

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 1ST DAY OF JUNE 2022 / 11TH JYAISHTA, 1944

OP (MAC) NO. 51 OF 2022

(Against the order dated 23.4.2022 in unnumbered O.P.(MV) on the
file of MACT, Thrissur)

PETITIONERS/PETITIONERS:

- 1 SATHY
AGED 44 YEARS
W/O SUBRAMANIAN,
KIZHAKKEMADAMPADI HOUSE, MANAPPADI,
DESAMANGALAM P.O, THRISSUR - 679532
- 2 SUDHI K.S
AGED 22 YEARS
S/O SUBRAMANIAN,
KIZHAKKEMADAMPADI HOUSE, MANAPPADI,
DESAMANGALAM P.O, THRISSUR - 679532
- 3 SUMI K.S
AGED 20 YEARS
D/O SUBRAMANIAN,
KIZHAKKEMADAMPADI HOUSE, MANAPPADI,
DESAMANGALAM P.O, THRISSUR - 679532
- 4 SUJI K.S
AGED 18 YEARS
D/O SUBRAMANIAN,
KIZHAKKEMADAMPADI HOUSE, MANAPPADI,
DESAMANGALAM P.O, THRISSUR - 679532

BY ADVS.
A.R.NIMOD
M.A.AUGUSTINE

RESPONDENTS/RESPONDENTS:

- 1 DILEEP I.S
S/O SREEDHARAN I.K, ITHIKKAT HOUSE,
VATANAPPALLY BEACH P.O, THRISSUR - 680614
- 2 SURESH N.A
S/O APPUKKUTTAN, NAMBIPAREECHI HOUSE,
VATANAPPALLY P.O, THRISSUR - 680614

3 NATIONAL INSURANCE COMPANY LTD.
BUSINESS CENTRE, FABINA PLAZA, NEAR SBI,
MANGO BAKERS BUILDING,
VATANAPPALLY, THRISSUR - 680614,
REPRESENTED BY BRANCH MANAGER.

SRI.LAL GEORGE, SC, R3

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON
01.06.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Inter alia alleges that the objection qua limitation is a mixed question of fact and law. The claim petition in respect of an accident occurred on 23.5.2019 could not have been rejected summarily by taking the aid of amendment caused in Section 166(3) of the Motor Vehicles Act, 1988 substituted by Act 32 of 2019 made effective from 1.4.2022 as the said amendment would have a prospective effect. Otherwise with the stroke of the amendment the right available to the injured and the claimants of the deceased person would be taken away.

2. Sri.Lal George accepts notice for the third respondent, the contesting respondent and submits that nothing has been saved under repealing and savings clause under Section 217 of the Motor Vehicles Act, 1988. Thus the order is perfectly legal and justified.

3. Prior to the amendment caused in the Motor Vehicles Act, Act 1939 was in existence dealing with the provisions of providing no fault liability and entertainment of claim petitions under Section 92A and Section 110A of 1939 Act. The aforementioned Act was amended by Motor Vehicles Act in 1988 and the claim petition was to be filed within a period of six months.

The aforementioned amendment by way of amendment in 1994 prescribed no limitation to file claim petitions in respect of the accident occurred at any point of time. Legislature in its wisdom introduced the Act of 32 of 2019 effective from 1.4.2022 by bringing back the old provisions of 166(3) restricting the entertainment of the application for compensation unless it is made within a period of six months from the occurrence of the accident. While causing the amendment and reintroducing the provision which was in vogue at the time when Motor Vehicles Act, 1988 was promulgated, there was no amendment in Section 217 dealing with repealing and savings clause.

4. Learned counsel appearing on behalf of the petitioner submits that the accident in the present case had occurred on 23.5.2019. At the relevant point of time, statutory right was available, claimants were entitled to file the claim petition untrammelled by any period of limitation. But, in the amendment aforementioned by Act 32 of 2019 effective from 1.4.2022, the right has been taken away resulting into the impugned order dated 23.4.2022 whereby the application for compensation filed on the same date has been dismissed being barred by law of limitation. The objection qua limitation, a mixed question of fact and law, can

be decided only when the parties are made to lead evidence by framing the issues. The petition should not have been rejected in a summarily manner.

5. On the other hand, learned counsel appearing on behalf of respondent No.3 Insurance Company submitted that in the absence of any provision in the repealing and savings clause, the order under challenge is perfectly justified as period of six months had elapsed on 22.11.2009. Though the amendment came on 1.4.2022, nothing prevented the claimants to prefer the claim petition within the parameters of law which was then in vogue and thus urge this Court for dismissal of the Original Petition.

