

GAHC010295372019



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

Case No. : CRP/172/2019

RANJU BEGUM AND 2 ORS.
W/O LATE RAHIDUR RAHMAN, R/O VILL-BHELLA (KHANDAKARPARA),
P.O.-BHELLA, P.S. AND DIST-BARPETA, ASSAM

2: AMINUR RAHMAN
S/O LATE RAHIDUR RAHMAN
R/O VILL-BHELLA (KHANDAKARPARA)
P.O.-BHELLA
P.S. AND DIST-BARPETA
ASSAM (MINOR BEING REPRESENTED BY HIS MOTHER
PETITIONER NO. 1)

3: AJNUR RAHMAN
S/O LATE RAHIDUR RAHMAN
R/O VILL-BHELLA (KHANDAKARPARA)
P.O.-BHELLA
P.S. AND DIST-BARPETA
ASSAM (MINOR BEING REPRESENTED BY HIS MOTHER
PETITIONER NO. 1)

VERSUS

SHAHJAHAN ALI AND ANR.
S/O BARHAN ALI, VILL-BARAGDIA, P.O.-NAGAON, P.S. AND DIST-
BARPETA, ASSAM (OWNER CUM DRIVER OF THE VEHICLE)

2:HDFC ERGO GENERAL INSURANCE CO. LTD.
MAYUR GARDENS
GROUND FLOOR
OPPOSITE TO RAJIV BHAWAN
ABC
GS ROAD
GUWAHATI
PIN-781005

ASSAM (INSURER OF THE VEHICLE

Advocate for the Petitioner : MR S S SHARMA

Advocate for the Respondent : MR. A K AHMED (R1)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 03.03.2021:

Heard Mr. S.S. Sharma, learned senior counsel assisted by Mr. B.K. Jain, learned counsel for the petitioners. Also heard Mr. K.K. Bhatta, learned counsel for the respondent no.2 as well as Mr. R.K.D. Choudhury, learned ASGI, who had appeared pursuant to notice issued on 10.02.2021.

2. The petitioners have filed this application under Article 227 of the Constitution of India, to assail the order dated 03.10.2019, passed by the learned Member, MACT, Barpeta, thereby dismissing MAC Case No.157/2019 as not maintainable by holding that the deceased had died on 26.02.2019, after being severely injured in a road traffic accident that had occurred on 14.02.2019, but the claim petition was presented on 28.08.2019, beyond six months as per limitation provided as per the amended provisions of Section 166(3) of the Motor Vehicles Act, 1988 (hereinafter referred to as "MV Act" for brevity), as amended vide the Motor Vehicles (Amendment) Act, 2019 i.e. Act 32 of 2019 (hereinafter referred to as "amending Act of 2019").

3. It appears from the statements made in para-1 of the instant application that on 14.02.2019, the predecessor-in-interest of the petitioners, namely, Late Rahidur Rahman was hit from behind by motorcycle bearing registration No.AS-15-K-3793 at about 3.00 PM, which was being driven in a rash and negligent manner. The victim was shifted to FAAMCH, Barpeta and he was referred to GMCH, Guwahati. However, for better treatment, the victim was taken to Rahman Hospital, Guwahati, where he succumbed to his injuries on 26.02.2019

as a result of the accident. Thereafter, on 28.08.2019, the claim petition was filed, seeking compensation against the owner- cum- driver of the offending motorcycle as well as the respondent no.2, insurer. On 03.10.2019, the learned Tribunal took up the matter and relying on the amended provisions of the MV Act, as amended by amending Act of 2019, took note of the provision of Section 5(1) of the General Clauses Act, 1897 which provides that where any Central Act is not expressed to come into operation on a particular day, then it shall come into force on the day on which it receives the assent, in the case of an Act of the Parliament, of the President. Accordingly, it was held that as per Section 53(iii) of the amending Act of 2019, a claim petition seeking compensation is required to be made within 6 (six) months from the date of occurrence. Accordingly, on the ground that the accident took place on 14.02.2019 and the claim petition was filed on 28.08.2019, it was held that the claim petition was filed beyond the period of 6 (six) months.

4. The provision of Section 23 of the amending Act is quoted below:-

53. Amendment of Section 166.

In Section 166 of the principal Act,—

- (i) in sub-section (1), after the proviso, the following proviso shall be inserted, namely—
"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."
- (ii) in sub-section (2), the proviso shall be omitted;
- (iii) after sub-section (2), the following sub-section shall be inserted, namely—
"(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident."
- (iv) in sub-section (4), for the words, brackets and figures "sub-section (6) of Section 158", the word and figures "Section 159" shall be substituted;
- (v) after sub-section (4), the following sub-section shall be inserted, namely—

"(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not."

