Supreme Court, we direct the Motor Accident Claims Tribunal, Pathanamthitta to restore O.P. (M.V.) 195 of 1990 to file and dispose of the same on merits after ordering notice to all the respondents.

4. In this appeal, the appellant has impleaded the owner and driver of the vehicle and the Insurance Company. A Division Bench of this Court, in the decision reported in *Anuradha Varma v. State of Kerala* 1993 (2) KLT 777 : I (1994) ACC 319 (DB) held that an application without impleading the driver is maintainable. To the same effect is the judgment reported in *Simon Pathrose v. United India Insurance Co.* 1994 (1) KLT 275, wherein the Bench has held that the driver is not a necessary party to the petition.

In view of the above two decisions, this appeal is allowed without ordering notice to the driver of the vehicle involved in the accident.