(1997) 05 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 109 of 1994

Jivrakhan APPELLANT

Vs

Shivcharandas and Others RESPONDENT

Date of Decision : 05-05-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140, 144, 217

Citation : (1999) ACJ 771 : (1999) 1 JLJ 129 : (1999) 1 MPLJ 5

Hon'ble Judges : A.K. Mathur, C.J;Dipak Misra, J;D.M. Dharmadhikari, J

Bench : Full Bench

Advocate : R.P. Agarwal and Sanjay Agarwal, for the Appellant; Ravindra Shrivastava and Kishore Shrivastava, for the Respondent

Judgement

A.K. Mathur, C.J. and Dipak Misra, J.

This is a reference made by learned single Judge arising out of Motor Vehicles Act, 1988. The following question has been referred by learned single Judge for answer by the Full Bench :

"Whether Section 140 of the Motor Vehicles Act of 1988 is retrospective in operation for the reason Section 144 thereof expressly says that - "the provisions of this chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force?"

Brief facts which are necessary for disposal of this reference are -

The Motor Accidents Claims Tribunal (Link Korba), District Bilaspur awarded to respondents Rs. 25,000/- plus interest at the rate of 18% per annum from 10-4-1989, i.e. from the date of filing application. One Hirabai, widow of Mahadeo, died on 20-10-1987 as a result of motor accident. Therefore, the respondents filed a claim u/s 110-A of the Motor Vehicles Act, 1939 (for short the Act of 1939). They moved an application u/s 92-A of the Act of 1939 read with Section 140 of the Motor Vehicles Act, 1988 (for short the Act of 1988) claiming compensation for no fault liability at the rate of Rs. 25,000/-. The Claims Tribunal granted a sum of Rs. 25,000/- for ''no fault liability'' in accordance with Section 140 of the Act of 1988.

Aggrieved by the grant of award, an appeal was preferred before this Court and it was contended that the claimants are only entitled to a sum of Rs. 15,000/- u/s 92-A of the Act of 1939 and not for Rs. 25,000/- u/s 140 of the Act of 1988. It was submitted before the learned single Judge that Section 140 of the Act of 1988 is not retrospective in operation and, therefore, it will not cover the accidents which occurred prior to the Act of 1988. It was contended that by virtue of Section 217 of the Act of 1988, all proceedings pending under the Act of 1939 were saved by the aforesaid provision and it shall be deemed that Act of 1988 was not passed so far as the old proceedings are concerned. Learned single Judge made, reference of cases of Prakash Chandumal Khatri and Anr. v. Suresh Pahilajrai Makhija and Anr., 1992 ACJ 369, Jaswant Rao Vs. Kamlabai and Another, and Oriental Insurance Company Ltd., Haldwani Vs. Dhanram Singh and others, . As against this, it was submitted before the learned single Judge that the provisions of the Act of 1988 are retrospective in operation because of Section 144 of the Act of 1988 as it has overriding effect on existing law. Therefore, it was submitted that in view of Section 217 of the Act of 1988, which incorporates Section 6 of the General Clauses Act by reference as provided by sub-section (4) of Section 217, the existing law for the pending proceedings would be the Act of 1939. But the wordings of Section 144 of the Act of 1988 are to the effect that they have overriding effect over every other law including the existing law. Hence, it was contended that Chapter-X bearing Section 144 of the Act of 1988 will have retrospective operation and in support of this reliance was placed on the cases of United India Insurance Co. Ltd., v. Padmavathy and Ors., 1990 ACJ 751 (Kerala), New India Assurance Co. Ltd. Vs. P. Thankam (alias) Unnimayamma and Others, , Ouseph Vs. Antony and Others, , Kamta Prasad and Another Vs. Jaggan and Co. and Another, , M. K. Kunhimohammad v. P. A. Ahmedkutty and Ors. 1987 ACJ 872 (SC) and Oriental Insurance Co. Ltd. Vs. Ram Chander Dwievedi and Others, . In this connection, reference was also made to the decision of this Court in the case of National Insurance Co. Ltd. Vs. Gangabai and Others, , wherein a view was taken that Section 140 of the Act of 1988 is prospective and not retrospective. As against this, another decision of this Court given in the case of National Insurance Co. Ltd. Vs. Ram Kishore Soni and Others, was referred to wherein it has been held that Section 140 of the Act of 1988 can be given retrospective operation as it is a social measure. Reference has also been made to a decision of Division Bench of this Court in the case of Govind Das and Another Vs. Yaqub Khan and Others, , which has also taken the view that Section 140 of the Act of 1988 is not retrospective in operation. Reference was also made to two decisions of Kerala High Court - One given in the case of United India Insurance Co. Ltd. Vs. Padmavathy and Others, and New India Assurance Co. Ltd. Vs. P. Thankam (alias) Unnimayamma and Others, , wherein it has been held that Section 140 of the Act of 1988 is retrospective in operation. Hence, the learned single Judge has held that since the decision given by this Court takes the view that Section 140 of the Act of 1988 is not retrospective in operation, it requires reconsideration and hence he has referred this question for answer by the Full Bench. Learned Single Judge has not taken into consideration the implication of Section 144 of the Act of 1988 read with Section 217 of the said Act.

