
(1972) 10 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeals No's. 93 and 94 of 1968

Fateh Lal and Another

APPELLANT

Vs

Smt. Kalawati and Others

RESPONDENT

Date of Decision : 20-10-1972

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110D, 110F

Citation : (1972) WLN 1008

Hon'ble Judges : M.L. Joshi, J;B.P. Beri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Beri, J.—By its order dated the 20th of July, 1968 the Motor Accidents Claims Tribunal, Ajmer (hereinafter called "the Tribunal") rejected the claim in both the appeals bearing Nos. 93 and 94 of 1966 on the ground that the accident had taken place prior to the constitution of the Tribunal and was, therefore, not capable of being taken cognizance of by it. These two appeals raise an identical point and are therefore being disposed of by this judgment,

2. Succinctly stated the circumstances which precedes the two appeals, are these: In between the night of 5th and 6th June, 1964 a bus bearing No. RJY 2035 was proceeding from Ajmer to Udaipur carrying petitioners Fatehlal and Mohanswaroop, the two claimants, amongst other passengers. From the opposite direction a truck bearing No. RJZ 2190 came and collided with the bus aforesaid, causing injuries to the right hand of petitioner Fatehlal and on the right elbow of petitioner Mohanswaroop. Fatehlal and Mohanswaroop presented two claim petitions on 24-5-1965, each claiming Rs. 21,000/- before the Motor Accidents Claims Tribunal at Ajmer, The claims were hotly contested by the widow of the owner of the truck RJZ 2190 and including the Jupiter General Insurance Co. L d. The Tribunal framed as many as 8 issues but rejected the claim by answering issue No. 1 against the claimants holding that it had no jurisdiction to entertain the claim because the accident took prior to its constitution and therefore it has

also no jurisdiction to condone the delay. It held in passing without framing any issue that the Jaipur Tribunal had no authority to transfer to him both the claims before it. Aggrieved by the rejection of the claim petitions both Fatehlal and Mohanswaroop have come up in appeal.

3. Learned Counsel for the Jupiter General Insurance Co, Ltd. Mr. Jain raises a preliminary objection that the appeal is not competent because the Tribunal gave no award and Section 110D envisages only an appeal against an award. He places reliance on *Miss Sarin Rustomji Munshi v. Santubhai Manibhai Patel and Ors.* AIR 1969 Guj. 233.

4. The provision which relates to appeal under Motor Vehicles Act (hereinafter called "the Act") is contained in Section 110D. It reads:

110 D. (1) Subject to the provisions of Sub-section (2), any person aggrieved by an award of Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees.

5. The learned Judge of the Gujrat High Court in *Miss Sarin Rustomji's case* AIR 1969 Guj. 233 expressed the opinion that the Claims Tribunal having refused to entertain a claim on the ground that it had no jurisdiction and accordingly the order was one of dismissal or disposal of the claim or determination of the claim in any other manner, and there was no adjudication of the claim but a refusal to adjudicate the claim and accordingly it was not an award within the meaning of Section 110 D of the Act. The learned Judge has significantly observed in paragraph 15 as follows:

Nevertheless the reasoning of the Madhya Pradesh High Court in the light of those decisions does call for consideration. The decision of the Madhya Pradesh High Court is based on the ground that refusal to go into the claim of damages to the car amounted to refusal to make an award amounted to making an award. That conclusion may be valid in the particular circumstances of that case. In fact that is how the counsel for the appellant in that case had placed his case. But assuming that the decision defines the word "award" so as to cover an order refusing to enquire into and adjudicate on the ground of want of jurisdiction, that view cannot, with respect, be accepted for the reasons earlier indicated.

6. An earlier decision on the topic is of *B. Govindarajulu Chetty Vs. M.L.A. Govindaraja Mudaliar and Others*, . In that case the Tribunal was called upon to determine whether in a case where the claim of an injured person was rejected amounted or not to an award within the meaning of Section 110 D of the Act. The learned Judge observed that there was nothing to indicate that the intention

of the Legislature was to restrict the right of appeal only to a case in which the decision of the Claims Tribunal resulted in imposing a liability for compensation. The expression "award" in Section 110 D must be understood to mean the decision of the Claims Tribunal whether involving a total dismissal of the claim or the determination of a particular amount of compensation. Having regard to the purposes of the enactment the word "award" in Section 110-D should receive the same restricted meaning as in Section 110B. The sound rule of construction added the learned Judges was to give the same meaning to the same words appearing in different parts of an Act of a legislature. By its application the learned Judges found that an appeal was competent.

