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**(1988) 04 KL CK 0005**  
**In the High Court Of Kerala**  
**Case No : M.F.A. No. 347 of 1986**

A. Vilasini and Others

APPELLANT

Vs

K.S.R.T.C. and Another

RESPONDENT

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**Date of Decision :** 08-04-1988

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 92A

**Citation :** (1988) 2 ACC 584 : (1988) ACJ 755 : AIR 1989 Ker 95 : (1989) 1 ILR (Ker) 116

**Hon'ble Judges :** V. Sivaraman Nair, J;P.K. Shamsuddin, J

**Bench :** Division Bench

**Advocate :** Pirappancode V. Sreedharan Nair and S.P. Aravindakshan Pillai, for the Appellant; P. Gopalakrishnan Nair, for the Respondent

**Final Decision :** Allowed

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## Judgement

Shamsuddin, J.—The petitioners in O.P. (MV) No. 689 of 1982 on the file of the Motor Accident Claims Tribunal, Trivandrum, are the appellants in this appeal. They are legal heirs of the one Johnson, who died on 29-5-1982 in an accident. Deceased Johnson was standing by the side of Poovar-Vizhinjam road at about 9.30 p.m. A passenger bus KLX 2794 came from north in a rash and negligent manner through the wrong side. On seeing the vehicle, one Simon who was standing near the deceased pushed him on the road forcibly and Johnson was run over by the bus and consequently he died instantaneously. The petitioners averred in the petition that the deceased was the proprietor of a plantain leaf shop, earning a monthly income of Rs. 1,000/- that he used to spend Rs. 700/- per mensem to his family, that he was only 34 years old at the time of his death, that but for the accident he would have lived at least up to 70 years and that the death of the deceased caused very serious pain, mental agony and suffering to the petitioners who were depending on the deceased for their livelihood. The 1st petitioner lost her right of marital consortium and happy life; the petitioners 2 to 5 also lost the parental care, protection, love and affection from their father, the

deceased, and petitioners 6 and 7 are aged parents of the deceased and they were maintained by the deceased. The petitioners also contended that the accident happened due to the rash and negligent driving of the 2nd respondent and hence respondents 1 and 2 are liable to pay compensation to the petitioners. The petitioners claimed a total compensation of Rs. 1,01,000/-.

2. The 1st respondent, who was the owner of the vehicle, filed a written statement repudiating the claim of the petitioners and contending that the petition was not maintainable, that the same was bad for nonjoinder of necessary parties, that the accused in the criminal case ought to have been impleaded in the case that the petitioners had to prove the allegations in the petition and that in any event, the claim was exorbitant. It was also alleged that when the bus reached Olathanni, deceased Johnson was abruptly pushed on to the road by one Simon, and the head of the deceased hit against the right side of the bus and he fell on the tarred road and that the above facts would clearly show that the accident occurred as a result of the act of Simon who was accused in Crime No. 262/82 of the Neyyattinkara Police Station, which was registered relating to this accident and in the circumstances, the first respondent pleaded that it was not liable to pay any compensation.

3. The deceased was 34 years old at the time of accident, In the petition, it was alleged that on 19-5-82, when the deceased was standing on the right side of the road, the bus KLX 2794 driven by the 2nd respondent came in a rash and negligent manner from south to north along the wrong side and on seeing this one Simon pushed the deceased forcibly and that he was run over by the bus and died on the spot.

4. The Tribunal found on the basis of the averments in the petition and the facts proved in the case that the accident took place as a result of wrongful act of Simon and the driver of the bus could not be said to be negligent in driving. In this view of the matter, the Tribunal came to the conclusion that the petitioners are not entitled to any compensation and dismissed the application. Aggrieved by the order of the Tribunal, the petitioners have filed this appeal.

5. Though the counsel for the appellant vehemently contended that the accident occurred as a result of rash and negligent driving of the driver of the Kerala State Road Transport Corporation bus, we are unable to agree with the submission of the learned counsel in view of the averments-in the petition itself and also the facts proved in the case.

6. The learned counsel however raised a contention that in view of Section 92-A which was introduced by Act 47 of 1982, the petitioners are entitled to compensation. It may be stated at the outset that no such plea was raised before the Motor Accident Claims Tribunal or the Memorandum of Grounds of Appeal. But subsequently the petitioners filed C.M.P.No. 6708 of 1987 invoking Section 92A(2) of the Motor Vehicles Act. According to the learned counsel for the respondents since the accident took place on 29-5-1982 and the Act came into

force only with effect from 1-10-1982, the provisions contained in Section 92A cannot be made applicable to the present case. Section 92-A was incorporated for the first time by Act 47 of 1982 prescribing the liability to pay compensation in certain cases on the principle of no fault. Under this section, even if the accident took place not as a result of rash and negligent driving of the driver of the vehicle involved in the case, the owner of the vehicle shall be jointly liable to pay compensation in respect of disablement in accordance with the provisions contained therein.

