

(1995) 04 OHC CK 0037
In the Orissa High Court
Case No : Misc. App. No. 91 of 1992

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Nandara Bawa and Others	RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140

Citation : (1997) ACJ 200 : AIR 1996 Ori 54

Hon'ble Judges : P.C. Naik, J

Bench : Single Bench

Advocate : P. Roy, L. Dash, S. Roy and P.K. Pradhan, for the Appellant; A.K. Mishra, S.K. Das, N.B. Jena, A.K. Guru and J. Nath, Counsel, A.S.C. and Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

P.C. Naik, J.—This appeal is directed against an interim award dated 22-12-1991 passed by the Motor Accident Claims Tribunal, Kalahandi, Bhiwanipatna in N.J.C. No. 13 of 1985.

2. Facts giving rise to this appeal are that N.J.C. No. 13 of 1985 was filed by the Respondents 1 to 4 claiming compensation of Rs. 50,000/- for the death of (sic) Guru (the son of Respondent No. 1 and the father of Respondents 2 to 4) in a motor accident on 23-3-1985. Admittedly, on the date of the accident, the Motor Vehicles Act, 1939 was in force. During the pendency of the claim petition, M. V. Act, 1939 was repealed on the coming into force of the Motor Vehicles Act, 1988 with effect from 1-7-1989.

3. Along with their petition u/s 110-A, of the 1939 Act, the claimants did not apply for grant of interim compensation u/s 92-A of the Act. However, after coming into force of the M. V. Act, 1988, an application u/s 140 was filed for interim compensation of Rs. 25,000/- for no fault liability. The application was resisted by the insurer on the ground that as the risk in question was not

covered by the policy, it was not liable. It was also contended that award u/s 140 of the M. V. Act 1988 could not be passed as it was not applicable to the facts of the case. The contentions were overruled and an Award of Rs. 25,000/- was passed in favour of the claimants and against the owner and the insurer. Hence this appeal by the insurer.

4. Learned counsel for the insurer/ appellant challenges the Award mainly on two grounds : Firstly, that as the risk in question was not covered by the policy, it could not be made liable. Accordingly, it is contended that as the accident took place on 23-3-1985 its liability was limited to Rs. 15,000/- u/s 92-A of 1939 Act and that an award of Rs. 25,000/- u/s 140 of the M. V. Act, 1988 could not be passed against it.

5. Learned counsel for claimant/respondents opposes the contentions raised by the appellant and submits that on the material on record, no case for quashing the interim award is made out. It is submitted that as on the date of the application, the M. V. Act, 1988 had come into force, the Tribunal was justified in awarding Rs. 25,000/- as interim compensation in terms of Section 140 of the 1988 Act.

6. Having considered the rival contentions, I am of the view that no case for quashing the interim award has been made out. Though the learned Tribunal was justified in awarding interim compensation, what is to be determined is whether it was to be u/s 92-A of the 1939 Act or u/s 140 of the 1988 Act. What is to be seen is whether or not, the risk in question is required to be covered by Section 95 of the M. V. Act, 1939 (now Section 147 of M. V. Act, 1988). In case it is found that prima facie the risk is required to be covered, no further inquiry need to be made and the contention raised by the Insurer can be agitated when the claim petition is considered on merits.

7. In the case of the The United India Insurance Co. Ltd. Vs. Kamalalochan Kamalo and Others, , it was the specific case of the claimant that the deceased along with other 25 to 30 persons were travelling as passengers in a goods vehicle. The contention of the Insurer was that such a risk is neither covered nor required to be covered by the policy. It was in the context of the facts of that case it was held that the Tribunal fell in error in not considering the plea of the Insurer that it was not liable. Accordingly, the interim award was set aside and the matter was remanded for an inquiry.

8. The facts of the present case are entirely different. In view of the averments contained in the petition, a prima facie case for grant of interim compensation is made out. It is alleged that the deceased was travelling in the truck on being directed by his employer. This is challenged by the insurer. It will be open to it to raise this defence on merits. A detailed inquiry is not contemplated at this stage.

9. This brings as to the second contention, namely, whether the Tribunal was justified in awarding Rs. 25,000/- under no fault liability u/s 140 of the M. V. Act, 1988 when admittedly the accident took place in the year 1985 when the M.V.

Act, 1939 was in force? In other words, what is to be considered is, whether the provisions contained in Section 140 of 1988 Act have a retrospective operation. On this point, the view of the High Court is not unanimous, whereas some High Courts have taken a view that the provisions contained in Section 140 of the M. V. Act, 1988 cannot be given any retrospective operation, some High Courts have taken the contrary view.

10. Having considered the contentions raised by the learned counsel for the parties and having considered the relevant provisions, I am of the opinion that the Tribunal, under the facts and circumstances of the case, was in error in awarding interim compensation of Rs. 25,000/- u/s 140 of the M. V. Act, 1988 as this section cannot be given retrospective operation for reasons to follow.

11. It cannot be denied that the golden rule of construction is that every statute is prima facie prospective unless it is expressly or by necessary implication declared to have a retrospective operation. It, therefore, cannot be so construed as to have the effect of altering the law applicable to a claim in litigation pending at the time when the new Act was passed. What is to be seen is, whether Section 140 of the M. V. Act, 1988 has a retrospective operation with respect to pending cases. For this purpose, it is necessary to refer to the provisions of Chapter X which deals with no fault liability and Section 217 which relates to repeals and savings.

