
(1995) 01 AHC CK 0107
In the Allahabad High Court
Case No : F.A.F.O. No. 661 of 1979

Kamta Prasad and Another	Vs	APPELLANT
Jaggan and Co. and Another		RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 217

Citation : (1996) ACJ 57

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : A.L. Jaiswal, for the Appellant; Bharatji Agarwal, S.N. Verma and Dinesh Kakkar, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—The question of law of obvious significance and far-reaching consequence permitted to be raised and debated at the Bar, though not taken in the grounds of appeal, has been the subject-matter of conflicting decisions of various High Courts. The question is whether Section 92-A of the Motor Vehicles Act, 1939, as inserted by Amending Act No. 47 of 1982 with effect from 1.10.1982 and Section 140 of the Motor Vehicles Act, 1988, are retrospective in operation and effect and the benefit thereof is extendible to a claim for damages in respect of death or permanent disablement which has resulted from an accident arising out of the use of motor vehicle, occurring prior to 1.10.1982?

2. Before taking up the question a resume" of the facts giving rise to this appeal may be stated as thus: The accident arising out of the use of motor vehicle in the instant case occurred on 14.1.1977 on the G.T. Road in village Kazipur, P.S. Puramukti, District Allahabad. K. Tejia, the victim of the accident, was the daughter of the claimants-appellants. She was going on foot by her left side when she was hit by car UTE No. 5545 due to rash and negligent act of driver of the car. She received head injuries which proved fatal. The appellants filed claim petition on 2.7.1977 claiming Rs. 30,150/- as the total compensation on account

of the death of their daughter who was aged about 6 years at the time of accident. Costs of the suit and interest from the date of presentation of the claim petition were also claimed. The Tribunal awarded Rs. 12,700/- as compensation on account of the death of the daughter of the claimants in the said motor accident with interest at the rate of 6 per cent per annum from the date of presentation of the claim petition till the date of recovery. Being dissatisfied, the claimants filed the instant appeal and it is during the pendency of the appeal that Section 92-A was inserted by amending Act 47 of 1982 with effect from 1.10.1982.

3. Learned counsel appearing for the appellants urged that Section 92-A of the Act is retrospective in nature and the amount of compensation payable on the principle of fault in respect of death and permanent disablement resulting from an accident arising out of the use of motor vehicle can in no case be less than what is prescribed by Section 92-A of the Act corresponding to Section 140 of the Motor Vehicles Act, 1988, in "no fault" cases. It was also urged by the counsel appearing for the appellants that the amount of compensation awarded by the Tribunal in the instant case was too low having regard to the facts and circumstances of the case. Learned counsel further urged that the appellants are entitled to get the benefit of Section 140 of 1988 Act as amended by the Motor Vehicles (Amendment) Act, 1994, enforced with effect from 14.11.1994. Learned counsel appearing for National Insurance Co. Ltd., respondent No. 2, refuted the submissions made by the counsel appearing for the appellants and urged that Section 92-A had the effect of amending substantive law on the point and as such it was prospective and not retrospective in nature. It was also urged by the counsel appearing for the respondent insurance company that the amount of compensation awarded by the Tribunal was just and reasonable having regard to the facts and circumstances of the instant case.

4. In the words of S.C. Agrawal, J., who spoke for the majority in K.S. Paripoornan Vs. State of Kerala and Others,

A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by

subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. [See: Halsbury's Laws of England, 4th Edn., Vol. 44 paras 921, 922, 925 and 926].

5. In the words of Lopes, L.J. in *re Pulborough Parish School Board Election*, *Bourke v. Nutt* (1894) 1 QB 725, p. 737:

Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.

[See: Principles of Statutory Interpretations by Justice G.P. Singh, 5th Edn., 1992, p. 294].

6. The principles aforesaid are equally applicable to amendatory statutes. According to Crawford: "Amendatory statutes are subject to the general principles relative to retroactive operation. Like original statutes, they will not be given retrospective construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transaction, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospectively." [See: Crawford's Statutory Construction, pp. 622-3].

