

GAHC010022592021



2024:GAU-AS:12578

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./30/2021

MD. TIBUL CHOUDHURY
S/O- LATE TAHID CHOUDHURY, R/O- VILL.- SILBHARAL, P.S. CHANGSARI,
DIST.- KAMRUP, ASSAM, PIN- 781141.

VERSUS

THE REGIONAL MANAGER, NATIONAL INSURANCE CO. LTD. AND 2 ORS.
LOHIA MANSION, G.S. ROAD, BHANGAGARH, GUWAHATI- 781005, DIST.-
KAMRUP(M), ASSAM.

2:CHAND MAHMOOD
S/O- LATE SALIMUDDIN AHMED
R/O- C/O- B.A BIRI FACTORY PVT. LTD.
P.S. TEZPUR SADAR THANA
DIST.- SONITPUR
ASSAM
PIN- 784001.

3:MAINUL HOQUE CHOUDHURY
S/O- LATE MOHAMMAD ALI
R/O- WARD NO. 3
NIMTOLI
P.O. AND P.S. KHARUPETIA
DIST.- MANGALDAI
ASSAM
PIN- 784115

Advocate for the Petitioner : MR N N UPADHYAYA, MR A AHMED,MR. S SHARMA,MR. B B KAKATI

Advocate for the Respondent : MR. S P SHARMA, MD K RAHMAN (R-2,3),MS. R D MOZUMDAR,MS. C MOZUMDAR

Date of hearing : 05.12.2024
Date of Judgment : 12.12.2024.

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

JUDGMENT AND ORDER (CAV)

Heard Mr. N.N. Upadhyaya, learned counsel for the appellant. I have also heard Mrs. R.D. Mozumdar, learned counsel appearing on behalf of the respondent No.1.

2. By filing this appeal under section 173 (1) of the Motor Vehicle Act, the appellant is challenging the order dated 07.11.2020, passed by the Member, Motor Accident Claims Tribunal, Kamrup, Guwahati, in MAC Case No.291/2019. By this impugned order, the petition filed by the appellant was dismissed as barred by law of limitation.

3. The brief facts of the case are that on 03.05.2019 at about 5.10 PM, while the appellant/claimant was speaking in front of the shop of Late Bhabesh Kalita, he was knocked down by the offending vehicle due to rash and negligent driving of the driver. The appellant filed MAC Case No.291/2019 before the Motor Accident Claims Tribunal, Kamrup, Guwahati, seeking compensation of Rs.8,00,000/- for the injuries sustained in the accident.

4. The respondents contested the case and filed written statements along with a petition seeking for dismissal of the claim petition on the ground that it is barred by limitation. However, by the impugned order dated 07.11.2020, the learned Tribunal

dismissed the petition, holding that the accident occurred on 03.5.2011 at about 5.10 PM at Dorakahora, NH 31, under Changsari Police Station, but the claimant has filed the claim petition on 11.11.2019, which is after 6 months of the accident. And as per section 166 (3) of the M.V. Act, 1988 (as amended upto date), no application for compensation shall be entertained unless it is made within six months of the occurrence of the accident. In view of this provision, the Tribunal held that the claim petition is barred by limitation and dismissed the petition.

5. Being aggrieved, the appellant has preferred this appeal on the following grounds: -

(i) the accident took place on 3.5.2019, when the Motor Vehicles (Amendment) Act had not yet been enacted and enforced.

(ii) the Motor Vehicle (amendment) Act, 2019, is prospective and not retrospective in nature.

In light of the fact above facts, the impugned order is liable to be set aside and quashed.

6. In support of his submission, the learned counsel for the appellant relied upon this Court's order dated 3.3.2021, in the case of ***Ranju Begum and 2 Ors vs. Shahjahan Ali and Anr.*** in ***CRP/172/2019***. In this case, the Court held that the provision of section 166 of the Motor Vehicles Act, which was amended by the amending Act, as contained in section 53 of the amending Act, 2019, had not yet been notified. Therefore, the petitioner could still prefer an application under section 140 and/or under section 163-A of the MV Act, as the case may be. Thus, the provisions of section

140, 163 A and 166 of the MV Act, as it stood before the amendment by the amending Act of 2019 (Act 32 of 2019), would continue to operate with full vigor until section 50 to 57 of the amending Act of 2019 are notified in the official gazette.

