

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

 SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

M.A.C. Appeal No. 04 of 2021

Prethivi Raj Rai,
 Aged about 60 years,
 S/o late Krishna Bahadur Rai,
 R/o Lower Tingchim,
 P.o. Tingchim, P.S. Mangan,
 North Sikkim.

.... Appellant

versus

1. The Secretary,
 Sikkim Nationalized Transport Department,
 Government of Sikkim,
 Gangtok, East Sikkim.
2. The Branch Manager,
 New India Assurance Co. Ltd.
 M.G. Marg,
 P.O. & P.S. Gangtok,
 East Sikkim.

.... Respondents

**Appeal under Section 173 of the Motor Vehicles Act,
 1988.**

Appearance:

Mr. B. K. Gupta, Legal Aid Counsel for the Appellant.

Mr. Sudesh Joshi, Additional Advocate General.

Mr. Yadav Sharma, Government Advocate for
 Respondent No.1.

Ms. Phurba Diki Sherpa, Advocate for Respondent
 No.2.

O R D E R (ORAL)
23.04.2021

Bhaskar Raj Pradhan, J

1. It transpires that on 17.08.2017 an accident occurred
 when a Sikkim Nationalised Transport bus plying from

Gangtok carrying passengers tumbled 250 feet below the road due to which the appellant and others sustained injuries. The appellant therefore, preferred a claim petition under Section 166 of the Motor Vehicles Act, 1988 on 23.06.2020.

2. On 08.09.2020 the appellant filed a petition seeking condonation of delay under Section 5 of the Limitation Act, 1963. The Claims Tribunal dismissed the application vide impugned order dated 11.11.2020 holding that sub-section (3) of section 166 was enforced on 09.08.2019 and that the appellant had not shown sufficient cause to condone the delay in filing the petition. The appellant is aggrieved by the impugned order dated 11.11.2020 passed by the Claims Tribunal and has therefore, preferred this appeal under section 173 of the Motor Vehicles Act, 1988.

3. Heard Mr. B.K. Gupta, learned Legal Aid Counsel for the appellant, Mr. Sudesh Joshi, learned Additional Advocate General for the respondent no.1 and Ms. Phurba Diki Sherpa, learned counsel for the respondent no.2.

4. It appears that the appellant had filed the application for condonation of delay presuming that section 53 of the Motor Vehicles (Amendment) Act, 2019 (Amendment Act) amending section 166 and inserting sub-section (3) therein had been enforced. The proposed sub-section (3) of section 166 provided that no application for compensation shall be

entertained unless it is made within six months of the occurrence of the accident. As the accident had occurred on 17.08.2017 and the claim petition was preferred on 23.06.2020 there was apparently delay in preferring the claim petition. This led to the filing of the application for condonation of delay.

5. At the hearing, the learned counsel for the respective parties informs this court that the proposed amendment vide section 53 of the Amendment Act has in fact not yet been enforced. Copies of various notifications bringing in force various provisions of the Amendment Act have been annexed by the appellant in the appeal.

6. The Motor Vehicles Act, 1988 came into force w.e.f. 01.07.1989. Sub-section (3) of section 166 as originally brought into force was omitted by Act 53 of 1994 w.e.f. 14.11.1994. Prior to the omission it read as:-

“(3) *No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:*

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

7. After the omission of sub-section (3) as it existed, section 166 reads as under:-

“166. *Application for compensation.—(1)*

An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made—

(a) by the person who has sustained the injury; or

- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application:

Provided further that where a person accepts compensation under Section 164 in accordance with the procedure provided under Section 149, his claims petition before the Claims Tribunal shall lapse.”

8. It would be noticed that after the omission of sub-section (3) as it existed, there is no provision prescribing a period of limitation in section 166 of the Motor Vehicles Act, 1988.

9. The Amendment Act notified vide notification dated 09.08.2019 was published in the Gazette of India on 09.08.2019 itself. It inserted sub-section (3) to section 166 of the Motor Vehicles Act, 1988 once again providing a period of limitation for preferring a claim petition.

10. Section 1 (2) of the Amendment Act however, provided that:

“(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.”

11. Thus it is clear that although the Amendment Act was notified on 09.08.2019 the provisions thereof would come into force on such dates as notified by the Central Government.

12. The Ministry of Road Transport and Highways has issued various notifications in exercise of the powers conferred by sub-section (2) of section 1 of the Amendment Act notifying the coming into force of the various provisions of the Amendment Act on different dates.

13. Notification dated 28.08.2019 published in the Gazette of India on the same date notified 01.09.2019 as the date on which sections 2, 3, clauses (i) to (iv) of section 4 (both inclusive), clause (i) to (iii) of section 5 (both inclusive), section 6, clause (i) of section 7, sections 9 and 10, section 14, section 16, clause (ii) of section 17, section 20, clause (ii) of section 21, section 22, section 24, section 27, clause (i) of section 28, section 29 to 35 (both inclusive), section 37 and 38, section 41 and 42, section 43, section 46, section 48 and 49, section 58 to 73 (both inclusive), section 75, sub-clause (i) of clause (B) of section 77, section 78 to 87 (both inclusive), section 89, sub-clause (a) of clause (i) and clause (ii) of section 91 and section 92 shall come into force.

14. Notification dated 30.08.2019 published in the Gazette of India on the same date notified that the provision of section 1 shall come into force on 01.09.2019.

15. Notification dated 25.09.2020 published in the Gazette of India on the same date notified sections 45, 74, 88, 90 and sub-clause (b) of clause (i) of section 91 shall come into force on 01.10.2020.

16. Notification dated 26.11.2020 published in the Gazette of India on the same date notified 27.11.2020 as the date on which section 36 of the Amendment Act shall come into force.

17. The Allahabad High Court in ***Shailendra Tripathi and Another vs. Dharmendra Yadav and Others***¹ rendered on 20.11.2020 has held that sections 50 to 57 of the Amendment Act are yet to be notified. Similarly, the Chattisgarh High Court in ***Mukesh Patle vs. Shailendra Verma***² rendered on 20.01.2021 has held that although the legislature had proposed the amendment, section 53, amongst others, is yet to be enforced.

18. The accident is said to have occurred on 17.08.2017. As such the proposed amendment to section 166 of the Motor Vehicles Act, 1988 which is yet to be enforced would have no effect. It is quite evident that the application for condonation of delay filed by the appellant and the impugned order dated 11.11.2020 were made and passed on a misconception of facts and law. Both the appellant as

¹ 2020 SCC OnLine All 1360

² 2021 SCC OnLine Chh 466

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well as the Claims Tribunal seemed to have incorrectly believed that sub-section (3) of section 166 as brought in by the Amendment Act was enforced and therefore, applicable. In the circumstances, the impugned order dated 11.11.2020 passed by the Claims Tribunal in MACT Case No. 04 of 2020 is set aside and the claim petition preferred by the appellant is restored back to its files.

19. Copy of this order shall be sent to the Claims Tribunal for information and compliance.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

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