

In Chambers

Case :- FIRST APPEAL FROM ORDER No. - 1563 of 2020

Appellant :- Shailendra Tripathi And Another

Respondent :- Dharmendra Yadav And 2 Others

Counsel for Appellant :- Yogesh Kumar Tripathi, Sanjay Kumar Singh

Counsel for Respondent :- Rahul Sahai

Hon'ble Dr. Kaushal Jayendra Thaker, J.

After the order dated 20.11.2020 was uploaded in the matter, it has come in the knowledge of the undersigned that there are typographical errors in the order.

In paragraph 3 of the order, date "20.8.2010" is corrected as "20.8.2020" and further in paragraph 17, after words "State Law Officer", words "/Standing Counsel, who states that" are added and after the word "position", word "is" is deleted. further in the very same paragraph "1998" is corrected as "1988".

These suo moto corrections are because of the typographical error.

Order Date :- 21.11.2020

Ram Murti

In Chambers

Case :- FIRST APPEAL FROM ORDER No. - 1563 of 2020

Appellant :- Shailendra Tripathi And Another

Respondent :- Dharmendra Yadav And 2 Others

Counsel for Appellant :- Yogesh Kumar Tripathi, Sanjay Kumar Singh

Counsel for Respondent :- Rahul Sahai

Hon'ble Dr. Kaushal Jayendra Thaker, J.

In view of the suo moto corrections made on 21.11.2020 in the order dated 20.11.2020, the corrected order is as under.

- "1. Heard learned counsel for the appellants and learned counsel for the Insurance Company and Sri Ojha, learned counsel for the State as Amicus Curiae.
2. Amendment, if any, be carried out during the course of day.
3. This appeal is at the behest of claimants whose claim petition came to be dismissed by the learned Motor Accident Claims Tribunal (hereinafter referred to as "the Tribunal" holding that as the accident took place on 24.12.2019 and the petition was filed on 20.8.2020, hence, the claim petition was filed beyond six months as per the amended provisions of Section 166 (3) of the Motor Vehicle Act (hereinafter referred to as "the Act") as amended in 2019 and, according to the learned Tribunal, the same provisions were/are in the statute book from 2019.
4. Brief skeletal facts are narrated as necessary to decide the question raised in this appeal. The claim petition was filed on 20th August, 2020 most probably after the courts started functioning and accepted filing in physical form. The reasons for delay were also assigned by the petitioners by annexing several medical documents

and death certificate of mother of petitioner no.1. The Tribunal mechanically held that amended Section 166 (3) of the Act subscribes a period of six months for filing claim petition and, therefore, a matter after that period cannot be entertained. Learned Tribunal, therefore, dismissed, the claim petition, which has given rise to this appeal.

5. Counsel for the appellants orally submitted that there is question of law involved in this appeal and, therefore, he has in paragraph 11 contended that the order of the Tribunal is against the settled principle of law.

6. The accident took place on 24.12.2019 as culled out from the order of Virjendra Kumar Singh, Presiding Officer, Motor Accident Claims Tribunal. It appears that learned Tribunal has held that six months' time as contemplated had elapsed and, therefore, rejected the claim petition of the claimants filed for claiming compensation for death of their son.

7. It is submitted by learned counsel for the appellants that the learned Tribunal has taken a hyper-technical stand in rejecting the claim petition. It is submitted that the matter can be viewed from three angles. First aspect is that accident took place in the month of December, 2019, even if we hold that assumption made by the learned Tribunal that Section 166 (3) has been notified and is made applicable, six months' period would be over during the pandemic. The pandemic struck us in the month of March, 2020 and the Apex Court by an omnibus order extended the period of limitation. This aspect should have also been looked into by the learned Judge. Thus, period of limitation, therefore, was not over as per the omnibus direction of this Court as well as Apex Court. Reference can be made to various orders passed in Public Interest Litigation (P.I.L) No.564 of 2020, In re Vs. State of U.P. Suo moto. The Division

Bench of Hon'ble the Chief Justice and Hon'ble Justice Siddhartha Varma passed therein several directions pertaining to enhancement of limitation as filing of matters was not permitted during the lock down and the order later on passed by the Division Bench on 10.7.2020 therein would also oblige, the learned Tribunal to consider the period. The orders have already been published on official website of the Court. It appears that in sheer haste, learned Tribunal has dismissed the claim petition.