7. The next case in *G. Gopalaswami Vs. G. Navalgaria and Others*, wherein a learned single Judge interpreted Sub-section (2) of Section 110-D and held that the right of appeal depends not only on the amount of compensation awarded by the Tribunal but on the amount in dispute in appeal. Therefore, even where claim for compensation is dismissed, an appeal lies from the order of dismissal if the claim is for more than Rs. 20,000/-,

8. The next case in the series in *S. Thangavelu Pillai Vs. E.M. Mani (decd) and Others*, where the learned single Judge of the Madras High Court held that where a claim u/s 110A was dismissed an appeal u/s 110-D(1) against such rejection was competent.

9. And the last case cited before us is *Komal Charan Vs. State of Uttar Pradesh and Others*, where the Division Bench of the Allahabad High Court considered a case when an application u/s 110-A found to be time barred was dismissed but it was held that it amounted to an award and was appealable. It followed 1966 Madras, 1967 Madras but dissented from an earlier view of the Allahabad High Court itself and that of the 1969 Gujrat.

10. The question which falls for our consideration is what is the proper meaning to be given to the word "award" as employed in Section 110-D of the Act. The golden rule of construction is to give the word in a statute its ordinary meaning. An "award", to quote Jewitt's Dictionary of English Law, has had a chequered history but the meaning that it has now come to acquire in comparatively modern times is that it is "a document containing the determination of commissioners, under an Inclosure Act or other public statute; also an instrument embodying an arbitrator's decision on a matter submitted to him.... Any words expressive of a decision are an award." An award, in our opinion, is an adjudication of the rival contentions of the contestants in a dispute made by a person who is either authorised by agreement or by law to decide the dispute. To give it any narrower meaning would be to defeat the purpose for which Sections 110 A to 110 F were enacted by the 1956 amendments to the Motor Vehicles Act. In our opinions, therefore, the orders of the Tribunal in both these appeals amount to an award and appeals are maintainable.

11. Another objection, which the learned Tribunal entertained in the course of its

orders under appeal was that the Jaipur Tribunal could not transfer the cases to him. There has been frequent changes in the appointments of Tribunals in Rajasthan. The first Notification in this connection is of 9th November, 1964 whereby the District Judges located at the Revenue Division Head quarters were conferred with powers u/s 110 A of the Act. By notifications dated 11-11-65; 11-8 66 & 7-10 66 the State Govt reconstituted "with immediate effect the Motor Accidents Claims Tribunals consisting of one Member and appointed the District Judges of Rajasthan as the Member of the said Tribunals for their respective jurisdiction." The Tribunal held that the Tribunal of Jaipur had no jurisdiction to transfer the two claims out of which present appeals arise. We have stated the argument merely to reject it. It would have been indeed better if in the Notification the Government had specifically authorised the respective Tribunals to transfer pending cases in accordance with the territories to which the accidents related but even in the absence of such specific order the Tribunal at Jaipur had two options: (1) to send the cases itself to the Ajmer Tribunal to enquire or (ii) to return the claim petitions to the petitioners to be presented before an appropriate authority. The Tribunal at Jaipur adopted the first course and we find nothing wrong with it. The object of the creation of Tribunals for the purposes of adjudicating automobile accidents by the amendment of the Motor Vehicles Act had one obvious purpose to achieve, namely, to provide inexpensive and speedy relief to the victims born of increasing automobile transport in the country and the Tribunal's territorial limits were defined by the Notification of 7th October, 1966 to facilitate the production of necessary evidence and to attain the aforesaid purpose. In this view of the matter the Tribunal at Ajmer was unduly technical when it took exception to the fact as to why the Tribunal at Jaipur had sent these claims to Ajmer.

