

IN THE HIGH COURT OF ORISSA, CUTTACK.

W.P.(c) PIL No. 163 of 2020
(Original Jurisdiction Case)

Subject Code: 219900

In the matter of:

An application under Article 226 of the
Constitution of India, 1950.

AND

In the matter of:

An application arising out of Articles 21 and
300 A of the Constitution of India, 1950.

AND

In the matter of:

An application arising out of Section
166 of the Motor Vehicles Act, 1988 as
amended by Motor Vehicles (Amendment)
Act, 2019,

AND

In the matter of:

Ananga Kumar Otta, aged about 59 years,
son of late Harihara Otta, At/P.O./P.S.:
Badachana, District: Jajpur.

.... Petitioner.

VERSUS

1. Union of India represented by its Secretary
Ministry of Law & Justice, Legislative
Department, 4th Floor, A Wing, Shastri
Bhawan, New Delhi – 110 001,
2. Union of India, represented by its Secretary
Ministry of Road Transport & Highways,
Parivahan Bhawan, Parliament Street, New
Delhi – 110 001,
3. Transport Development Council, Ministry of
Road Transport & Highways,
Parivahan Bhawan, Parliament Street,
New Delhi – 110 001

... .. **Opposite Parties.**

The matter out of which the present application arises was never before this Hon'ble Court in any form whatsoever as per the instructions of the petitioner.

To

The Hon'ble Sri Kalpesh Satyendra Jhaveri, B.Sc., LL.B.,
the Hon'ble Chief Justice of the High Court of Orissa and
Her companion Justices of the said Hon'ble Court.

Humble petition of the
petitioner named above;

MOST RESPECTFULLY SHEWETH:

01. That the petitioner in the present application seeks to invoke the extra-ordinary jurisdiction of this Hon'ble Court to entertain the present application as a Public Interest Litigation in assailing the *vires* of the Motor Vehicles Amendment Act, 2019, so far as the insertion of Sub-Section (3) in Section 166 of the Motor Vehicles Act, 1988 i.e. the Principal Act, by Section 53 of the Amending Act published in Part-I of the Gazette of India Extra-ordinary coming into force on the date it received the assent of the Hon'ble the President of India i.e. on 09.08.2019 inasmuch as the Amending Act under Section 2 thereof laid down that 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.

True copy of the Gazette of India Extra-ordinary Part-I, No.51, Dated 09th August, 2019 is annexed and is marked as **ANNEXURE: 1** to the present application.

02. That the present writ petition is filed in public interest and the petitioner does not have any private or personal interest in respect of the subject matter or the relief sought for in the present Writ Petition. Further, it may be pertinent to state that the petitioner, a member of the Bar, does not have any sort of personal grievance against any of the opposite parties.

03. That the petitioner has approached this Hon'ble Court through this Writ Petition on his own and has not received or obtained any amount from any source whatsoever towards the expenses involved in the filing of the present Writ Petition. It may not be out of place to mention that the lawyers engaged by the petitioner having expressed their concern over the matter, agreed to pursue and conduct the case without charging any remuneration or obtaining fees for their job.

04. That the petitioner respectfully submits that the insertion of Sub-Section (3) in Section 166 of the Motor

Vehicles Act, 1988 i.e. the Principal Act, by Section 53 of the Amending Act, 2019, is as follows.

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

In reality, period of limitation is prescribed under the Amending Act, 2019, restricting filing of an application for compensation altogether after expiry of six months of the occurrence of the accident.

05. That for appreciation of the questions involved in the present application, it may be desirable to take note of the prior legislations on the subject.

In the Motor Vehicles Act, 1939, the relevant provision for an application for compensation was under Section 110-A, wherein Sub-Section (3) was as under.

(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 if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

In the subsequent legislation, namely, the Motor Vehicles Act, 1988, Section 166(3), as originally enacted, also provided for limitation of a period of six months for filing a claim petition and also 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. Relevant provision is reproduced here-in-below.

(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.