7. Chapter VII-A in which Section 92-A occurred was introduced in the backdrop of worldwide demand to make the liability for damages arising out of motor vehicle accidents as a liability Without fault as also recommendation of Law Commission and opinion expressed by the Apex Court in certain cases and "in order to meet, to some extent, the responsibility of the society to the deaths and injuries caused in road accident". As observed by the Supreme Court in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, , Section 92-A was in the nature of a beneficial legislation enacted with a view to cover the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. Section 92-A was in fact a provision pertaining to substantive law. In *Gujarat State Road Trans. Corporation v. Ramanbhai Prabhathhai* 1987 ACJ 561 (SC), Section 92-A has been described as a clear departure from usual common law principle and to that extent as held therein, the "substantive law" of the country stands altered and modified. The decision aforesaid has been followed in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, Thus it is no longer *res integra* that Section 92-A of the Act was a provision of substantive law. Prior to insertion of Section 92-A, the right to recover compensation in

respect of death or permanent disablement under the Act was dependent on proof of fault or negligence on the part of the driver of the vehicle or any person. Section 92-A, for the first time, provided that in any claim for compensation in respect of death or permanent disablement of any person "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" and it is in this respect that the substantive law of the land stood altered.

8. In *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, , the Supreme Court has further ruled that "...in the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose."

9. In *Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others*, , the Supreme Court has held that "...the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not." In *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, , the Supreme Court held that "...a statutory provision is held to be retrospective either when it is so declared by express terms, or the intention to make it retrospective clearly follows from the relevant words and the context in which they occur." Again in *Mithilesh Kumari v. Prem Behari* AIR 1989 SC 1253, the Supreme Court has observed as under:

...laws made justly and for the benefit of individuals and the community as a whole, as in this case, may relate to a time antecedent to their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed.

10. True, there are no express words in Section 92-A nor is there any express provision in the amending Act 47 of 1982 making the section retrospective but that by itself is not sufficient to hold against retrospectivity for such an intention of the legislature may be inferred by necessary implication for there is no absolute rule of inviolability of substantive rights. Presumption against retrospectivity may be rebutted by necessary implication specially in a case where new law is to cure an acknowledged evil and has been made justly for the benefit of the individual and the community as a whole. [See *Mithilesh Kumari v. Prem Behari* AIR 1989 SC 1253]. If the new law speaks in a 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 an 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.

11. The question, therefore, that emerges is whether retrospectivity is implicit and can be inferred from the language in which Section 92-A (section 140 of 1988 Act) is couched having due regard to the legislative intent and objective behind introduction of the provisions for compensation based on principle of no fault. The words shall be liable to pay compensation used in Section 92-A(1) are, in my opinion, of wide amplitude and comprehensive enough to cover all cases of future payment of compensation in respect of the death or permanent disablement where such death or permanent disablement has resulted from an accident arising out of the use of motor vehicle irrespective of whether the accident and the consequential death or permanent disablement has taken place before or after 1.10.1982, the date with effect from which Section 92-A was inserted. Aforestated italicised words used in Sub-section (1) of Section 92-A when read in conjunction with the expression "the death or permanent disablement in respect of which the claim has been made" used in Sub-section (3) lead to inescapable conclusion that the benefit of Section 92-A is extendible even to the claims for compensation in respect of death or permanent disablement which has resulted from an accident taking place prior to 1.10.1982 though nothing therein has the effect of reopening any claim for compensation already settled and concluded or otherwise extinguished by efflux of time.

(Emphasis supplied)

12. Take, for example, a case where the accident arising out of the use of motor vehicle occurred on 30.9.1982 but the person who sustained injuries died on or after 1.10.1982. Can it be said that the benefit of Section 92-A is not extendible to such a case merely because the accident had taken place prior to 1.10.1982? I find nothing on principle or authority to say "no". Section 92-A, in my opinion, was a blend of prospective as well as retrospective enactment and so is Section 140 of the Motor Vehicles Act, 1988 and in the absence of any expression therein to indicate that the section shall apply to an accident taking place only after its introduction the provision has to be applied in present in respect of matters pending before Tribunals or courts of appeal as well as in respect of all claims subsisting on the date of coming into force of the provision but preferred thereafter.

13. Accordingly, I find myself unable to agree with the view that Section 92-A of the Act or for that purpose Section 140 of the Motor Vehicles Act, 1988, has no application to accidents taking place prior to their coming into force as held by Kerala High Court in Neeli and Others Vs. Padmanabha Pillai Narayana Pillai and Others, ; Punjab and Haryana High Court in Bimla Devi v. National Insurance Co. Ltd. 1988 ACJ 981 (P&H); Rajasthan High Court in Vazir Mohd. v. Sambhu Singh 1986 ACJ 496 (Rajasthan) and for the reasons aforestated I am in respectful agreement with the view taken by Andhra Pradesh High Court in T. Srinivasulu

Reddy Vs. C. Govardana Naidu and another, , that the section would apply even to accidents taking place prior to 1.10.1982 subject to the limitations aforesaid.