7. The learned counsel for the appellant also relied upon the judgment passed by the Hon'ble Sikkim High Court dated 17.4.2023, in MAC App. No.02/2022 (***Aita Maya Gurung and Others vs Ratna Kumar Pradhan and Others***), whereby the Hon'ble High Court while referring to the Notification dated 25.2.2022, issued by the Ministry of Road Transport and Highways, held that the amendment in section 166, which inserted sub section (3), was to come into effect only from 01.04.2022.

8. In light of the submissions made by the learned counsel for the appellant, the learned counsel for the respondent No.1 has not raised any serious objection. She fairly submitted that although section 166 of the MV Act, 1988, was amended in the year 2019, it was notified by the Ministry of Road Transport and Highway only on 25.2.2022. This notification stipulates that the section 50 to 57 and section 93 shall come into force on April 1, 2022. In light of this, she has also not raised serious objection to the prayer made by the learned counsel for the appellant to remand the matter back to the tribunal for trial.

9. Upon hearing the parties and reviewing the record, it appears that the accident occurred on 03.5.2019, while the appellant was standing in front of the shop of the Late Bhabesh Kalita. The appellant was knocked down by the offending vehicle due to rash

and negligent driving of its driver. The appellant filed MAC 291/2019 on 11.11.2019, seeking compensation from the respondents. However, by the impugned order dated 07.11.2020, the petition was dismissed on the grounds that it was barred by limitation under the section 166(3) of the MV Act 1988 (as amended). This section states that no application shall be entertained unless it is made within six months of the accident's occurrence. The learned Tribunal noted that the accident took place on 3.5.2019, but the appellant filed the claim petition only on 11.11.2019 i.e. after the six-month period. Therefore, the claim petition was dismissed as barred by law of limitation.

10. In light of the above, the key question for consideration is whether the learned Tribunal was correct in concluding that the claim petition was barred by limitation due to the amendment to section 166 of the MV Act, 1988, which includes the insertion of sub-section 3. This provision is as follows:

"53. Amendment of Section 166.

In Section 166 of the principal Act:

(1) ...

(2) ...

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident."

(4) ...

(5) ..."

11. The amendment was inserted by an Act 32 of 2019, Section 53 (iii) (w.e.f 1.9.2019 vide S.O 3147(E), dated 30th August, 2019). The Notification dated 25.2.2022 of the Ministry of road Transport and Highway, provides as follows: -

"NOTIFICATION"

New Delhi, the 25th February, 2022

S.O. 895(E).-In exercise of the powers conferred by sub-section (2) of section 1 of the Motor Vehicles (Amendment) Act, 2019 (32 of 2019), the central Government hereby appoints the 1st day of April, 2022 as the date on which the following provisions of the said Act shall come into force, namely:-

Sl.No	Sections
1.	Section 50;
2.	Section 51;
3.	Section 52;
4.	Section 53;
5.	Section 54;
6.	Section 55;
7.	Section 56;
8.	Section 57; and
9.	Section 93;

12. Therefore, the amendment to section 166, which includes the insertion of sub-section (3), was to come into effect only from April 1, 2022, as specified in the aforementioned Notification from the relevant Ministry dated February 25, 2022.

13. In light of the legal position established in the aforementioned cases, and considering that the accident occurred on 03.5.2019, prior to the enforcement of the amendment inserting sub-section (3) to section 166 of the MV Act, 1988, I am of the opinion that the learned Tribunal made erroneous interpretation of Section 166(3) of the MV Act, 1988, under incorrect belief that the amendment was enforced on 19.8.2019. Consequently, the impugned order dated 07.11.2020 must be interfered with, and accordingly, it is set aside.

14. As a result, the claim petition filed by the appellant being MAC Case 291/2019 stands restored to the file of the learned Tribunal.

The learned Tribunal shall proceed with the claim petition of the petitioner in accordance with the law.

15. The parties are directed to present a copy of this order before the learned Tribunal on 20.01.2025, for further necessary orders.

JUDGE

Comparing Assistant