A perusal of the original provision of Section 166 of the 1988 Act, extracted above reveals that once again a period of limitation of six months (from the date of occurrence of the accident) was provided for. However, on this occasion, a bar was introduced for entertaining a claim petition, arising out of a motor accident after twelve months (from the date of occurrence of the accident). Obviously, the period of limitation provided for through

Section 166(3) of the 1988 Act, could be relaxed up to twelve months, by demonstrating that there was sufficient cause for such delay.

It would however, be pertinent to mention, that the period of limitation provided under Section 166(3), as above, was completely done away with effect from 14.11.1994, as Section 166(3) came to be omitted/deleted altogether from the Motor Vehicles Act, 1988, by Section 53 of the Amending Act, 53 of 1994.

It may be submitted that the present application is not connected with the consequence of the omission of Sub-section (3) of Section 166 of the 1988 Act, by the Amending Act, 53 of 1994, rendering that a claimant can file an application at any time, as he chooses and even after a decade or a reasonable time.

But, then the Amending Act, 2019, restricted filing of application for compensation altogether, by providing that no application for compensation shall be entertained after expiry of six months of the occurrence of the accident. It took away the authority of the Claims Tribunal, to entertain an application filed after six months

even if it is established that the applicant was prevented by sufficient cause from making the application in time.

6. That the petitioner verily believes that hitherto, the Motor Vehicles (Amendment) Act, 2019 is based on the recommendations of the Group of Transport Ministers of States. Given that the Act wanted to deter individuals from violating traffic rules, it has introduced heavy fines for drunken driving, driving without licence, dangerous driving, over-speeding, etc. These penalties will be increasing by 10 per cent every year on April 1, as notified by the Central government. The new Act has also extended the period for renewal of driving licences from one month to one year after the date of expiry. Only if the renewal delayed more than a year, will the driver have to undergo a test of competence. The Act also promises to protect those people who render emergency medical or non-medical assistance to a victim of an accident, from any civil or criminal liability. The minimum compensation for death or grievous injury due to hit and run has been moved up substantially. But, then the by the amendment in the principal Act, so far as completely abrogating the authority of the Claims Tribunal to entertain an application for compensation beyond six months from the date of

accident seems to have devastating effect of taking away the nature of benevolence of the statute towards the accident victims.

7. That on a perusal of the statement of object and reasons of the Motor Vehicles (Amendment) Act, 1994, so far as it completely waived the period of limitation, it may be noticed that a review committee was constituted by the Government in March, 1990 to examine and review the Motor Vehicles Act, 1988 and recommendations of the Committee were forwarded to State Governments and they generally agreed with the recommendations. The draft of the proposals based on recommendations of the Committee and the representations from the public were placed before the Transport Development Council, on whose suggestion, the Bill was prepared in respect of various issues including removal of time limit for filing of application by road accident victims for compensation. But then, the statement of object and reasons of the Motor Vehicles (Amendment) Act, 2019 without any expression of object and reason, for not only prescribing time limit of six months for making an application for compensation but also providing that no such application shall be entertained

after expiry of six months, whatever be the circumstances or at all, appear to have not been conscious of the plights of the victims, who might have suffered the agony for more than six months, which is not unusual and who might have remained under comma for more than six months. Non-consideration of the relevant aspects which persuaded waiver of limitation smacks non-application of mind in stipulating that no application for compensation under any circumstance can be entertained.

