

(1991) 01 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 10 of 1991

Kanhaiya Lal and Another

APPELLANT

Vs

Kailashi Devi and Others

RESPONDENT

Date of Decision : 23-01-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 173

Citation : (1991) 1 ACC 484 : (1991) ACJ 518

Hon'ble Judges : K.C. Agrawal, C.J

Bench : Single Bench

Advocate : P.S. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This is an appeal filed u/s 110-D of the Motor Vehicles Act, 1939, read with Section 173 of the Motor Vehicles Act, 1988, against the order dated August 18, 1990 passed by the Motor Accidents Claims Tribunal, Karoli, District Sawai Madhopur, in MAC.T. Case No. 53 of 1988 (Kailashi Devi v. Kanhaiya Lal).

2. The claim petition was filed by the respondents on May 31, 1988. The respondents thereafter moved an application u/s 92-A of the 1939 Act for payment of "no fault compensation" in respect of the death of Parma.

3. The sole controversy involved in this case is whether Section 140 of the new Act (1988 Act) could be applied to the accident, which occurred or took place before coming into force of the 1988 Act.

4. Section 140 provides for payment of Rs. 25,000/- as no fault compensation. This has raised the amount from Rs. 15,000/- provided for by Section 92-A of the 1939 Act to Rs. 25,000/-. The argument of the learned counsel for the appellants was that as the appellants had acquired a vested right of paying no fault compensation to the dependants of the deceased to the extent of only Rs. 15,000/-, the Tribunal had no power to apply Section 140 of the 1988 Act and to

direct them to pay Rs. 25,000/-.

5. Counsel for the appellants urged that no rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation. In this regard reference may be made to what was said by Wright, J., In re: Athlumney (1898) 2 QB 547:

Perhaps no rule of construction is more firmly established than this-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.

6. In order to find whether the argument of the appellants' counsel is right, we have to bear in mind that Section 92-A, so also Section 140, are benevolent provisions and by the rule of construction applicable to such provisions the Tribunal had to place a liberal interpretation on them so that the decision reached is a just one. The legislature provided for payment of no fault compensation by Section 92-A as it was realised that a litigation for payment of compensation may take unduly long time and the dependants of the deceased do not have the capacity to suffer the consequences of death, with which they, unfortunately, are faced with, for long. Same is the basis of providing no fault compensation to a person who suffered permanent disablement. u/s 92-A the provision was for payment of Rs. 15,000/-. It is this amount, which has been enhanced by the Motor Vehicles Act, 1988, obviously because of the fact that value of money has considerably fallen since the enactment of Section 92-A. The intention behind Section 92-A is the same as u/s 140. The payment of no fault compensation is regarding procedure, which an Accidents Claims Tribunal has to follow.

7. Counsel for the appellants urged that they have a vested right to get the case pending before the Tribunal decided in accordance with law as it stood on the date of the institution of claim against them and that the amendment made by 1988 Act could not be applied to the pending proceedings. The submission is not tenable.

8. The right is a privilege or power which is capable of being enforced by one person against another. The appellants' assertion that the claim petition filed against them could be decided only in accordance with the old law has no legs to stand. The application for no fault compensation is to be decided in accordance with law as it stands on the day of its moving. It is a matter pertaining to procedure. It is well settled that a law dealing with the procedure or pertaining to procedure or having effect on the procedure of the court can be retrospective. In fact, unnecessary argument is being made that they have a vested right for getting the entire case disposed of in accordance with the unamended law. Black's Law Dictionary defines the expression "vested rights" as: "In constitutional law, rights which have so completely and definitely accrued to or

settled in a person that they are not subject to be defeated or cancelled by the act of any other private person...".

9. Section 140 confers right on the person who is entitled to apply for grant of no fault compensation. It is not grant on the person against whom the application for being given no fault compensation is made. The appellant has unjustifiably brought it to the level of a substantive right.

10. Citing *Yashoda Kumari v. Rajasthan State Road Transport Corporation* 1984 ACJ 716 (Rajasthan) and *Ram Mani Gupta v. Mohd. Ibrahim* 1985 ACJ 476 (Allahabad), counsel urged that the principles laid down in these cases were applicable to the present case also, I am unable to agree. In both of these cases accidents occurred when Section 92-A of the Act was not in the statute book. In such a situation the question arose whether no fault compensation could be allowed by applying Section 92-A. The two decisions relied upon held that no fault compensation could not be granted. In the instant case Section 92-A was already in picture under which Rs. 15,000/- could be awarded as no fault compensation. By the 1988 Act, the amount of Rs. 15,000/- was raised to Rs. 25,000/-. Therefore, there is a distinction in the controversy arising before me and the one which arose in those cases.

11. Procedural law is that which prescribes method of enforcing right or obtaining redress or their invasion. It is the right to get no fault compensation and deals with the machinery or the method in accordance with which no fault compensation has to be determined. It is immaterial that the amount has been raised from Rs. 15,000/- to Rs. 25,000/-.

12. In contrast to statutes dealing with substantive rights, statutes dealing with merely matters of procedure are presumed to be retrospective unless such a construction is textually inadmissible: AIR 1927 242 (Privy Council). If, therefore, new Act affects matters of procedure only, then it applies to all actions pending as well as future. This has been so laid down by the Supreme Court in *K. Eapen Chako v. Provident Fund Investment Company (P) Ltd.* AIR 1976 SC 2610. The Supreme Court has quoted with approval the following observations made in Maxwell: Interpretation of Statutes, 11th Edn., p. 21, as under:

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.

13. In my opinion, enhancement of no fault compensation from Rs. 15,000/- to Rs. 25,000/- is only a procedural matter. This provision is a departure from the usual case in which a claimant should establish negligence on the part of the owner or driver before claiming any compensation for the death or permanent disablement caused on account of the motor vehicle accident. As the Parliament felt that the amount of Rs. 15,000/-, previously provided by Section 92-A of the

1939 Act, had lost its efficacy due to inflation, it raised the amount to Rs. 25,000/-. The Tribunal was right in holding that Rs. 25,000/- was awardable.

14. For the reasons given above, the appeal fails and is dismissed.