

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2025
(Arising out of SLP(C)No.2466 of 2020)

THE NEW INDIA ASSURANCE CO. LTD.

APPELLANT

VERSUS

GOPU & ANR.

RESPONDENTS

O R D E R

Leave granted.

2. This appeal is directed against an order dated 01.03.2019, passed by the High Court of Kerala in MACA No.627 of 2016, by which the compensation awarded to the claimants by the Motor Accidents Claims Tribunal, Alappuzha (for short, 'the Tribunal') was enhanced.

3. On 02.06.2000 at 3.00 P.M., the deceased was riding pillion on a motorcycle being driven by one V.G. Shibu, 1st respondent before the Tribunal. Near the Avalookunnu Post office, respondent No.1 applied sudden brake to save a cyclist and the deceased fell and was injured. Ultimately, the deceased succumbed to her injuries on 07.06.2000 at the Medical College Hospital. It is alleged that the accident was due to the rash and negligent driving by the bike driver. The owner and driver were *ex-parte* in the Tribunal.

4. The legal representatives of the deceased, husband and two minor children, preferred a claim petition under Section 166 of the Motor Vehicles Act, 1988 and the Motor Accidents Claims Tribunal awarded compensation of Rs.6,53,000/- (Rupees Six Lakh

Fifty Three Thousand only). Against the award dated 23.11.2006, after 10 years, in 2016, the children alone preferred an appeal before the High Court. The High Court of Kerala enhanced the compensation from Rs.6,53,000/- to Rs.14,95,000/- and further directed the appellant-Insurance Company to pay interest @ 7% p.a. interest. This is the order which has been challenged before us.

5. Heard learned counsel for the parties and carefully perused the material placed on record.

6. Learned counsel for the respondent-claimants submits the deceased was working as a Junior Public Health Nurse at PHC, Thenipalam and was getting an amount of Rs.5,955/- per month. The appellants Gopu and Goukul are her children, who were minors, when the deceased aged 32 died as a result of the accident. Learned counsel submits that just amount was not awarded by the Tribunal; as after the death of Rasimol (the deceased), three Pay Commission Reports dated 25.03.2006, 26.02.2011 and 20.01.2016 were implemented. And a considerable increase in the salary was recommended in the Pay Commission. Learned counsel contends that the future prospects and the hike in salary was not considered by the Tribunal while awarding compensation.

7. *Per contra*, learned counsel for the appellant-Insurance Company submits that there are discrepancies in the judgment of the High Court in apportioning the enhanced compensation and that the cause of action had occurred in the year 2000, hence the salary received at the time of accident alone can be considered. Learned counsel further submits that the judgment passed by the High Court is not sustainable in the eye of law as

respondent No.1-Gopu himself attained majority in the year 2011 as per his affidavit filed with the MAC appeal in year 2016 and he has not given any satisfactory explanation as to why the MAC Appeal was not filed immediately thereafter; when he attained majority. The respondents/claimants have filed the MAC appeal after 10 years of the award and further after about 8 years (2877 days) from the date of attaining majority.

8. Learned counsel for the respondents rely upon Sections 6 and 7 of the Limitation Act, 1963, which read as under:

"6. Legal disability.—(1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.

(2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation.— For the purposes of this section, 'minor' includes a child in the womb.

7. Disability of one of several persons.—Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.—This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II. —For the purposes of this section, the Manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property”

9. Section 6, of the Limitation Act, 1963, as is evident from the extract enables a person disabled, by reason of minority, insanity or idiocy, to institute a suit or make an application for the execution of a ‘decree’, within the period of limitation provided, after the disability has ceased. The provision applies only with respect to a suit or an application for the execution of a decree and not in an appeal or any other proceeding. Here, we must notice the definition clause, Section 2(1) which though does not define a suit but provides that *‘a suit does not include an appeal or an application’*. An appeal, an application and a suit are hence dealt with differently insofar as the Limitation Act is concerned, as evidenced from Section 3 also. In this context, we have also to notice the distinction, insofar as Section 5 of the Limitation Act, providing for admission of an appeal, or any application, other than an application under any of the provisions

of Order XXI of the C.P.C., even after the prescribed period, if sufficient cause is shown to satisfy the Court.

10. It is pertinent that till the Act of 1963 came into effect applications for execution of the decree were not specifically excluded from the purview of the provision allowing condonation of delay, (Section 5(b) of the Limitation Act of 1871 and Section 5 of the Limitation Act of 1908) which was excluded for the first time under Section 5 of the Act of 1963. It has been held that Section 5 of the Limitation Act does not apply to a suit in *Ajay Gupta v. Raju*¹. Likewise legal disabilities specified in Section 6 creates an exemption and enables the period of limitation to run from the date on which the disability has ceased, only in the case of a suit or an application for the execution of a decree; the last of which we already noticed is excluded under Section 5.