True copy of the statements of objects and reasons of the Motor Vehicles (Amendment) Act, 1994 and the Motor Vehicles (Amendment) Act, 2019 are annexed and are marked as **ANNEXURE: 2 series.**

8. That it may be submitted that the right of the victim of road accident to get the compensation cannot be said as a bounty. Such right gets crystallised no sooner the accident takes place. It may further be submitted that by judicial pronouncement in the case of *Ravindra Ram Chandra Vs. Indore Municipal Corporation*, reported in (2017) 1 SCC 667, it is clear enough that even if the relevant statute is totally silent about payment of

compensation, yet compensation becomes payable. By virtue of the law as existent immediately prior to the date of coming into force of the Motor Vehicles (Amendment) Act, 2019 needs a close look, for finding out as to whether the amended provision under Sub-Section (3) of Section 166 of the Act could have done away with the vested right or accrued right of the claimant. All such cases, wherein the occurrence of the accident took place before six months and could have been entertained on the day before the Amending Act came into force, become barred under law. The Amending Act, to that extent is exproprietary. Absence of provision for filing of applications in respect of accidents taking place six months prior to occurrence of the accident, by way of a saving clause at least makes no sense at all and leaves an idea of laying down the scheme of compensation only in respect of those victims, who suffered the accident within six months from the occurrence of the accident and ignore all those victims who could have maintained the application for compensation on the day preceding the day when such Amending Act, 2019 came into force, irrespective of the date/occurrence of the accident.

9. That it may be submitted that by a plain reading of the Sub-Section (3) of Section 166 of the Motor Vehicles Act, 1988 and construing the under laying object of the Act, the only conclusion that may be possible is to find out the prohibition only in respect of occurrence of accident having taken place after the Amending Act, 2019 came into force and not the accident which occurred immediately before inasmuch as there was no prohibition or time limit for making the application for compensation, on the day the right accrued in favour of the claimants. It is submitted that such a construction of the Amending Act, 2019 is within the domain of judicial review. It is submitted further that in the matter of construction of a provision under the beneficent statute, it is not permissible by judicial interpretation to read words which are not there in it and thereby bring a restriction.

10. That amendment in law which is intended to curtail the right of the victims of road accident cannot be applied retrospectively inasmuch as the law that stood immediately before waived the period of limitation rather consciously, while Motor Vehicles (Amendment) Act, 1994 came in to force. It has always been held under the taxing statute that if finality is achieved by the law of limitation,

the same cannot be again revisited or reopened by subsequent legislation waiving the period of limitation. It is submitted that when it is about the right of the victims to claim compensation, which existed immediately before irrespective of the date/occurrence of accident, in a beneficent legislation, it must receive a construction that would advance the cause of justice rather than bringing in something which would defeat the very object of legislation and therefore, must be held as prospective.

11. That it is respectfully submitted that this Hon'ble Court being the Constitutional Court and the *sentinel on the qui vive*, and also in the interest of administration of Justice, should indicate by way of Judicial order, to remind the legislative bodies that by an unmindful action, the victims of road accidents are going to suffer and thereby the same is against public interest.

12. That it is submitted that while the Legislature in its wisdom has enacted several ways and means for awarding compensation to victims of electrocution, crimes, the farmers and others also against natural calamities, loss sustained by the insured and no limitation is prescribed for raising a claim or that it is three years, by

applying the residuary article under the Limitation Act, 1963, restricting the same altogether for the victims of the road accident to make the application within six months from the occurrence of the accident seems to be thoroughly illogical and unacceptable for the reason that the Statute partakes a character of benevolent legislation for the road traffic accident victims. It is submitted that Court is expected to adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction, which would have the effect of curtailing the benefit conferred by it earlier. It may be apposite to take note of the reasons expressed emphatically by the Apex Court in the case of *M/s Purohit and Company V. Khatoonbee*, reported in AIR 2017 SC 1612, to repel the contention based on the pre-amended Act that Article 137 of the Limitation Act may be invoked.

12. The learned counsel for the appellant, next contended that since no period of limitation has been prescribed by the legislature, Article 137 of the Limitation Act may be invoked, otherwise, according to him, stale claims would be encouraged leading to multiplicity of litigation for non-prescribing the period of limitation. We are unable to countenance the contention of the appellant for more than one reason.

Firstly, such an Act like the Motor Vehicles Act is a beneficial legislation aimed at providing relief

to the victims or their families, if otherwise the claim is found genuine.

