

M.A.C. Case No. 151 of 2023

Order No. 12

13.11.2024

Petitioner files hajira. Today is fixed for passing order in respect of petition dated 20.02.2024 filed by OP No. 2, ICICI Lombard General Insurance Company Ltd, challenging maintainability of the instant case.

The petition is taken up for making order.

Perused the petition. Considered.

The petition was heard in presence of both sides on 07.11.2024 when Ld. Lawyer for OP No. 2 submitted that the instant claim case has been filed u/s 164 of M.V. Act beyond the period of limitation of six months as provided u/s 166(3) of MV Act. He further relied on the explanation to Section 165 of MV Act and submitted that the provision of Section 166(3) of MV Act is applicable in respect of claim cases u/s 164 of MV Act also. He submitted that the claim case is barred by limitation and as such, the same is liable to be dismissed, being not maintainable.

On the other hand, Ld. Lawyer for the claimants submitted that Section 166(3) of MV Act is applicable only to the claim cases instituted u/s 166 of MV Act and not to claim cases filed u/s 164 of the MV Act. He argued that u/s 164 of the Act, a fixed compensation is awarded and as such, the legislation has not provided any period of limitation for such cases.

Section 166(3) of MV Act provides that no application for compensation shall be entertained unless it is made within six months of the occurrence of the accident. Section 165 of the MV Act lays down that a State Government may, by notification in the official Gazette, constitute one or more Motor Accident Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of use of motor vehicles, or damages to any property of a third party so arising, or both. The explanation to Section 165 of the Act specifies that for the removal of doubts, it is hereby declared that the expression "Claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation u/s 164 of the Act. From plain reading of the provisions under Section 165 of the Act, it is clear that Claim Tribunals constituted u/s 165 of the Act are competent to try claim cases u/s 164 of the MV Act also in addition to claims cases u/s 166 of the Act. From the contents of Section 165 of MV Act, in my considered view, it cannot be said that the provisions of Section 166(3) of MV Act is applicable in claim cases u/s 164 of the Act also. Section 164 of the Act provides for compensation of a fixed sum of Rs. 5,00,000/- in case of death or Rs. 2.50,000/- in case of grievous hurt to the legal heirs of the victim, as the case may be, which is based on no fault liability. Section 166 of the MV Act provides for compensation to the legal representatives of deceased in case of death or to the victim in case of grievous injury on the basis of fault liability. In such cases, it is incumbent

upon the claimant to prove that the accident has taken place due to rash and negligent driving by the driver of the offending vehicle. The provisions of Section 164 and 166 of MV Act are different and distinguishable.

In a decision of Hon'ble Kerala High Court, reported in 2023 Supreme (Online) (KER) 30210, Vijayan Vs. Manoj. K, decided on 12.01.2023, authored by Hon'ble Amit Rawal, the question came up for determination before the Hon'ble Court as to whether the provision of Section 166(3) of MV Act is applicable in cases u/s 164 of the MV Act or not. The fact of the case before the Hon'ble Court was that Order dated 08.11.2022 of MACT, Waynad, dismissing the two claim petitions preferred for claiming compensation in respect of an accident occurred on 12.04.2022, being barred by limitation, were under challenge in the original petition. The petitions were filed u/s 164 of MV Act and not u/s 166 of the Act. The Hon'ble Court has held, "Prior to the Amendment Clause of the Motor Vehicles Act, Section 163(A) was in vogue for filing the claim petition on the basis of no fault liability prescribed in the structure formula. Section 164 is pari materia to the aforementioned provision. The Act opens with the non-obstante clause and therefore, the provision of Section 3 of Section 166 would not come into the way of the petitioners for the purpose of prosecuting the O.P. (MV) preferred on 25.10.2022. The order impugned is preposterous, opaque and illegal and accordingly, set aside." It is clear from this decision of Hon'ble Kerala High Court that the provisions of Section 166(3) of MV Act is not applicable in a claim case u/s 164 of MV Act. I am inclined to hold, in view of the above, that the instant claim case is not barred by limitation u/s 166(3) of the MV Act.

Therefore, the instant petition filed by OP No. 2 is devoid of any merit and is liable to be dismissed.

Hence, it is

ORDERED

that the instant petition filed by OP No. 2 is hereby dismissed without cost.

Fix 04.01.2025 for filing written statement by OP No. 2, i.d. necessary order.

Dictated and corrected by me.

Judge, 3rd M.A.C. Tribunal, Burdwan

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