12. Now comes the crucial question, and before we come to grips with it, it would be proper to restate it Whether the claim for compensation u/s 110 A arising out of the accident in the night between 5th and 6th June, 1964 could not be taken cognizance of by the Tribunal because none was created within 60 days thereafter. There are a number of cases cited before us which have taken divergent views. Our Court in *M/c Yadav Motor Transport Co. v. Shri Jagdish Prasad* 1969 RLW 542 has taken the view that the Tribunal has jurisdiction regardless of the date of accident. In view, however, of the divergence in other High Courts and arguments urged before us we propose to closely scrutinize the contentions.

13. In the *The New India Assurance Co. Ltd. and Others Vs. Smt. Shanti Misra and Others*, the facts were these: The accident had taken place on 11th September, 1966, The Claims Tribunal was constituted on 11th March 1967. The claim was presented on 8th July, 1967 and the claim was amended by being presented in a prescribed form on 17th April, 1969. The Tribunal rejected the claim and the learned Single Judge rejected the petition directed against it on the ground that there was nothing in any of the provisions of Sections 110A to 110 F to indicate a clear intention of the Legislature that they would operate

retrospectively and if they were given retrospective effect they were likely to deprive persons of vested right of action in cases of accidents occurring at any time within two years of the constitution of Tribunal but more than sixty days prior to its constitution. Under the law of limitation, as it obtained prior to the constitution of the Tribunal u/s 110-A, a suit for compensation arising out of such accidents could be brought at any time within two years of the accidents. The learned Single Judge quoted some extracts of the Supreme Court in this very judgment which it will be proper to recall. They are from *Anant Gopal Sheorey v. State of Bombay* AIR 1958 SC 916 contained in paragraph 4:

There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode.... In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective.

14. Tested on this touch stone itself, the questions which arise before as are whether the creation of a Tribunal and shrinking of the period of limitation for the purposes of presentation of a claim before it are matters relating to substantive rights or are only procedural matters. The answer is contained in an illuminating judgment of the learned Judges of the Allahabad High Court in *Ram Karan Singh and Anr. v. Ram Dass Singh and Ors.* AIR 1932 All 635 A substantial right is not assumed to be taken away by a new Act unless it expressly says so. But a right to sue in one court rather than in another or a right to wait for a particular period time before suing are not substantive rights. The selection of a Court in no way affects the right of suit itself. The Limitation Act does not necessarily extinguish the right, though it certainly places a bar against the remedy by suit. The distinction between a substantive right and a procedural right is illustrated by Salmond, thus:

Whether I have a right to recover certain property is a question of substantive law, for the determination and the protection of such rights are among the ends of the administration of justice; but in what courts and within what time I must institute proceedings are questions of procedural law, for they relate merely to the modes in which the Courts fulfil their functions.

15. Therefore with great respect we are unable to appreciate the view taken by the learned Single Judge of the Allahabad High Court when he says that the provisions of Section 110-A to 110 F cannot be regarded to be retrospective because they are likely to deprive the persons of their vested rights. Their function plainly is to facilitate remedy and not to frustrate it.

16. In *Phatumal Ghanshamdas v. Abdul Kadir Jamaluddin and Ors.* AIR 1961 MP 896 certain claim arising out of an accident was pending in a civil court. The Tribunal came into being later. The suit was filed in pauperism and the enquiry

was pending. During the pendency of this enquiry into pauperism a claim for compensation was preferred before the Tribunal which came to be constituted in the meantime. An objection was raised that the claim for compensation arising out of an accident occurring before the constitution of the Tribunal could not be tried by the Tribunal. It was held that the Tribunal had no jurisdiction whatsoever to entertain the claim in view of the provisions of Section 110-F of the Act. And the reason which persuaded the learned Judges to take this view was that no statute should be construed as retrospective unless there is a provision in it to do so.

17. In another case of Madhya Pradesh High Court in *Habbu and Another Vs. Mohammad Hasan and Another*, the accident had taken place before the Tribunal was constituted on 13-9-1959. Applications were filed before the Tribunal for compensation. An objection was raised that the Tribunal had no jurisdiction and the reason which prevailed with the learned Judges was that any enactment which had the effect of destroying an existing right could not be given retrospective effect without express words and this rule also extends to the remedy which a litigant had for obtaining relief by means of a suit. The learned Judges relied on *United Provinces v. Mt. Atiqa Begum* AIR 1941 PC 16, wherein the well known words of William J. were quoted that it would require words of no ordinary strength in the statute to induce one to say that it took away a vested right.