7. The question that falls for consideration is whether the provision contained in Section 92-A has retrospective effect so as to give effect to it even in cases where the incident occurred prior to the coming into force of the Act. At the time when the Act came into force, the matter was pending before the Claims Tribunal.

8. The learned counsel for the petitioners placed before us a few decisions in support of his contention that Section 92-A has retrospective effect.

9. It is well established principle that retrospective operation cannot be given to a statute so as to impair a right or obligation other than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment, or unless by express wording of the statute or by necessary implications such intendment is clear from the statute. It is also well-established that an enactment ought to be construed as prospective only when it is expressed in language which is fairly capable of either interpretation. The Supreme Court in the decision of *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, relied on the observations in *Craies on Statutory Law 6th Eda and Halsbury's Laws of England, 3rd Edn. Vol. 36, p. 425* that if a statute is passed for the purpose of protecting the public against some evil or abuse it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right.

10. In *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, , the Supreme.

Court held that Section 92-A as introduced by Act 47 of 1982 is clearly a departure from the common law principle that the claimant should establish, negligence on the part of the owner or driver of the vehicle before claiming compensation for the death or permanent disablement caused on account of a motor vehicle accident and to that extent substantive law of the country stood modified The question whether Section 92-A has retrospective effect was not considered in this decision.

11. The learned counsel for the petitioners also invited our attention to the ruling in *Lakshmi Narayan Guin and Others Vs. Niranjana Modak*, That case related to the extension of the provisions of the West Bengal Premises Tenancy Act (12 of 1956) to a particular area after passing of eviction decree, but during pendency of appeal. The Supreme Court held that the change in law during the pendency of the appeal has to be taken into account. This is the view taken in *Ram Sarup*

Vs. Munshi and Others, , Mula and Others Vs. Godhu and Others, , and in Smt. Dayawati and Another Vs. Inderjit and Others, . In Smt. Dayawati and Another Vs. Inderjit and Others, the Supreme Court observed that if the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of Appeal must have regard to the intention so expressed, and the Court of Appeal may give effect to such a law even after the judgment of the Court of first instance.

12. In Narendra Singh Vs. Oriental Fire and General Insurance Co. Ltd., Delhi and Others, a single Judge of the Rajasthan High Court held that the provisions for payment of prompt and immediate compensation in respect of "no fault" by Section 92-A is in the spirit of social welfare legislation and should be interpreted beneficially in favour of the claimant and in such a matter the technicalities of law should not be allowed to have any upper hand and to obliterate the beneficial and social justice orientations of the enactment.

13. However, the learned counsel for the respondents vehemently contended that any law which deals with substantive right of persons can have only prospective operation unless by express words or clear intention the legislature indicated a different intention. He also invited our attention to the decision of a Division Bench of the Allahabad High Court in Ram Mani Gupta v. Mohammad Ibrahim 1985 ACJ 476, and particularly to para. 27 of the said judgment which reads as follows: --

""27. Section 92-A introduces a new principle of liability, and makes the defendant liable to pay Rs. 15,000/- even if there is no negligence of the defendant and also in cases where the accident took place due to the negligence of the deceased. The section itself came into operation on 1-10-1982. There is no express provision that it will operate retrospectively. The language also does not imply that retrospective effect is intended. It is not a case where the legislative intent is clear and compulsive. We are of the opinion that Section 92-A is prospective and it cannot be given effect to retrospectively."

The Court relied on the following observation of the Supreme Court in Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, , in coming to this conclusion :

"All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive, such retrospective effect may be given where there are express words giving retrospective effect or where the language necessarily implies that such retrospective operation is intended."

It made a special reference to Section 2 of the Motor Vehicles Amendment Act 1982 which reads thus :

"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."

As regards the contention raised relying on the observation in *Pardo v. Bingham* (1969) 4 Ch A 733 at p. 740, *Craies on Statute Law*, 6th Edn., the Court observed as follows : --

"92. Section 92-A has not been introduced for the purpose of protecting the public from any evil or abuse. Under the Law of Torts, the liability to pay compensation for death arises when the defendant is negligent. There is no liability if death is caused due to the negligence of the deceased. Under the law as it stood on the date of accident, the respondents were not liable as the accident took place due to the rash and negligent driving of the motor cycle by the deceased"

14. The learned counsel for the respondent also drew our attention to a decision of a learned Judge of Rajasthan High Court in *Yashoda Kumari v. Rajasthan Road Transport Corpn.*, Jaipur 1984 ACJ 716 which took the view that Section 92-A has no retrospective operation.

