

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 2ND DAY OF DECEMBER 2022 / 11TH AGRAHAYANA, 1944

OP (MAC) NO. 136 OF 2022

ARISING OUT OF THE ORDER OF MOTOR ACCIDENT CLAIMS TRIBUNAL,

OTTAPPALAM DATED 11.11.2022 IN UNNUMBERED OP(MV) -EFILING

NO.C202200074

PETITIONER:

VIMALA JOSE
AGED 62 YEARS
W/O.LATE ABRAHAM, VETTIKATTU (VETTIKATTIL) HOUSE,
PALATT ROAD, OTTAPALAM POST, OTTAPALAM TALUK,
PALAKKAD DISTRICT, PIN - 679101

BY ADVS.
R.SREEHARI
HAMZA A.V.

RESPONDENTS:

- 1 ABOOBACKER
AGED 61 YEARS
S/O.UNNIYANKUTTY, PAZHAMKULATHINGAL HOUSE,
CHUNANGAD POST, OTTAPALAM TALUK,
PALAKKAD DISTRICT, PIN - 679511
- 2 MUHAMMED MANAF
AGED 35 YEARS
S/O.ABOOBACKER, PAZHAMKULATHINGAL HOUSE,
CHUNANGAD POST, OTTAPALAM TALUK,
PALAKKAD DISTRICT, PIN - 679511
- 3 UNITED INDIA INSURANCE CO. LTD
PARAPPURATH TOWER, MAIN ROAD, OTTAPALAM POST,
OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN - 679101
REPRESENTED BY ITS BRANCH MANAGER.

BY ADV.SRI.P.K.MANOJ KUMAR, SC, R3

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 02.12.2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This Original Petition is filed against the order dated 11.11.2022, whereby the claim petition preferred by the petitioner/claimant, who sustained injuries in an accident occurred on 10.05.2022, has been rejected being barred by limitation.

2. The facts in brief are that the petitioner while standing in front of "Choice Hyper Market", was hit by a car bearing Regn.No.KL-51/K-8212 driven by the first respondent and insured by the third respondent. The claim petition was filed on 10.11.2022 with e-filing No.C-202200074 before the Motor Accidents Claims Tribunal, which was returned by holding it to be barred by limitation in view of the Government notification dated 25.02.2022 read with Section 53 in Gazette No.51 dated 09.08.2019, whereby the amendment under the Motor Vehicles Act, 2019 came into effect with effect from 01.04.2022 and incorporated in sub-section (3) of Section 166.

3. Learned counsel appearing on behalf of the petitioner submitted that the MACT ought not to have returned the petition on this ground and ought to have called the other side and framed the issues to adjudicate whether the claim petition is barred by law

of limitation or not, for, the calculation of the period of six months has to be from the date of the accident and not by counting each day in a month. In support of the aforementioned contention, relied upon paragraph No.8 of the judgment in ***Bibi Salma Khatoon v. State of Bihar (2001 KHC 1617)***, whereby after noticing the provisions of the General Clauses Act, 1977, the period of limitation has been calculated by taking note of the meaning of the word 'month' by excluding the date from which the limitation is stated to have commenced. Since the claim petition was filed on 10.11.2022, which was on the last date of six months and excluding one day, it could have been one day short of six months. Paragraph 8 of the above judgment reads as under :

“8. Here we are concerned with compliance of requirement of making application within the prescribed period of three months. The question arises, what is meant by the word 'month'. Sub-section (34) of Section 4 of the Bihar and Orissa General Clauses Act, 1917 defines the word 'month' to mean a month reckoned according to the British Calendar. This means Gregorian Calendar – January, February, etc. Mr.Jha has drawn our attention to Section 11 of the said Act of 1917 to point out that when word 'from' is used the first in the series of days or any other period of time has to be excluded and when the word 'to' is used the last in a series of days of any other period of time has to be included but in this case the word 'of' is used so that section will not apply. A perusal of Section 11 shows it is an aid for drafting a provision rather than for interpreting the provision of the Act. Be that as it may, since the Act does not expressly exclude Section 4 to 14 of the Limitation Act they apply to application under Section 16(3) of the Act. Therefore, the date from which the limitation commences has to be excluded in computing the period of limitation of three months. In Halsbury's Laws of England, Fourth Edition, Para 211 method of computation of month is given as follows :

“Para 21: Calendar month running from arbitrary date – when the period prescribed is a

calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month. If a period of one calendar month includes the last day of February there must be 29 or 28 days, according as the year is or is not a leap year."