Secondly, it is a self contained Act which prescribes the mode of filing the application, procedure to be followed and award to be made. The Parliament, in its wisdom, realised the grave injustice and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions at the threshold on the ground of limitation, and purposely deleted sub-section (3) of Section 166, which provided the period of limitation for filing the claim petitions and this being the intendment of the legislature to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the Legislature."

(Emphasis is ours)

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13. That it is thus submitted that what purposely was deleted by Motor Vehicle (Amendment) Act, 1994 w.e.f. 14.11.1994, has not only been incorporated by the Motor Vehicle (Amendment) Act, 2019 without express objects and reasons, but the Amending Act, 2019 has altogether barred the authority of the Tribunal to entertain applications filed after six months from the occurrence of accident even if sufficient grounds for not been able to file the application within the prescribed time limit exists. Exclusion of the applicability of the Limitation Act, 1963

has caused havoc inasmuch as in most cases the victims of an accident get composed much after the time limit set by the Amending Act, 2019. Much has been done under the Amending Act, 2019, to ensure minimization of accident, by raising the structure of penalty for violation of traffic rules, but due care has not been adhered to the genuine claim of the victims of road accident.

14. That the petitioner does not have any other alternative and efficacious remedy available and has reasons to approach this Hon'ble Court on the following amongst other;

G R O U N D S

A. For that the insertion of Sub-Section (3) in Section 166 of the Motor Vehicles Act, 1988 i.e. the Principal Act, by Section 53 of the Amending Act, 2019, restricting filing of an application for compensation altogether after expiry of six months of the occurrence of the accident is against the public interest and the very object of the beneficent statute and as such must be declared as *ultra vires* to the Motor Vehicles Act, 1988.

B. For that the legislative back ground is suggestive of non-application of mind inasmuch as in the Motor Vehicles Act, 1939, the relevant provision for an application for compensation was under Section 110-A, wherein Sub-Section (3) though provided that no application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident, yet under the proviso clarified that the Claims Tribunal may entertain the application after the expiry of the said period of six months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time and again in the subsequent legislation, namely, the Motor Vehicles Act, 1988, Section 166(3), as originally enacted, also provided for limitation of a period of six months for filing a claim petition and also 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 by demonstrating that there was sufficient cause for the delay and by Section 53 of the Amending Act, 53 of 1994, i.e. immediately preceding the present amendment, the period of limitation provided under Section 166(3), as above, was completely done away with effect from

14.11.1994. But, then the Amending Act, 2019, restricted filing of application for compensation altogether, by providing that no application for compensation shall be entertained after expiry of six months of the occurrence of the accident. It took away the authority of the Claims Tribunal, to entertain an application filed after six months even if it is established that the applicant was prevented by sufficient cause from making the application in time.

C. For that the Motor Vehicles (Amendment) Act, 2019 is based on the recommendations of the Group of Transport Ministers of States. Given that the Act wanted to deter individuals from violating traffic rules, it has introduced heavy fines for drunken driving, driving without licence, dangerous driving, over-speeding, etc. The Act also promises to protect those people who render emergency medical or non-medical assistance to a victim of an accident, from any civil or criminal liability and enhanced the minimum compensation for death or grievous injury due to hit and run. But, then the by the amendment, the authority of the Claims Tribunal to entertain an application for compensation beyond six months from the date of accident stood abrogated,

causing devastating effect of taking away the nature of benevolence of the statute towards the accident victims.

D. For that a bare perusal of the statement of objects and reasons of the Motor Vehicles (Amendment) Act, 1994, would indicate the stages through which the Bill was passed while removing of time limit for filing of application by road accident victims for compensation; whereas the statement of object and reasons of the Motor Vehicles (Amendment) Act, 2019 is totally silent when it prescribed that no such application shall be entertained after expiry of six months. Thus, it being completely in conflict with the object of the Motor Vehicles Act, 1988 as a self contained benevolent statute providing the procedure for compensation to the victims of road accident, is liable to be struck off.