Before we proceed to refer the cases cited before us, it is relevant to mention here the provisions of law bearing on the subject. The Motor Vehicles Act, 1988 came into force with effect from July 1, 1989. Corresponding provision of Section 92-A of the Act of 1939 is Section 140 of the Act of 1988. Section 140 of the Act of 1988 reads as under :

"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 twenty five 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 of twelve 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."

Corresponding Section 92-A of the Act of 1939 to Section 140 of the Act of 1988 reads as under :

"92-A. Liability to pay compensation in certain cases on the principle of no fault. - (1) Where the 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 fifteen 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 of seven thousand five hundred 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."

Section 144 of the Act of 1988 reads as under :

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

Section 217 of the Act of 1988 which is also relevant is quoted as under :

"Section 217. Repeal and savings. - (1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in the State (hereafter 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 provision 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 conditions 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 provision of this Act.

(d) the assignment of distinguishing marks by the registering authority and the manner of display on motor vehicles in accordance with the provision 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 provision, 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."

As per the scheme of things, Section 92-A of the Act of 1939, dealt with ''no fault liability'' and Section 140 is the corresponding section of the Act of 1988 which also deals with ''no fault liability''. The amount of compensation for no fault liability under the Act of 1939 was Rs. 15,000/-. It was subsequently raised under the Act of 1988 to Rs. 25,000/-. The question before us is whether Section 140 of the Act of 1988 which lays down no fault compensation to the extent of Rs. 25,000/- could be given retrospective effect or not so as to cover accidents which took place prior to the Act of 1988 came into force. Though the Division Bench of this Court in the case of Govind Das (supra) has taken the view that it is not retrospective, but still learned Single Judge says that effect of Section 144 of the Act of 1988 was not considered by the Division Bench. Section 140 of the Act of 1988 talks of liability to pay compensation in certain cases on the principle of no fault liability and Section 144 which appears under Chapter X says that this Chapter will have overriding effect notwithstanding anything contained in this Act or any other law. Therefore, the learned Single Judge is of the view that because of Section 144, Section 140 will have overriding effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

By virtue of sub-section (4) of Section 217 of the Act of 1988, Section 6 of General Clauses Act has been made applicable and according to Section 6(e) of the General Clauses Act, any legal proceedings pending before coming into force of the new law shall continue to be disposed of by the old law and will not be adversely affected by the new Act. So far as the claim petition filed by the claimants under the old Act of 1939 is concerned, it shall continue to be governed by the provisions of the Act of 1939. Question is that when Motor Vehicles Act, 1988 came into force providing a higher compensation for no fault liability, then can such old proceedings be governed by the new Act so as to award compensation at the higher rate? In this connection, reference may be made to Section 144 of the Act of 1988 also. Though Section 144 of the Act of 1988 says that notwithstanding anything contained in this Act or any other provision of any law, the provisions of this Chapter will have overriding effect - meaning thereby that Chapter X wherein Section 140 occurs providing compensation of Rs. 25,000/- for no fault liability, will have overriding effect; but that does not mean that it will operate retrospectively. The Act of 1988 came into force with effect from 1st July 1989 and all those accidents which took place after coming into force the Act of 1988 will be governed by this Act of 1988 and if there is any law to the contrary, then this Chapter of the Act of 1988 will have overriding effect. It does not mean that notwithstanding the fact that it has come into force with effect from 1-7-1989, it covers the accidents which took place prior thereto. The overriding effect of this Chapter is prospective and not retrospective. Section 144 of the Act of 1988 is no charter to construe that Section 140 will have retrospective operation notwithstanding its non- obstante clause. That construction is not possible in the scheme of things.