15. In *Oriental Fire & General Insurance Co. Ltd. v. Shantabai S. Dhume* 1987 ACJ 198, the question whether Section 92-A has retrospective operation came up for the consideration of a learned Judge of Bombay High Court. In this decision, it was held that Section 92A is to be applied to all pending cases irrespective of the date on which the accident occurred. The Court held that the fact that the Amendment Act postulates that the amendment Act would come into force on the dates notified in the gazette and that different dates may be appointed for different provisions of the Act was of no consequence. It was further held that the legislative intendment was to give a quick relief to the victims of motor vehicle accidents or to their families on the principle of no fault and that in that sense, the Amendment Act is a beneficial piece of legislation intended to give benefits to all victims who were involved in the accident due to no fault basis and to remove the mischief that people who suffered the accident had to face, being sometimes unable to prove the negligence or rashness of the driver or the owner of the vehicle and therefore unable to get compensation.

15A. The statement of objects and reasons of the Amendment Act clearly indicates that it was to remove the evil and mischief referred to above that the new provision was enacted. The incidence of road accidents by motor vehicles had reached serious proportions and the victim of the accidents are generally pedestrians belonging to the less affluent sections of society and the provisions of the Act as to compensation in respect of accidents could be availed of only in cases of accidents which could be proved to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles. In the statement of objections and reasons it is stated as follows :

"Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove

negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown."

It is therefore clear that the Bill for the amendment of the Act was introduced having in view of the mischief that existed, i.e. that victims of accidents had to prove the rashness and negligence in driving the vehicle by the owner or driver thereof and that in many cases, namely, in cases of hit-and-run accidents there was difficulty in identifying the vehicle itself. It is no doubt true that Statement of Object and Reasons cannot be used for interpreting a statute. But it is also no less true as observed by the Supreme Court in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, that they may and do often furnish valuable historical material in ascertaining the reasons which induced the legislature to enact a statute.

16. Bearing in mind that Section 92A is a social welfare legislation intended to remove the difficulties faced by the victims to establish the rashness and negligence on the part of the driver of the vehicle, we are inclined to hold that the provisions contained in Section 92-A are applicable to the pending proceedings also.

17. The main objection raised in holding that the provisions of Section 92-A have retrospective operation is based on the fact that Section 2 of the Act provides that the amendments were to come into force on such date as notified by the Central Government in the Official Gazette and by a notification published in the Gazette of India dated 15-9-1982 different dates were notified for enforcement of several sections of the Act. It was argued that Section 92-A is a completely new provision of law and that if the intention of the legislation was to give retrospective effect, nothing prevented the legislature from expressly providing for such retrospective operation. This argument appears to us to be attractive but on a deeper consideration of the purpose for which the law was enacted and the mischief and evil that were sought to be removed by the enactment, we are not inclined to accept this argument so vehemently urged by the learned counsel for the respondent. No doubt this argument found favour with a Division Bench of the Allahabad High Court in *Ram Mani Gupta's case* (supra) and also a single Judge of the Rajasthan High Court reported in *Yashoda Kumari v. Rajasthan Road Transport Corporation, Jaipur* 1984 ACJ 716. With great respect we are unable to agree with the view expressed by the Division Bench of the Allahabad High Court and Rajasthan High Court in the above-said decisions. We are inclined to accept the view expressed by the Bombay High Court in *Oriental Fire and General*

Insurance Company's case (supra).

18. The foregoing discussion would show that Section 92A is applicable to the instant case and that it was not necessary for the petitioners to establish that the accident took place as a result of the rash and negligent driving of the driver. It therefore follows that the petitioner is entitled to compensation of Rs. 15,000/- as provided in Section 92A(2) of the Act.

19. We shall not leave this case without recording our appreciation of the industry and thoroughness with which Sri Sudheer, counsel for the appellant presented his case.

20, Appellants 1 to 5 are the widow and children of the deceased Out of the amount of compensation, we fix the share of the 1st appellant, the widow as Rs. 3,500/-. Appellants 2 to 5 will be entitled to compensation of Rs. 2,500/- each. The balance amount of Rs. 1,500/- will be shared equally between appellants 6 and 7, the parents of the deceased The amount due to the petitioners 2 to 5 will be deposited in fixed Deposit in a Nationalised Bank in the names of petitioners 2 to 5 who are minors, until their attainment of majority. It will be open to the 1st petitioner to withdraw the interest which accrues from time to time. The 1st respondent will deposit the amount with interest at 9% with effect from 29-5-1982 till date of realisation within a period of one month.

The appeal is allowed as above. There will be no order as to costs.