14. So far as the view expressed by the Division Bench of the Allahabad High Court in Ram Mani Gupta v. Mohammad Ibrahim 1985 ACJ 476 (Allahabad), is concerned, the Division Bench observed as under:

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 appellants are not entitled to the benefit of this provision.

15. The conclusion that "the language also does not imply with retrospective effect is intended" reached by the Division Bench of this court in the aforesaid case of Ram Mani Gupta 1985 ACJ 476 (Allahabad), is not based on consideration of the relevant words used in the sections. In Shama Rao v. State of Pondicherry AIR 1967 SC 1680, it was observed: it is trite to say that decision is binding not because of its conclusion but in regard to its ratio and the principles laid down therein. In State of U.P. v. Synthetics and Chemicals Ltd. JT 1992 (3) SC 268, para 41, it was held: "Any declaration or conclusion arrived at without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for the sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

16. In my opinion, therefore, the Division Bench decision in Ram Mani Gupta's case 1985 ACJ 476 (Allahabad), cannot be cited as a binding precedent to support the submission that the language in which Section 92-A was couched too did not imply retrospective effect. Section 92-A of the Act was intended to have retrospective effect and, in my opinion, all claims either pending before Tribunals or courts or otherwise subsisting on the date of enforcement of the sections are covered and so also is the effect of Section 140 of the Motor Vehicles Act, 1988. Similar will be the position in respect of Section 163A inserted by Amendment Act No. 54 of 1994 in the Motor Vehicles Act, 1988, with effect from 14.11.1994. There is nothing in Section 217 of the said Act to suggest exclusion of Section 140 to pending cases. The limit of compensation in the case of death has since been enhanced to Rs. 50,000/- by means of amending Act No. 54 of 1994 which has been enforced with effect from 14. i 1.1994. In Lakshmi Narayan Guin and Others Vs. Niranjan Modak, , it has been held "that a change in the law during the pendency of an appeal has to be taken into account and would govern the rights of the parties". In this view of the matter I am of the considered view that Section 140 of the Motor Vehicles Act, 1988, as amended by Motor Vehicles

(Amendment) Act, 1994 (Act No. 54 of 1994) enforced with effect from 14.11.1994 shall apply to all claims pending before the Tribunal or appellate court as also the causes of action subsisting on 14.11.1994 notwithstanding that the accident giving rise to the claim had taken place before 14.11.1994.

17. In any event, I am of the firm view that Tribunals and courts of appeal while determining the quantum of compensation in motor accident claims must not be oblivious of the value the human life and limb have in the society at a given time. The legislative estimate of life and limb in terms of money as indicated in no fault cases must be taken note of by Tribunals or courts while fixing the quantum of damages in claims arising out of motor vehicle accidents. The legislature has now come out u/s 163-A with a Schedule for compensation which has to be taken note of.

18. However, in the instant case, although the counsel appearing for the appellants urged that while determining the quantum of compensation the court should take into consideration the minimum amount of compensation fixed by Section 140 as amended by Act No. 54 of 1994 enforced with effect from 14.11.1994 but made no efforts to get his claim petition amended. In these circumstances, I am not inclined to award a greater amount of compensation than what has been claimed by the appellants in their claim petition as well as in the appeal.

19. Having regard to the facts and circumstances of the case, I am of the view that the amount of compensation determined by the Tribunal in the instant case was far from being just and reasonable. If "social justice" and "values of life and limb" have any meaning, compensation of Rs. 12,700/- awarded in this case by Tribunal for loss of the life of a girl, aged 6 years, for no fault of her, cannot be regarded as "just and reasonable". "The determination of the quantum must be liberal, not niggardly, since the law values life and limb in free country in generous scales" [See: Concord of India Insurance Co. Ltd, v. Nirmala Devi 1980 ACJ 55 (SC)]. Having regard to the fact that support to parents by a daughter even after her marriage is not unknown to our society and having regard to the value of life and limb as also the changes in law that have taken place during the pendency of this appeal. I am of the firm view that Rs. 30,150 claimed by way of compensation in this case was not unjust and excessive in any manner and the Tribunal has erred in slashing it down to Rs. 12,700/-.

20. In the result, the appeal succeeds and is allowed with costs. The claim is decreed in toto for a sum of Rs. 30,150/-together with interest at the rate of 6 per cent per annum from the date of presentation of the claim petition to the date of actual payment. The amount already paid shall be adjusted.