Section 217 of the Act of 1988 only says of pending proceedings and it does not lay down that all the new provisions can be given retrospective effect. Section 217 of the Act of 1988 only saved the pending proceedings meaning thereby that the proceedings which are pending under the Act of 1939 shall continue to be governed by the Act of 1939. Section 144 of the Act of 1988 only says that the provisions of this Chapter will have overriding effect notwithstanding anything contained under the provisions of the Act of 1988 or any other law contrary to that. It does not mean that Section 140 of the Act of 1988 which came into force with effect from 1st July, 1989 will have retrospective operation. Such a construction is absolutely beyond the scope of the Act and the settled principles of interpretation of statutes that no provisions of the Act shall be given retrospective effect "unless it is clearly intended under the provisions of the Act. Section 140 or Section 144 of the Act of 1988 does not express any such clear intention that it should have retrospective operation. Therefore, to construe that Section 140 of the Act of 1988 granting enhanced rate of compensation for no fault liability shall have the retrospective effect is absolutely misconceived and against the settled principles of interpretation of statutes. Section 144 of the Act of 1988 itself has come into operation from 1-7-1989 and it only lays down that if in future there is any provision contrary, then it will have overriding effect. Non-obstante clause ''notwithstanding'' can only have prospective operation and it cannot have retrospective operation.

The number of cases which have been referred above by the learned single Judge laying down a contrary proposition cannot be treated to be good law. In this connection, our attention was invited to the Full Bench decision of this Court in the case of New India Assurance Company v. Nafis Begam 1991 MPLJ 700. The Full Bench of this Court while interpreting Section 92-A of the Act of 1939 took the view that it cannot have retrospective operation. There also, Section 93-E provided overriding effect which is pari materia Section 144 of the Act of 1988. Considering the same question, their Lordships after considering various conflicting decisions of other Courts took the view that Section 140 of the Act of 1988 is prospective in character and it cannot have retrospective effect. This was also a reference made by the learned single Judge from Gwalior Bench and as there was a conflict of opinion, therefore this question was resolved by the Full Bench. The Full Bench has categorically laid down that -

"As explained by us above, the legislation before us is a piece of substantive law creating new rights and liabilities. Retrospective operation cannot be given, treating it as a procedural law as is sought to be done by Dr. T N. Singh, J. in his opinion expressed in the case which arose at the Gwalior Bench (supra)."

Incidentally, two Full Bench decisions of Kerala High Court have been cited namely (1) Neeli and Others Vs. Padmanabha Pillai Narayana Pillai and Others, and (2) The Oriental Insurance Co. Ltd. Vs. Sheela Ratnan and Others, . Both the Full Bench decisions of Kerala High Court have reaffirmed the view that Section 140 of the Act of 1988 cannot have retrospective effect. In the case of Neeli and Ors. (supra), Hon''ble Chief Justice Rao, as he then was, observed that when the statute is amended, it is open to the concerned legislature either to give effect to it prospectively or retrospectively. If the amendment is one dealing with procedure of a rule of evidence, there is a well-settled rule that, prima facie, the amendment is retrospective; but if the amendment is dealing with substantive right, there is again a well-settled presumption that the amendment is intended to be prospective only, unless of course, the amending law has either expressly been given retrospective effect or is so by necessary implication.

There is no gainsaying that awarding of the compensation, cannot be said to be a procedural law. It is a substantive law. Salmond on Jurisprudence, Twelfth Edition page 461 observed - "the substantive part of the criminal law deals, not with crimes alone, but with punishments also. So in the civil law, the rules as to the measure of damages pertain to the substantive law, no less than those declaring what damage is actionable. "Thus, grant of damages is a matter of substantive law and unless the Legislature has intended to give it retrospective effect, the provisions cannot be interpreted, be it a social measure.

It has been observed in the Principles of Statutory Interpretation, 6th Edition by G. P. Singh at page No. 15 -

"The Union Parliament as also State Legislature have plenary powers of Legislative field of and subject to certain constitutional restrictions, they can legislate prospectively as well as retrospectively. It is, however, a cardinal principle of construction that every statute is a prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation."