E. For that the right of the victim of road accident to get the compensation, being not a bounty and such being crystallised no sooner the accident takes place, the accrued right of the claimant in all such cases, where the occurrence of the accident took place before six months and could have been entertained on the day before the Amending Act came into force, are not available to be

done away with by the Amending Act, 2019 inasmuch as the same would be ex-proprietary.

F. For that by a plain reading of the Sub-Section (3) of Section 166 of the Motor Vehicles Act, 1988 and the under laying object of the Act, the only conclusion that may be possible is to find out the prohibition only in respect of occurrence of accident having taken place after the Amending Act, 2019 came into force and not the accident which occurred immediately before inasmuch as there was no prohibition or time limit for making the application for compensation, on the day the right accrued in favour of the claimants.

G. For that a construction of the Amending Act, 2019 is within the domain of judicial review and in the matter of construction of a provision under the beneficent statute, it is not permissible by judicial interpretation to read words which are not there in it and thereby bring a restriction in respect of all such accident taking place prior to commencement of the Amending Act, 2019.

H. For that the amendment in law which is intended to curtail the right of the victims of road accident cannot be applied retrospectively inasmuch as the law that

stood immediately before waived the period of limitation rather consciously, while Motor Vehicles (Amendment) Act, 1994 came in to force. Rights of the victims of road accident to claim compensation that existed immediately prior to commencement of the Amending Act, 2019 irrespective of the date/occurrence of accident, in a beneficent legislation, must receive a construction that would advance the cause of justice rather than bringing in something which would defeat the very object of the Statute and therefore, must be held as prospective.

I. For that this Hon'ble Court being the Constitutional Court and the *sentinel on the qui vive*, and also in the interest of administration of Justice, should indicate by way of Judicial order, to remind the legislative bodies that by an unmindful action, the victims of road accidents are going to suffer and thereby the same is against public interest.

J. For that when the Legislature in its wisdom has enacted several ways and means for awarding compensation to victims of electrocution, crimes, the farmers and others also against natural calamities, loss sustained by the insured and no limitation is prescribed for

raising a claim or that it is three years, by applying the residuary article under the Limitation Act, 1963, restricting the same altogether for the victims of the road accident to make the application within six months from the occurrence of the accident seems to be thoroughly illogical and unacceptable.

K. For that what purposely was deleted by Motor Vehicle (Amendment) Act, 1994 w.e.f. 14.11.1994, has not only been incorporated by the Motor Vehicle (Amendment) Act, 2019 without express objects and reasons, but the Amending Act, 2019 but also has altogether barred the authority of the Tribunal to entertain applications filed after six months from the occurrence of accident even if sufficient grounds for not been able to file the application within the prescribed time limit exists. Exclusion of the scope to condone delay is not available to be countenanced inasmuch as in most cases the victims of an accident get composed much after the time limit set by the Amending Act, 2019. Much has been done under the Amending Act, 2019, to ensure minimization of accident, by raising the structure of penalty for violation of traffic rules, but due care has not been adhered to the genuine claim of the victims of road accident.

L. For that the insertion of Sub-Section (3) in Section 166 of the Motor Vehicles Act, 1988 i.e. the Principal Act, by Section 53 of the Amending Act, 2019 is to be declared as *ultra vires* on other grounds as well, which may be urged at the time of hearing.

P R A Y E R

It is therefore, prayed that this Hon'ble Court may be pleased to issue a writ in the nature of Mandamus declaring the insertion of Sub-Section (3) in Section 166 of the Motor Vehicles Act, 1988 i.e. the Principal Act, by Section 53 of the Amending Act, 2019 under ANNEXURE:1 to the writ application and may further be pleased to issue such other or further writ declaring the same as prospective and inapplicable to the accidents occurring prior to the commencement of the Amending Act, 2019 and to pass such other or further writ(s), order(s), or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

And, for this act of kindness, the petitioner as in duty bound shall ever pray.

Cuttack,
02.01.2020.

Advocate
for the petitioner.