8. Another aspect which is required to be appreciated is that even if we consider that the provisions of 166 (3) of the Motor Accident Act 2019 have been brought on statute book, learned Judge could have seen the matter from different angle that there is substitution of Section 163A by section 164, where no period of limitation has been prescribed. He could have permitted the said alternative also. Thirdly, Section 166 (3) has been notified but what is the current position with respect to the provisions contained under Section 166(3) of the Motor Vehicles (Amendment Act, 2019 which was published in the Gazette of India on 28th August, 2019?, will have to be evaluated.

9. The while reading Section, is 1 (2) of the 2019 of the amendment Act, the present situation as emerges is that 2019 notification in Section 1(2) connotes as follows:-

10. On 9th August, 2019 the Motor Vehicles Act (Amendment) Act, 2019 was published in the Gazette of India (hereinafter referred as 'the Amendment Act). By this amendment, the Motor Vehicles Act, 1988 (hereinafter referred as 'the Principal Act) has been drastically amended.

11. Section 1 of the Amendment Act is relevant for the present discussion therefore, same is reproduced hereinunder:-

Section 1(1):- This Act may be called the Motor Vehicles (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

12. In exercise of the powers conferred by Sub-section (2) of Section 1 of the Amendment Act, the Central Government appointed the 1st day of September, 2019 as the date on which the following Sections of the Amendment Act shall come into force, namely...

Section 2, Section 3, Clauses (i) to (iv) of Section 4, Clauses (i) to (iii) of Section 5, Section 6, Clauses (i) of Section 7, Sections 9 and 10, Section 14, Section 16, Clauses (ii) of Section 17, Section 20, Clauses (ii) of Section 21, Section 22, Section 24, Section 27, Clauses (i) Section 28, Sections 29 to 35, Sections 37 and 38, Sections 41 to 43, Section 46, Sections 48 and 49, Sections 58 to 73, Section 75, Clauses (i) of Clause (B) of Section 77, Sections 78 to 87, Section 89, Sub-clauses (a) of clause (i) and clause (ii) of Section 91 and Section 92 of the Amendment Act. Admittedly Sections 50 to 57 of the Amendment Act are not notified till dated.

13. Since we are discussing an issue as to whether the provisions contained under the proposed Section 166(3) of the Act which was published in the Gazette of India on 28th August, 2019 would be applicable in the present time or not, it would be apt to have the comparative table of the Amendment Act and the Principal Act.

Sr.	Provisions	Provisions
-----	------------	------------

No.	contained under the Amendment Act	Contained under the Principal Act.
1	Section 50	Sections 140 to 144 (Chapter X)
2	Section 51	Sections 145 to 164 (Chapter XI)
3	Section 52	Section 165
4	Section 53	Section 166
5	Section 54	Section 168
6	Section 55	Section 169
7	Section 56	Section 170
8	Section 57	Section 173

14. *If we arefully peruse the above referred table, it clearly appears that Sections 50 to 57 of the Amendment Act are yet to be notified. These Sections 50 to 57 of the Amendment Act relate to Sections 140 to 144, Sections 145 to 164, Section 165, Section 166, Section 168, Sections 169, Section 170 and Section 173, respectively of the Principal Act. In simple words, Sections 140 to 144 of the Principal Act (Chapter - X) have not been omitted as yet and continue to operate. Similarly Sections 145 to 164 (Chapter - XI) and Section 165, Section 166, Section 168, Sections 169, Section 170 and Section 173 of the Principal Act would continue to operate with full vigor till the time Section 51 to 57 of the Amendment Act are notified in the Official Gazette.*

15. *Above referred discussion leads us to the conclusion that the provisions contained under Sections 140 of the Principal Act which speaks about liability of the Owner and/or Insurer to pay compensation in certain cases on the principle of no fault, Section 163-A of the Principal Act which provides for the special provisions*

as to payment of compensation based on structured formula and under Section 166 of the Principal Act, legal representative/s can continue to prefer any of the application mentioned hereinabove for compensation as Sections 140, 163-A and 166 of the Principal Act would continue to operate with full vigor till the time Section 51 to 57 of the Amendment Act are notified in the Official Gazette.