11. In this context, we refer to the decision of the Full Bench of the High Court of Allahabad in *Bechi v. Ahsan-Ullah Khan*² [ILR (1890) 12 All 461 (FB)] and make the following extract from Mahmood, J's opinion which was concurred by all the other three Hon'ble Judges:

"What effect the minority of some of the defendants has upon the case is the subject of the second question as enunciated by me. And upon this point, I am of the opinion that the defendants-respondents have no case. It is true that some of them are minors, but they are duly represented by guardians whose interests are the same as theirs, and the fact of minority could not prevent the guardians from showing due diligence on behalf of the minors. It is noticeable that Section 7 of the Limitation Act, in extending the period of limitation on account of minority, refers only to suits and applications and makes no mention of

¹ (2016) 14 SCC 314

² 1890 SCC OnLine All 1

appeals, and its provisions are, therefore, unavailable to the minor defendants."

Section 7 referred to in the above extract is from the: Limitation Act (XV of 1877) and the provisions we are concerned with also is similarly worded, without any mention of appeals.

12. In *Musthafali v. Subair*³, the High Court of Kerala considering the word 'suit' used in Section 6 and defined in the Limitation Act held that the proceedings under Section 110A of the Motor Vehicles Act are in the nature of a suit under the Code of Civil Procedure; since the *lis* is instituted by presentation of an application, which is more or less like a plaint. The Division Bench of the High Court relied on a Constitution Bench decision of this Court in *H.H. Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur v. State of Rajasthan*⁴ which held

"A proceeding which does not commence with a plaint or petition in the nature of plaint, or where the claimant is not in respect of dispute ordinarily triable in a civil court, would prima facie not be regarded as falling within Section 86 of Code of Civil Procedure.." [sic paragraph 5].

Impliedly, the exemption by reason of a disability applies to the institution of an original proceeding or an application for execution of a final decree, which will not apply in the case of an appeal. Appeal is a continuation of the original proceeding and if, as is the case here, when the original proceeding was instituted at the time of minority, why should there be a subsequent disability inferred, when the natural guardian, the father, who instituted the appeal was alive and did not suffer from any disability himself,

³ 1991 SCC OnLine Ker 269

⁴ 1963 SCC OnLine SC 119

even when the appeal period stood expired. The above observation of ours may not be taken as Section 6 being applicable to appeals, which the legislature did not intend.

13. In the present case, the father as the natural guardian has instituted the original proceeding before the Motor Accidents Claims Tribunal, filed for compensation on the death of his wife in a motor vehicle accident, with both the minor children in the party array of claimants, represented by the father, the natural guardian. The father did not choose to file an appeal from the award. In fact, as per Annexure P-4, it is seen that the Insurance Company had filed an appeal from the award of the Tribunal on the ground of the policy not covering the risk of a pillion rider, which stood dismissed by a Division Bench of the High Court, based on a clarification issued by the Insurance Regulatory Development Authority that a package policy will also cover the risk of a pillion rider. In the said appeal the father and the two minor children were made parties, and they appeared through counsel. The father did not choose to file a cross appeal seeking enhancement of the claim amounts. The father who is the natural guardian took a conscious decision not to file an appeal and was satisfied with the award. The statements made in the application for condonation of delay, that; the father had married again; the children were abandoned; who were in the care of their grandparents are not substantiated. We make this observation fully conscious of the fact that any substantiation would also have not enabled the filing of an appeal under Section 6, the exemption under which, based on a disability, is confined to suits and applications for execution of

a decree. The intention of the legislature being very clear, it is not for the courts to extend the period of limitation on misplaced sympathies. Even Section 5 has no application in the facts of the case, insofar as the long delay occasioned, especially when in the original proceedings, the children were represented by the father, the natural guardian.

14. On the above reasoning, we set aside the judgment of the learned Single Judge finding the appeal filed to be grossly delayed and hence not maintainable. The appeal stands allowed.

.....J.
(SUDHANSHU DHULIA)

.....J.
(K. VINOD CHANDRAN)

NEW DELHI;
APRIL 08, 2025.

ITEM NO.25

COURT NO.9

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).2466/2020

[Arising out of impugned final judgment and order dated 01-03-2019 in MACA No.627/2016 passed by the High Court of Kerala at Ernakulam]

THE NEW INDIA ASSURANCE CO. LTD.

Petitioner(s)

VERSUS

GOPU & ANR.

Respondent(s)

Date : 08-04-2025 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) Mr. Sanjay Kumar Dubey, Adv.
Ms. Shuchi Singh, Adv.
Mr. Shuchi Singh, AOR
Mr. Vivek Kumar Pandey, Adv.
Ms. Shivani Mishra, Adv.

For Respondent(s) Mr. Venkita Subramoniam T.R., AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands allowed in terms of the signed reportable order, which is placed on the file.

(SATISH KUMAR YADAV)
ADDITIONAL REGISTRAR

(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR