

Lali Devi Vs. Hanuman and ors.

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Court : Rajasthan

Decided On : Jan-22-2004

Reported in : II(2004)ACC379; III(2005)ACC547; 2005ACJ1101;
RLW2004(2)Raj1221; 2004(1)WLC725

Judge : A.C. Goyal, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166(3); [Limitation Act, 1963](#) - Sections 5

Appeal No. : S.B. Civil Misc. Appeal No. 359 of 1992

Appellant : Lali Devi

Respondent : Hanuman and ors.

Advocate for Def. : Virendra Agarwal, Adv. for Respondent No. 3

Advocate for Pet/Ap. : V.V. Harit, Adv.

Disposition : Appeal allowed

Judgement :

A.C. Goyal, J.

1. The appeal claimant Smt. Devi has preferred this appeal against the Award dated 31.3.1992, whereby Motor Accidents Claims Tribunal, Jaipur City, Jaipur,

dismissed the Claim Petition No. 895/1991, treating it to be beyond prescribed period of limitation.

2. The relevant facts in brief are that the claimants wife, mother and father of the deceased Bhagwan Sahai, filed a claim petition on 26.7.1991, claiming a sum of Rs. 20,15,000/- with the averments that Bhagwan Sahai died in a road accident on 8.6.1990. An application under Section 5 of the Limitation act was also submitted with a prayer for condonation of delay in filing the claim petition.

3. The Insurance Company opposed this application. The learned Tribunal held that in view of the Provisions of Section 166(3) of the Motor Vehicles Act 1988 (for Short the 'Act'), such application for compensation shall be filed within six months of the occurrence of the accident and the Tribunal may entertain the application after the expiry of the said period of six months but not later than 12 months and since the present application was filed beyond 12 months of the accident, the delay could not be condoned.

4. Against this order, only one claimant Smt. Lali Devi, wife of the deceased has preferred this appeal.

5. I have heard learned counsel for the claimant and the Insurance Company. It is not in dispute that Sub-section (3) of Section 166 of the Act stands omitted w.e.f. 14.11.1994. According to learned counsel for the appellant since Sub-section (3) of Section 166 of the Act stands deleted, hence this claim petition is now not barred. He placed reliance upon Smt. Hazna and Ors. v. Prabhu Lal and Ors. (1), Dhanna Lal V. D.P. Vijayvargiya and Ors. (2) and The New Indian Assurance Co. Ltd. v. C. Padma and Anr. (3). Learned counsel for the Insurance Company contended that C. Padma's case (supra) is not applicable. As held in Para 11 of this judgment, it was submitted before Hon'ble Supreme Court that in view of the decision of the Apex Court rendered in Vinod Gurudas Raikar v. National Insurance Co. Ltd. (4), the Hon'ble Apex Court observed that the facts of the case of Vinod Gurudas were the appellant was injured in an accident, which took place on 22.1.1989 and the claim petition was filed on 15.3.1990 with a prayer for condonation of delay. The Tribunal held that in view of Sub-section (3) of Section 166 of the Act, which came into force on 1.7.1989, the delay of more than six

months could not be condoned. In the facts and circumstances of the case the Court held that the case of the appellant was covered by the new Act and the delay for a longer period than six months could not be condoned and in our view, the facts of the case in Vinod Gurudas are different from the facts of the present case, as noticed above. He also placed reliance upon *Asokan v. State of Kerala and Ors.* (5), *Kerala and Sambandam v. M. Subbas and Anr.* (6). I have considered the above submissions. In Dhannalal's case (*supra*), the accident took place on 4.12.1990 and the claim petition was filed on 7.12.1991. In view of these facts the Hon'ble Apex Court held that where a claim petition was filed while Sub-section (3) of Section 166 was operative; an objection was raised that the petition was barred by limitation and the proceedings involving the question whether the delay could be condoned was pending before the High Court on 14.11.1994, i.e. the date on which Sub-section (3) of S. 166 stood repealed, the benefit of the repeal would be available to the claimant and the petition could not be dismissed on ground that at the time of this filing it was barred by limitation under Sub-section (3). Hon'ble Apex Court in the case of *New India Assurance Co. Ltd.* (*supra*) in para 10 held that the ratio laid down in Dhannalal's case applies with full force to the facts of the present case. In view of these two judgments of the Hon'ble Apex Court, it is not necessary to discuss the judgments of other High Court relied upon by learned counsel for the parties and thus benefit of the repeal to Sub-section (3) of Section 166 of the Act would be applicable to the claimants and the claim petition could not have been dismissed on that ground.

6. Consequently, this appeal is allowed. The impugned order dated 31.3.1992, is set-aside and the claim petition is remanded back to the concerned Tribunal to decide the same on merits. The parties are directed to appear before the Tribunal on 9.2.2004. Record of the Tribunal be sent back immediately.