Thus computed the application filed appellant on April 30, 1988 is within limitation – a period of three months of the date of the registered sale deed dated January 30, 1988. In view of the matter, we are unable to sustain the order under challenge. We set aside the impugned order, restore the second appeal and remit the case to the High Court for disposal in accordance with law."

4. Issue notice before admission. Learned Standing Counsel accepts notice on behalf of the third respondent no.3, and submits that on plain calculation of the dates from the date of accident till the date of filing, the petition was filed beyond 180 days i.e., filed on 184th day whereas a month consists of 180 days. The order is perfectly legal and justified.

5. I have heard the counsel for the parties and appraised the paper book.

6. I am of the view of that it is not necessary to issue notice to the driver and owner of the vehicle as it would defray the cost of litigation. Act 32 of 2019 was introduced putting an embargo on entertainment of the application for compensation. Sub-section (35) of Section 3 of the General Clauses Act, 1987 applicable to the State of Kerala would mean a month reckoned according to the British calendar, the same reads as under:

“(35) “month” shall mean a month reckoned according to the British calendar.”

7. By taking the definition of a month as the period to be counted for the purpose of limitation, filing of the claim petition within a period of six months has to be calculated from the date of accident. If the said period is calculated from the date of accident 10th November is the last date of six months on which date the claim petition was instituted.

8. The judgment in ***Bibi Salma Khatoon (supra)*** has also relied upon the provisions of the local General Clauses Act and it was found that the intention of the legislature is months and not the days, then the limitation has to be counted by taking into consideration month and not days.

9. I am of the view that MACT ought not to have returned the petition by calculating the limitation in the manner and mode as has been done. At the best, could have framed the issue and put the parties to lead evidence on that or hear the argument by taking into consideration the provisions of the law. Since I have already undertaken this exercise, it would be a farcical exercise for this Court to direct the learned MACT to frame the issue and decide the same. Accordingly, the impugned order is set aside. The

Superintendent of the District Court is directed to register the claim petition filed through e-filing No.C202200074, allocate to the competent court and proceed in accordance with law.

Original Petition stands disposed of.

Sd/-
AMIT RAWAL
JUDGE

APPENDIX OF OP (MAC) 136/2022

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE APPLICATION FOR COMPENSATION FILED BY THE PETITIONER HEREIN ON 10/11/2022 BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM, UNDER SECTION 166 (READ WITH SECTION 140) OF THE MOTOR VEHICLES ACT, 1988

Exhibit P1(a) TYPED TRUE COPY OF THE ORDER PASSED BY THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM DATED 11/11/2022 IN UNNUMBERED O.P. (MV) FILED BY PETITIONER ON 10/11/2022 WITH E-FILING NO.C 202200074 AS SEEN ENDORSED ON THE DOCKET OF EXHIBIT P1

Exhibit P2 TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT OF INDIA REPORTED IN 2001 KHC 1617 (BIBI SALMA KHATOON -VS- STATE OF BIHAR) .

Exhibit P3 TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT OF INDIA REPORTED IN 2010 (3) KLT 575 (SC) (STATE OF HIMACHAL PRADESH -VS- HIMACHAL TECHNO ENGINEERS)

Exhibit P4 TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA REPORTED IN 2011 (3) KLT SN 71 (C.NO.68) (SUDARSANA BABU -VS- INCOME TAX OFFICER)