6. I have heard the counsel parties and appraised the paper book.

7. It is a matter of record that when the old Motor Vehicles Act 1939 was substituted and repealed by Act of 1988, the provision of limiting the right to file claim petition was six months. The aforementioned period of six months was omitted by way of amendment in the year 1994. Thus, the affected parties had a right to file claim petition in a case of injury or death at any point of time untrammelled by the objection of limitation. Legislature in the wisdom on due deliberation have reintroduced the

aforementioned erstwhile provisions of sub-section (3) of Section 166 limiting the right to entertain the claim petition before the concerned court within a period of six months from the date of the accident. The accident in this case, as noticed above, had occurred on 23.5.2019. The claim petition was filed on 23.4.2022. By that time the new amendment had already come into force by Act 32 of 2019 effective from 1.4.2022 resulting into the impugned order. The same reads as under :

“This application is filed under Section 166(1) of MV Act, 1988.

The date of accident is 23.5.2019. As per Motor Vehicle (Amendment) Act, 2019, which came into force with effect from 1.4.2022, the application to be filed within six months of the occurrence of the accident (vide Section 166(3) of the M.V.Act, 1988). The present application filed on 23.4.2022 is barred by limitation.

In the result, this application is rejected as time barred.”

8. It is settled law that in case there is no provision protecting the rights of a litigant viz by causing amendment which inexplicably takes away exceptional rights, then the provisions of Section 6 of General Clauses Act, 1897 would come into play. Similar situation had occurred when the amendment was caused in the old Act of 1939 by introducing Act of 1988 wherein in a case of no fault liability the maximum compensation of MACT award was Rs.15,000/-. The High Court while entertaining the appeal by

taking aid of the amended provisions of Section 140 introduced by way of 1988 amendments gave the benefit of Rs.50,000/-. The aforementioned objection was assailed before the Supreme Court in a matter reported in ***State of Punjab and others v. Bhajan Kaur and others*** [2008 (3) KHC 823]. After deliberation on the issue, it was held that when there is no introduction or omission of the provisions of the Act, there is no intention of the legislature to have its prospective or retro-active applicability and in such circumstances, the amendment caused in the new Act would have a prospective effect. It would be expedient to extract paragraphs 13, 16 and 17 of the above judgment :

“13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated herein before, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by the Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1.07.1989.

.....
16. Section 6 of the General Clauses Act, therefore, inter alia saves a right accrued and/ or a liability incurred. It does not create a right. When Section 6 applies only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise. Section 140 of the 1988 Act does not contain any procedural

provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood, viz., before the new Act come into force.

17. It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication.”

9. Section 6 of the General Clauses Act, 1897 postulates the situation of a similar nature where by protecting right, privilege, obligation or liability acquired or accrued under any repealed enactment. It is settled law that the provisions of the new Act cannot infringe or re-ligate the right granted under the old Act. Section 6 of General Clauses Act reads thus :

"6 Effect of repeal. Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

10. Since while introducing the Act of 2019 effective from

1.4.2022, Legislature did not cause any amendment in the repealing and savings clause specifying its applicability in respect of the accidents occurred prior to the introduction of the amendment, in view of the provisions of Section 6 and the observations of the Supreme Court in the judgment in ***State of Punjab and others v. Bhajan Kaur and others*** (*supra*), I am of the view that the applicability of the Act i.e., introduction of the old provisions of sub-section (3) of Section 166, would have a prospective effect and the limitation period of six months would apply after introduction of the amendment i.e., post 1st April 2022. In other words, in any accident occurred after 1.4.2022, provisions of the amendment caused in the Act prescribing the limitation to entertain a claim petition, the parties would be governed by the same but not in respect of the persons whom a right had already accrued and was available if the amendment had not been caused.

For the reasons aforementioned the impugned order is set aside. Original petition is allowed. The MACT is directed to entertain the claim petition preferred and try the case on merits. Since the Insurance Company has already put in appearance, the counsel representing the Insurance Company will be at liberty to put an appearance before the MACT as it will save the time

regarding service of the Insurance Company. The parties are directed to appear before the MACT on 7.7.2022.

Sd/-

AMIT RAWAL
JUDGE

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APPENDIX OF OP (MAC) 51/2022

PETITIONERS' EXHIBITS

Exhibit P1 TRUE COPY OF THE CLAIM PETITION DATED
30.03.2022

Exhibit P2 CERTIFIED COPY OF ORDER DATED 23.04.2022
IN UNNUMBERED O.P. (MV) ON THE FILE OF
THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR

RESPONDENTS' EXHIBITS : NIL