On a reading of Section 140 read with Sections 144 and 217 of the Act of 1988, it cannot be said that Section 140 is having retrospective effect as there is no such intendment born from the provisions of Section 144 or Section 217 of the Act of 1988. Our attention was invited to a decision of Hon''ble Supreme Court in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, , wherein dealing with Section 166(3) which was omitted by the Act No. 54 of 1994, prescribing the period of limitation, their Lordships observed that the Amending Act does not appear that it has been deleted retrospectively. But at the same time, nothing is intended to show that deletion of sub-section (3) of Section 166 is not to be extended to pending claim cases where the plea of limitation has been raised. Suffice it to say, the question of limitation is procedural law and not a substantive law. Therefore, this judgment will not be of any help to the appellant. In the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , arising u/s 92-A of the Act of 1939, it was not held that operation of Section 92-A of the Act of 1939 will have retrospective effect. The case of M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, , is with regard to Section 95(2) of the Act of 1939. This decision does not lay down that it will have retrospective operation. Section 95 of the Act of 1939 was amended by Act No. 47 of 1982 increasing the liability of insurer. It was not intended to mean that it will have a retrospective effect.

As a result of above discussion, we are of the opinion that Section 140 of the Motor Vehicles Act, 1988 will not have a retrospective effect, notwithstanding Section 144 read with Section 217 of the Act of 1988. Reference is accordingly answered.

D.M. DHARMADHIKARI, J.

I respectfully agree with the view expressed by Hon''ble Shri A. K. Mathur, C.J., but I consider it necessary to add to it my own reasons to re-enforce the conclusion reached by him in answering the question referred that Section 140 of the Motor Vehicles Act, 1988 is not retrospective.

The main reason assigned by the learned Single Judge (S. C. Pandey, J.) is that Section 144 of the Act of 1988 giving overriding effect to Chapter X of the said Act on the subject of quantum of compensation for no fault liability has been overlooked by the earlier decisions of this Court. According to him if the aforesaid provision is given full effect, the provisions of Section 140 can be held as retrospective in operation to even pending cases.

With respect, the above view of the learned Single Judge proceeds on an erroneous assumption of the scope and effect of a provision giving overriding effect to the repealing Act over the repealed Act.

The nature of such a provision giving overriding effect came up for consideration before the Supreme Court in the case of Bansidhar and Others Vs. State of Rajasthan and Others, which arise in the context of a similar provision contained in Section 3 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973. Before quoting the Supreme Court, it may be mentioned that Section 40 of the Rajasthan Act contains provision of repeal and savings as contained in Section 217 of the 1988 Act. The Supreme Court in the case of Bansidhar (supra) approved the view taken by the High Court of Rajasthan and relying on Supreme Court''s earlier decision, observed thus :

"....The contention of the learned counsel is that the expression ''notwithstanding anything inconsistent contained in any other law for the time being in force'' in Section 3 of 1973 Act would exclude the operation of Chapter III-B of the ''1995 Act'' which, according to the contention, even if kept alive would yet be a ''law for the time being in force'' and, therefore, be excluded by virtue of Section 3. This contention has been negatived by the High Court - and in our opinion rightly - by placing reliance on the pronouncements of this Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., . The High Court held that the expression ''law for the time being in force'' does not take within its sweep a law ''deemed to be in force'' and that, accordingly, the opening words of Section 3 relied upon by the appellants'' learned counsel will not have an overriding effect so as to exclude the old law.

A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in Commissioner of Income Tax Vs. Shah Sadiq and Sons, , at p. 1221 :

"....In other words, whatever rights are expressly saved by the ''savings'' provision stand saved. But that does not mean that rights which are not saved by the ''savings'' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c), General Clauses Act, 1897...."

We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of Section 5(6A) and Chapter III-B of ''1955 Act'' so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are not effaced. Appellant''s contention (a) is, in our opinion, insubstantial."

The decision of the Supreme Court in the case of Bansidhar (supra) is also an answer to the incidental question as to whether the provision fixing quantum of compensation creates rights or liabilities accrued and are part of substantive or procedural law.

In paragraph 17 the said decision of the Supreme Court in Bansidhar (supra), the following observations of Lord Morris, in Director of Public Works v. Ho Po Sang. (161) 2 All ER 721 have been quoted with approval and relied :

"....''It may be, therefore, that under some repealed enactment, a right has been given, but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On a repeal the former is preserved by the interpretation Act. The latter is not."

The above passage was referred to with approval in M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others, at p. 81."

As has been held by the Full Bench in the case of Nafis Begum 1991 MPLJ 700, rights and liabilities between parties arise on happening of the accident and that would be the date for determining quantum of compensation fixed under the law existing then. The mere fact that the case for claiming such compensation is filed before or after the coming into force of 1988 Act does not take away the operation of the repealed Act on the rights and liabilities accrued when the repealed Act was in force. This is an additional reason for answering the question referred that Section 140 of the Act of 1988 is not retrospective in operation.