16. *Since, Sections 50 to 57 of the Amendment Act are not notified, claimant/s can still prefer an application u/s 140 of the Principal Act independently or along with an application for compensation u/s 166 of the Principal Act or in alternative claimant/s can prefer an application u/s 163-A of the Principal Act for compensation based on the structured formula. It is to be remembered that w.e.f. 14th November, 1994 Section 166(3) of the Principal Act, wherein the provision with respect to condonation of delay was made, has been omitted. Since now, there is no provision which provides for seeking condonation of delay, if an application for compensation is filed beyond the period of six months from the date of the accident (Sub-section 3 of Section 166, as proposed to be inserted by way of the Amendment Act), till the time Section 53 of the Amendment Act is notified, claimant/s are not required to prefer an application for condensation of delay.*

17. I have enquired from Sri Ojha, State Law Officer/Standing Counsel who states that the position that 166 (3) has not been brought on the statute book. What is the position is that 166 of 1988 Act would still govern the litigation as of today. The alternative was also available to the learned Tribunal but in sheer haste of disposal of the matter, he lost sight of omnibus order of Apex court of extending the period of limitation. The other aspect was that the family was bereaved of young son and mother of one of the appellants passed away due to covid. All these aspects have not been looked into by the learned Judge.

18. This Court had called for the remarks of the learned Tribunal by passing the following order:-

"I have requested colleague of Sri Rahul Sahai, learned counsel, to assist the Court as he is on the panel of I.C.I.C.I Lombard General Insurance Company involved in the accident.

Learned M.A.C.P. Tribunal has dismissed the claim petition on the ground that it is hit by Section 166 (3).

The matter be listed tomorrow, i.e., 20.11.2020 as according to the information with the undersigned, the provisions of 166 (3) as amended by 2019 Act has not been notified, however, the learned counsel for the appellants would like to ascertain the same, hence, list the matter as fresh.

Meanwhile, office to have clarification from the learned Judge by telephonic message as to notification under Section 166 (3) as amended. Send email to the Tribunal as despite telephonic messages, the learned Tribunal does not respond."

19. Sri Satya Nand Upadhyay, learned Additional District & Sessions Judge/Incharge Presiding Officer, Motor Accident claims Tribunal, Gorakhpur has sent his remarks that the notification appointing the date on which the provisions of the Act shall come into force does not subscribe Section 52 to 57 of the amended Act.

20. This Court is thankful to Sri Satya Nand Upadhyay, learned Judge/Tribunal for reverting back to this Court at a short notice. Sri Virjendra Kumar Singh, Presiding Office, Motor Accident Claims Tribunal shall remain more vigilant in future while deciding the claim petition under beneficial legislation.

21. In view of the above, I have no hesitation in quashing and

setting aside the Judgment/order impugned. Claim petition is ordered to be restored to file of Tribunal. The Tribunal shall proceed as per 166 read with Section 168 of the Motor Vehicle Act, 1988 as till date amended section dealing with Chapter X, XI XII of the act have not been brought on statute book substituting the earlier provision. Reference to the authoritative notification as published on SCC online web edition <http://www.sconline.com>, which also gives glimpse of the amendments made. The provisions of section 166 of the 2019 Act has several implications which can be flagged, namely, limitation, which was not there, has been introduced. It appears that the Central Government with a purpose not decided the date for bringing in, has not brought the provisions of amended Sections 52 to 57 which relates to complete change to Chapter X, XI & XII and, therefore, the amended Act has not been brought on the statute book is very clear. The scheme of the new regime would show that they have not been brought on the statute book by amending or repealing the earlier provisions of Chapter X, XI & XII.

22. Copy of this order be circulated to all the Motor Accident Claims Tribunal so that this fallacy may not creep in the future proceedings.

23. This Court is also thankful to Sri Rahul Sahai for having deputed his colleague Sri Akshat Darbari to this Court.

24. With these observations, this appeal is allowed."

Office to issue fresh corrected copy of the order dated 20.11.2020.

Order Date :- 21.11.2020

Ram Murti