Section 140 of the M. V. Act, 1988 which corresponds to Section 92-A of the M. V. Act, 1939 reads thus:

"140. Liability to pay compensation in certain cases on the principle of no fault--
(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum (twenty-five thousand rupees).

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum

of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force;

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A."

Reference may be made to Section 144 of the 1988 Act which corresponds to Section 92-E of the M. V. Act, 1939 and deals with overriding effect and reads thus:

"144. Overriding effect:-- The provisions of this Chapter shall have effect notwithstanding anything contained in any other provisions of this Act or of any other law for the time being in force."

These sections do not in any way indicate that they have a retrospective operation. By enacting Section 144, the Legislature has made it clear that after commencement of the Act, provisions of Chapter X will hold the field with respect to award, of compensation on the basis of no fault liability. It has nothing to do with retrospective operation of the said provision. It cannot be denied that the liability to pay compensation either interim or final accrues or is crystallised at the time when the accident took place and the fact that the compensation is not claimed promptly or that the proceeding remained pending, cannot affect the liability which was incurred on the date of accident. It follows that in a case where the accident occurred when the M. V. Act, 1939 was in force, the liability will have to be determined with respect to the provisions contained in that Act as neither Section 140 nor Section 144 or Section 217 of the 1988 Act speaks of retrospective operation of Chapter X to pending cases.

12. A reference may also be made to Section 217 of the M. V. Act, 1988 which deals with repeal and savings and reads thus:

"217. Repeal and savings.-- (1) The Motor Vehicles Act, 1939 (4 of 1939) any say law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereinafter in this Section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments,--

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately

before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provisions of this Act.

(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same condition and for the same period as if this Act had not been passed;

(c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provisions of this Act;

(d) the assignment of distinguishing marks by the registering authority and the manner of display on motor vehicle in accordance with the provisions of the repealed enactments shall, after the commencement of this Act, continue to remain in force until a notification under Sub-section (6) of Section 41 of this Act is issued;

(e) any scheme made u/s 68-C of the Motor Vehicles Act, 1939 (4 of 1939) or under the corresponding law, if any, in force in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act;

(f) the permits issued under Sub-section (1-A) of Section 68-F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding provisions, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter VI of this Act is published.

(3) Any penalty payable under any of the repealed enactments may be recovered in the manner provided by or under this Act, but without prejudice to any action already taken for the recovery of such penalty under the repealed enactments.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

A bare reading of Section 217 indicates that whenever the Parliament wanted to enforce the provisions of the M. V. Act, 1988 to pending matter, it made a specific provision to that effect. There is, however, no reference to Chapter X of Section 217 which deals with no fault liability in any of the sub-sections of Section 217 of the Act. Sub-section () of Section 217, no doubt, provides that mention of particular matter in Section 217 shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeals. From a reading of Section 217 of the M, V. Act, 1988 and Section 6 and in particular Sub-section (c) of section 6 of the General Clauses Act, 1897, there can be no doubt that the legal proceedings instituted before repeal are to be continued or enforced as if the repealing Act M. V. Act,

1988 had not been passed and the repeal of the 1988 Act will not affect any liability incurred under the repealed Act. In the provisions of M. V. Act, 1988, there is no indication either express or by implication that the provisions of Chapter X which deals with claims for no fault liability were intended to have a retrospective application and applied to pending litigations. The mere fact that the provision is in the nature of social welfare legislation, cannot be the basis, in absence of any provision in the Act, for holding that Section 140 of the M. V. Act, 1988 is retrospective.

13. It is seen that Section 217 of the M. V. Act, 1988 provides that unless a different intention appears, repeal shall not affect any right, application or liability acquired, accrued or incurred under any enactment so repealed. Therefore, though M. V. Act, 1988 repealed the M. V. Act, 1939, no fault liability accrued or incurred u/s 92-A of the 1939 Act is saved. In this view of the matter, the liability in the instant case has to be determined in the light of Section 92-A of the M. V. Act, 1939 which in the case of death was a fixed amount of Rs. 15,000/-. The Tribunal therefore erred in passing an award of Rs. 25,000/- u/s 140 of the M. V. Act, 1988.

14. The learned Counsel for the appellant also contended that the Tribunal was not justified in awarding interest at the rate of 18% per annum to the claimants. Having considered the matter, I am of the opinion that the rate of interest is on the higher side and needs to be modified. Interest which is usually being awarded is 12% per annum. Accordingly, it is directed that the direction with regard to interest is modified and that the amount will carry interest at the rate of 12% per annum and not at the rate of 18% per annum as directed by the Tribunal.

15. In view of the discussions aforesaid, the appeal is partly allowed. The interim award is modified and it is held that the claimants/respondents 1 to 4 are entitled to an interim compensation of Rs. 15,000/- under Section 92-A of the M. V. Act, 1939 and not to Rs. 25,000/- u/s 140 of the M. V. Act, 1988 as per the award by the Tribunal. It is further directed that the amount of Rs. 15,000/- will carry interest " 12% per annum from the date of petition till realization.

16. The records of the Claims Tribunal be sent back forthwith. It is hoped that with the co-operation of the parties, the Tribunal will dispose of the claim case expeditiously.