18. With great respect we are unable to argue with the view taken by the learned Judges of the Madhya Pradesh High Court. Sections 110-A to 110-F do not affect any substantive rights. They only mean a change in forum and the doctrine of retrospectivity has no application because the provisions are merely procedural.

19. A civil suit for damages is a proverbially long drawn litigation and to cut short that long distance which a litigant had to travel and to provide relief and justice Sections 110-A to 110-F have been enacted. To cripple these remedial provisions by applying the doctrine of retrospectivity when it is plainly inapplicable would be defeating the very purpose for which these amendments were introduced in the Act. What Section 110-F means is that where any Claims Tribunal has been constituted for an area no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. This section also debars a civil court from granting any injunction in respect of any action which may be taken by or before the Claims Tribunal in respect of the claim for compensation. The object is to give exclusive jurisdiction to the Claims Tribunal for determining disputes relating to the claims for compensation arising out of accidents governed by the Act. The intention apparently was to avoid conflict of jurisdiction and to provide speedy and inexpensive remedy. To quote the *Craze on Statute Law* 1968 Edition Page 96:

The most firmly established rules for construing an obscure enactment are those laid down by the Barons of the Exchequer in *Rexdon's* case, which have been

continually cited with approval and acted upon and are as follows: "That for the sure and true interpretation of all statutes...four things are to be discussed and considered: (1) what was the common law before the making of the Act (2) what was the mischief and defence for which the common law did not provide (3) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth (4) the true reason of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and to add force and life to the cure....

We think those fundamental principles support the view we have taken namely which advances the expeditious remedy of a victim.

20. Let us now examine the cases which have taken the view with which we are in respectful agreement. In *Unique Motor and General Insurance Co. Ltd. Vs. Kartar Singh and Another*, is a Division Bench case, in which the view taken by the same High Court in *Mulak Raj Bhola Shah Vs. Northern India Goods Transport Corporation Ltd. and Others*, has not been approved. It has been held that after a Tribunal had been constituted for the particular area, application could be made to it and not to the Civil Court which, by the express words of Section 110F of the Act, have been debarred from entertaining any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. All that the legislature has done, while substituting Section 110 as also introducing Sections 110 A to 110-F in the Act by the amending Act of 1956, is to provide a cheap and speedy remedy for the enforcement of the substantive right of an injured person to claim compensation which he could claim in the form of damages in tort in a Civil Court. No rights are affected and it is only the remedy which has been changed for enforcing that right. A right of action is something different from the choice of the forum.

21. In *Abdul Mohamad Agra and Another Vs. Peter Leo D'Mello and Another*, , in which an accident had taken place on 16-12-1958, the Tribunal was constituted on 1-12-1959 and the petition for claim of compensation was presented on 14-12-1959, the learned single Judge held that the Tribunal had jurisdiction and dissented from the view taken in *Mulak Raj Bhola Shah Vs. Northern India Goods Transport Corporation Ltd. and Others*,

22. In *V.C.K. Bus Service (P) Ltd., Coimbatore and Another Vs. H.B. Sethna and Others*, the learned Judge held after examining the provisions of Section 110 A to 110-F that it appears that no question of retrospective operation arises at all in such a situation. Only a change of the forum from a civil court to a Tribunal is the result of the change in law. The language of Section 110 F is so clear that it does not admit of a construction that after the constitution of a Tribunal the civil court could possibly have jurisdiction over the accident claims of any kind arising out of personal injuries. The learned Judge also observed that the larger period of limitation is not a vested right. A litigant cannot say, where the legislature abolishes a forum, that he can wait until the last date of limitation as a matter of

right, and that therefore the Court should retain the forum for his purposes though abolished for other purposes.

23. Even in the case of Miss Sirn Rustomji AIR 1969 Guj 233 it has been held that an accident taking place prior to the constitution of Claims Tribunal, a claim for compensation it is the Tribunal which has exclusive jurisdiction to decide.

24. As a result of our discussions as aforesaid even though the accidents in the two appeals before us arose prior to the constitution of the Tribunal they could be entertained by the Tribunal when it came into existence.

25. We accordingly allow both the appeals and remit the cases to the Motor Accidents Claims Tribunal, Ajmer, to decide the issues. The evidence has already been taken. The costs of these appeals Shall abide the result.