
(1991) 03 AP CK 0003
In the Andhra Pradesh High Court

Mawubal Bee and Others

APPELLANT

Vs

A.P.S.R.T.C.

RESPONDENT

Date of Decision : 05-03-1991

Acts Referred:

General Clauses Act, 1897 — Section 6, 8
Motor Vehicles Act, 1988 — Section 166

Citation : (1991) 2 ACC 725 : (1991) 2 APLJ 131

Hon'ble Judges : Jagannadha Raju, J

Bench : Single Bench

Judgement

Jagannadha Raju, J.—This Civil Miscellaneous Appeal has come up for admission. A few facts are pertinent for deciding whether this appeal can be entertained. The motor accident which gave rise to the claim for this MVOP which was rejected by the tribunal occurred on 29-3-82. The petition was filed before the Motor Accidents Claims Tribunal, Chittoor on 18.8.89 indicating as if it is a petition filed u/s 110-A(3) of the old Motor Vehicles Act of 1939. A perusal of the order passed by the District Judge-cum-Chairman of the Motor Accidents Claims Tribunal indicates that neither the Advocates who appeared in the matter nor the Judge were aware of the statutory changes that were effected by passing of the Motor Vehicles Act of 1988, Act 58 of 1988 which came into force on 1.7.89. Dealing with the petition as a petition under the Old Act, the Chairman Motor Accident Claims Tribunal came to the conclusion that the delay of 6 years, 10 months and 20 days in filing the OP cannot be condoned and there is no justification for condonation of the exorbitant delay. Accordingly, the Petition was dismissed. Against the order dt. 22-8-90 passed by the Tribunal dismissing the OP the present appeal is filed.

2. The crucial question that arises for consideration is whether the appellants-petitioners are entitled to invoke the provisions of Section 110-A(3) of the Old Act after passing of the new Motor Vehicles Act and whether an OP can be entertained in violation of Section 166(3) of the new Act.

3. While the Old Act Section 110-A (3) did not provide any limitation as regards the period of delay that can be condoned by the tribunal Section 166(3) reads as follows:

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.

Provided that the claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(4) Sub-section (3) clearly contemplates that no application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident. The proviso imposes a total embargo on the claims tribunal entertaining the application if such an application is filed, after a period of 12 months from the date of accident. There is a vital statutory change in the law by reason of enactment of Section 166(3) is on the following words: The claims tribunal may entertain the application after the expiry of the said period of six months. But no later than twelve months. It is also interesting to see that the applicant has to show u/s 166(3) proviso is that The Applicant was prevented from making the application in time. Sri Krishna Murthy appearing for the appellants-petitioners contends that notwithstanding the fact that the new Act came into force on 1-7-89 his client's petition should be considered under the pre-existing law and not under the existing law. I am afraid such an argument cannot be countenanced. It is well settled principles of law and the law which governs an action is the law that is prevailing at the time of institution of the petition. Mr. Krishna Murthy further contends that under the old Act and u/s 110-A as it stood then, there are numerous decisions which had laid down that while construing the words sufficient case" as liberal interpretation should be given. I have absolutely no quarrel with the principle laid down by those decisions. It is significant to remember that u/s 110-A(3) there was no limitation for the total period of delay which could be condoned by the tribunal. But under the new Act there is a total embargo for entertaining any claim petition filed after one year from the date of occurrence of the accident. The four decisions relied upon by the learned advocate viz., Vidya Devi Vs. Himachal Road Transport Corporation, Simla and Others, , Dujai Bai v. State of U.P. 1986 (2) ACC 231; Niranjana Kaur v. New India Assurance Co. 1986 (2) ACC 324 and Smt. Bhuvneshwari Devi and Others Vs. Murari Lal and Another, cannot hold the field after the statutory change has come into existence.

5. Mr. Krishna Murthy raised another argument saying that by reason of the accident petitioners had a vested right and statutory changes cannot take away a vested right. It should be remembered that the accident gives the legal representatives of the deceased a right to claim compensation. No vested right is created under the enactment. As long as Section 110-A(3) of the 1939 Act was in force he could approach the Court even after the expiry of the 6 months period

and convince the Court that he was prevented from approaching the Court earlier and that there is justification for the delay in filing the OP. Now by reason of the amendment of the law the tribunal is precluded from entertaining any application filed after a period of one year from the date of occurrence of the accident.

6. An effort is made to rely upon Section 6 of the General Clauses Act. Unfortunately, Section 6 of the General Clauses Act which deals with repeal of an earlier enactment is not the proper Section. Section 8 of the General Clauses Act is the appropriate Section which deals with the construction of reference to repealed enactments. Section 8 clearly indicates where Acts are repealed and re-enacted with or without modification how the provisions should be construed. Sub-section (1) of Section 8 clearly indicates that any provision of a former enactment then references in any other enactment or in any instrument to the provisions so repealed shall unless a different intention appears be construed as reference to the provision so re-enacted. Sub-section (2) further clarifies the matters by stating that the repealed enactment provisions shall not be referred to, can be referred to unless a different intention appears in the re-enacted provisions. In view of the indication given in Section 8 of the General Clauses Act also it is not open to the appellants to rely upon the pre-existing law which was in force prior to 1-7-89.

7. It is my plaintiff duty to point out that the two Advocates who conducted the matter in the Claims. Tribunal and the learned Judges were totally ignorant of the statutory changes made and they proceeded on the footing as if the old law applied. Even taking the old law as applicable the Chairman came to the conclusion that the abnormal delay of 6 years. 10 months and 20 days in filing the OP cannot be condoned. The position has become much worse after 1-7-89. After 1-7-89 as the law stands no application for claiming compensation can be filed after the expiry of one year from the date of occurrence of the accident. Judged from whatever angle, the OP filed on 1-8-89 is fated for dismissal.

8. In the result, the appeal is dismissed as OP is not maintainable. The order of the tribunal dt. 22.8.90 is confirmed, though for different reasons.