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**Vimla Devi and anr. (Smt.) Vs. Rajendra Kumar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/771278](http://sooperkanoon.com/771278)

**Court :** Rajasthan

**Decided On :** May-20-2002

**Reported in :** I(2003)ACC89; 2004ACJ504; RLW2003(3)Raj1562;  
2002(5)WLN702

**Judge :** Rajesh Balia and; K.K. Acharya, JJ.

**Acts :** Motor Accident Claims Tribunal Rules, 1964 - Rule 20; [Motor Vehicles Act, 1988](#) - Sections 166; Code of Civil Procedure (CPC) - Order 7, Rule 11 - Order 9, Rule 4

**Appeal No. :** D.B. Civil Special Appeal (writ) No. 501 of 2000

**Appellant :** Vimla Devi and anr. (Smt.)

**Respondent :** Rajendra Kumar and ors.

**Advocate for Def. :** H.S. Shreemali, Adv.

**Advocate for Pet/Ap. :** M.R. Singhvi, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Balia, J.**

1. This appeal is directed against the order dated 4.5.2000 passed by a learned Single Judge of this Court in Smt. Vimla Devi and Anr. v. Rajendra Kumar and Ors., AIR 1996 SC 2155 , whereby the writ petition filed by the petitioners was dismissed.

2. The facts giving rise to this appeal are that the appellants were claimants before the Motor Accident Claims Tribunal, Bikaner (for short 'the Tribunal'). The accident occurred on 19.6.1988. The claim petition No. 66 of 1988 filed by the appellants was dismissed for want of prosecution vide order dated 20.5.1993 as their counsel was absent at the time when the matter came up for hearing, the claimants-appellants who are the legal representatives of deceased Jankinath @ Jankidass had not filed any application for restoration but they preferred a fresh claim petition on 28.11.1997. The Tribunal rejected their fresh claim petition holding that the claimants have not made out sufficient cause for their non-appearance on 20.5.1993, then is not maintainable, the fresh claim petition was dismissed by invoking the provisions of Order VII, Rule 11 CPC.

3. Order VII, Rule 11 (d) CPC specifically provides that the plaint shall be rejected in cases where the suit appears from the statement in the plaint to be barred by any law. Thereafter, the claimants-appellants filed S.b. Civil Writ Petition No. 1268 of 2000 before this Court, which came to be dismissed by this Court vide its Order dated 4.5.2000. The learned Single Judge held that it is true that Hon'ble Supreme Court in case of Dhannalal v. D.P. Vijayvargiya (2), held that the provisions of Motor Accident Claims Tribunal Act, 1994 will apply retrospectively. It was further held:-

'However, in my considered opinion, the earlier order of dismissing absence of the claimants and their counsel stands. Therefore, second claim petition filed under the new Motor Accident Claims Tribunal Act, 1994 is not maintainable.'

4. Hence this special appeal by the claimants-appellants.

5. Having heard the learned counsel appearing for the parties, we are of the opinion that the learned Motor Accident Claims Tribunal as well as the learned Single Judge both have not noticed that under Rule 20 of the Rajasthan Motor

Accident Claims Tribunals Rules, 1964, which also continues to be operative under the Rajasthan [Motor Vehicles Act, 1988](#), the provisions of Order IX CPC have been made applicable to the proceedings before the Motor Accident Claims Tribunals. The provision's of Order VII CPC have not been made applicable to such proceedings.

6. Order IX, Rule 4 CPC which governs the proceedings after the suit or claim has been dismissed for default reads as under-

'Order IX, Rule 4 CPC. Plaintiff may bring fresh suit or Court may restore suit to file,- Where a suit is dismissed under Rule 2 or Rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for (such failure as is referred to in Rule 2), or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.'

7. A perusal of the aforesaid provision leaves no room for doubt that it gives two options to the litigants whose suit or claim has been dismissed for non-prosecution or for default. The first option is that the plaintiff or the claimant may bring a fresh suit or claim subject to law of limitation applicable to such suit or claim. The second option is that he may apply for an order to set the dismissal aside and if he satisfies the Court, that there was sufficient cause for such failure as is referred to in Rule 2 or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit or the claim. So far as filing of fresh suit or claim petition is concerned, it is subject to the law of limitation and no other enquiry is needed to be made for continuing with the suit which is filed afresh.

8. It is settled principle the whether a suit or other proceedings is within period of limitation prescribed therefor has to be viewed in the light of any law of limitation in force as on the date such suit or proceedings is commenced and not the law as on the date cause of action had arisen. In the present case, the subsequent claim petition shall be governed, if it is not otherwise barred, by law of limitation as on the date second petition was filed.

9. It is no more in dispute that when the suit was filed, the provisions of Motor Vehicles act has been amended and the provision regarding limitation for filing the claim petition has been taken away from the Statute. Thus, it is apparent that no limitation was prescribed for filing the claim petition under the Statute.

10. The effect of amendments brought by Motor Vehicles (Amendment) Act, 1994 was considered by the Supreme Court in Dhannalal v. D.P. Vijayvargiya (3),. The 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 under the Proviso to sub, Section (3) 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 Section 166 stood repealed;, the benefit of the claimant and the petition could not be dismissed on ground that at the time of its filing it was barred by limitation under Sub-section (3).'

11. In that case it was further held by the Supreme Court:

'The deletion of Sub-section (3) from Section 166 should be given full effect so that the object of deletion of said section by the Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer 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 condonation of delay of filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court. The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The 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 dale of the accident is pending consideration either before the Tribunal, High Court or Supreme Court. In such cases, the benefit of amendment of Sub-section (3) of

Section 166 should be extended'

12. Apparently, notwithstanding the judgment of the Supreme Court has been noticed by the Motor Accident Claims Tribunal as well as learned Single Judge, they have not appreciated the controversy in the light of applicability of the provisions of Order IX, Rule 4 CPC.

13. It has also not been noticed that not all but only such of the provisions of CPC have been extended to proceedings before Motor Accident Claims Tribunal as are prescribed while Order IX has been made fully applicable, no part of Order VII has been made applicable which could authorise rejection of plaint on the ground of limitation without entertaining it.

14. Accordingly, this appeal is allowed and the impugned judgment dated 4.5.2000 passed by the learned Single Judge and the order dt.20.5.93 passed by the Motor Accident Claims Tribunal, Bikaner are set aside. The matter is remitted back to the learned Motor Accident Claims Tribunal, Bikaner for deciding the case afresh in accordance with the law. The claim petition may be decided as expeditiously as possible.

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