5. In this connection, it would be vitally important to quote the provisions of Section 1 of the amending Act of 2019, which is as follows:

*“1. **Short title and commencement.**- (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.”*

6. The amending Act of 2019 was published in the Gazette of India, Extraordinary Pt.-II, Section 1, No. 51 dated 9th August, 2019. Thereafter, in terms of Sub-Section (2) of Section 1 of the amending Act of 2019, the provision of Section 1 of the amending Act of 2019 had come into force on 01.09.2019 by virtue of Notification no. S.O.3147(E) dated 30th August, 2019. The provision of Section 166 of the Motor Vehicles Act, which was amended vide the amending Act of 2019 is contained in Section 53 thereof. The learned counsel for the respondent no.2 as well as the learned A.S.G.I., have not been able to show that that the provision of Section 53 of the amending Act of 2019 has been notified. In this regard, the Court is relying on the footnote appended to Section 1 appearing in the bare act of the Motor Vehicles Act, 1988 published by the Universal/ Lexis Nexis (2020 Edition) wherefrom it appears that Sections 50 to 57 including Section 53 of the amending Act of 2019 was not notified till the date of publication of the said bare act.

7. Therefore, when it has been expressly provided under Sub-Section (2) of Section 1 of the amending Act of 2019 that the Central Govt. may appoint different dates for

different provisions of the said Act to come into force, the learned Tribunal had erred in law to apply the provision Section 5(1)(b) of the General Clauses Act, 1897 and to deem that Section 53 of the amending Act of 2019 which contained amendment to the provision of Section 166 of the MV Act had come into operation on the date when it received assent of the President.

8. It is seen that as sections 50 to 57 of the amending Act of 2019 are not yet notified, the petitioners can 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, 163A and 166 of the MV Act, as it stood before its amendment vide amending Act of 2019 (Act 32 of 2019) would continue to operate with full vigour till such time Section 50 to 57 of the amending Act of 2019 is notified in the Official Gazette.

9. Therefore, notwithstanding the enactment of amending Act of 2019, Section 50 to Section 57 thereof must be deemed to have not come into force as the Central Govt. has not notified the date appointed for coming into force the said provisions. Herein below is given a chart showing provisions of MV Act which had been impacted by the provisions of Section 50 to 57 of the amending Act of 2019:-

Sl. no.	Provisions of amending Act of 2019.	Provisions of MV Act	Chapter
1.	Section 50	Sections 140 to 144	Chapter X.
2.	Section 51	Sections 145 to 164	Chapter XI.
3.	Section 52	Section 165	Chapter XII.
4.	Section 53	Section 166	Chapter XII.
5.	Section 54	Section 168	Chapter XII.
6.	Section 55	Section 169	Chapter XII.
7.	Section 56	Section 170	Chapter XII.
8.	Section 57	Section 173	Chapter XII.

10. It may be mentioned that the respondent no.2 has referred to the case of *Vinod Gurudas Raikar Vs. National Insurance Co. Ltd, AIR 1991 SC 2156: (1991) 4 SCC 333,*

where the Supreme Court of India had refused to condone the delay in filing claim petition. The said ratio is not found applicable because in the said case, it was held that once the MV Act, 1988 had come into force, there was no merit in the application filed for condonation of delay and therefore, it was held in the said case that the benefit of a repealed law could not be availed. From the facts as narrated herein before the facts of the cited case is totally distinguishable. In the present case in hand, the provisions of Section 53 of the amending Act of 2019 has not been notified and had not come into force, as such, the provisions of Section 166 of the MV Act, as it stood before amending Act of 2019 had been enacted and received the assent of the President would continue to prevail.

11. Accordingly, the Court is inclined to hold that the petitioners have been able to make out a case that the rejection of their claim petition by the learned Tribunal was *ex facie* erroneous. Accordingly, the Court has no hesitation to set aside and quash the impugned order dated 03.10.2019 passed by the learned Member, MACT, Barpeta in MAC Case No.157/2019. Accordingly, the claim petition filed by the petitioners, being MAC Case No.157/2019 stands restored to file before the said learned Tribunal. The said learned Tribunal shall proceed with the claim petition of the petitioners in accordance with law.

12. As the petitioners and the respondent no.2 have already appeared in the matter, both sides will appear before the learned Member, MACT, Barpeta on 05.04.2021 without any notice of appearance. On appearance, the petitioner shall produce a certified copy of this order so as to enable the learned Tribunal to restore and commence the proceeding.

13. The Registry shall examine if this judgment is required to be circulated across all the Motor Accident Claims Tribunals under its jurisdiction in the States of Assam, Nagaland, Mizoram and Arunachal Pradesh so that similar fallacy may not lead to dismissal of other claim petitions. Hence, this judgment shall be brought to the notice of the Registrar (Judicial).

14. With the aforesaid direction and observations, this application stands allowed. There shall be no order as to cost.

JUDGE

Comparing Assistant