(1993) 06 GAU CK 0027

In the Gauhati High Court

Case No : M.A. (F) 7 of 1993

Md. Makibar Rahman APPELLANT

Vs

Md. Islam Ali and Others RESPONDENT

Date of Decision : 21-06-1993

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1939 — Section 110D
Motor Vehicles Act, 1988 — Section 173, 217(4)

Citation : (1994) ACJ 227 : AIR 1994 Guw 4 : (1994) 80 CompCas 75 : (1994) 2 LLJ 246

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : P.C. Kataki, J.P. Sarma and H. Munir, for the Appellant; P.K. Goswami, D.K. Kataky and S.K. Borkatay, for the Respondent

Judgement

S.N. Phukan, J.—This appeal was admitted by order dated 4-1-93 and it was clearly recorded that as this appeal was filed under the old Act, the amount mentioned in Section 173 of the Motor Vehicles Act, 1988 need not be deposited. Subsequently, the claimant-respondent approached this court that in view of the 1st proviso to Sub-section (1) of Section 173 of the M.V. Act, 1988, the appellant is bound to deposit the amount as provided in that proviso.

2. After admission of this appeal, I have got serious doubt as to whether this point can be taken at this stage. But as this point has been taken and as there is no decision of this court, the matter was heard at length.

3. Heard Mr. Mupir, learned counsel for the appellant, Mr. Goswami for claimant-respondent and Mr. Barkataki for the insurance company.

4. Let me quote below relevant provision viz. Section 110D of the old M.V. Act, 1939, Sub-section (1) of Section 173 of the M.V. Act, 1988 and Sub-section (4) of Section 217 of the M.V. Act, 1988. I may also quote the Section 6 of the General Clauses Act, 1897;

"S. 110D (M.V. Act, 1939). Appeals.

(1) Subject to the provisions of Sub-section (2), any persons 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 Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees."

"Section 173(1) (M.V. Act, 1988)--

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

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty five thousand rupees or fifty per cent of the amount so awarded, whichever is less in the manner directed by the High Court.

Provided further 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."

"Section 217(1) to (3). ....

(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, with regard to the affect of repeals."

"Section 6 (General Clauses Act, 1897) --

Effect of repeal-Where this-Act, or any Central Act or Regulation made after the commencement of this Act, , repeals any enactment hitherto made or hereafter to be made, then, unless a different . Intention appears, the repeal shall not --

(a) revive anything not in force or existing at the time of which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

5. Mr. Goswami on behalf of the claimant-respondent has placed reliance on two decisions viz. Mohini C. Naik v. New India Assurance Co. Ltd. 1991 (1) T.A.C. 55 and decision of this Court in National Insurance Company Ltd. v. Smti Usha Devi 1992 (1) TAC 658.

6. It may be stated that in Mohini C. Naik, (supra) the present point did not come up directly and the question involved was Section 110A of the old M.V. Act, 1983 and as amended by the New Act of 1988. Relying on para 13 of the said judgment Mr. Goswami has urged that proviso to Section 173 of the M.V. Act, 1988 is applicable in the case in hand.

7. 1 am unable to accept the contention of Mr. Goswami and in my opinion the above 2 decisions are not relevant for the present purpose.

8. Mr. Barkataki appearing for the insurance company has placed reliance in New India Assurance Company Limited Vs. Mahadev Jatta Naik and another, This is adecision of the Division Bench of the Karnataka High Court and it was held that when an appeal filed after the commencement of the new Act, 1988, the proviso to Sub-section (1) of Section 173 of the M.V. Act, 1988 shall apply. While coming to the above decision, the court placed reliance in a decision of the apex court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, It is a short judgment and the point was decided mainly relying on the above decision of the apex court. In the judgment the provision of Sub-section (4) of Section 217 of the M.V. Act, 1988 was not at all considered. Therefore, with respect I am unable to agree with the ratio laid down in the above decision,

9. Before I proceed further I may quote below para 23 of the judgment of the apex court in Garikapati (supra) wherein as many as 5 conditions were laid down in the said para which are as follows : --

"(23) From the decisions cited above the following principles clearly emerge.

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intend-ment and not otherwise."

10. Mr. Munir has placed reliance on the above principles laid down by the apex court, more particularly, the principle (iii) according to which institution of the suit carries with it the implication that all rights in the appeal then in force are preserved till the rest of the career of the suit. On the other hand Mr. Barkataki has emphasised on the principle as stated in Clause (v) by the apex court and according to said principle the vested right of appeal can be taken away only by the subsequent enactment if it so provides expressly or by necessary intendment and not otherwise. 1 may state here that the vested right of appeal was not at all taken away by the new M.V. Act of 1988. Therefore, I agree with Mr. Munir that the present appeal will be governed by the principle as stated in Clause (iii) by the apex court. In otherwords, the appeal being a continuance of the main proceeding will be governed by the old Act, 1939. In otherwords, an appeal in respect of, an award passed under the old Act can be filedl without complying to the provisions of Ist proviso to Sub-section (1) of Section 173.

11. From reading Sub-section (4) of Section 217 it appears that Section 173 is controlled by Section 6 the General Clauses Act. In Section 6 the General Clauses Act it inter alia provides that any enactment repealed shall not effect any right, privilege, obligation or liability acquired dr accrued under any enactment so repealed. Therefore, though by Section 217 of the M.V. Act, 1988 the old Act of 1939 was repealed, the right of appeal continued in respect of any award made under the old Act. In other-j words, the proviso to Sub-section (1) of the new Section 173 of the M.V. Act, 1988 shall not apply.

12. In this connection Mr. Munir has placed reliance on a devision bench decision of the Madhya Pradesh High Court in Jaswant Rao Vs. Kamlabai and Another, It was laid down that requirement of payment of Rs. 25.000/- or 50% of the amount awarded whichever is less required under the provision of Section 173 cannot be insisted upon when the claim for compensation was presented before coming into force of 1988 Act.

13. For what has been stated above I am in respectfully agreement with the ratio laid down by the Madhya Pradesh High Court and I hold that in the present case the provision of Sub-section (1) of Section 173 need not be complied with.

14. As the matter relates to an award of the Motor Accidents Claims Tribunal and the occurrence took place in the year 1975 paper book is dispensed with and let

the item be listed immediately and positively in the 1st week of July for final disposal.

15. This order will also cover the M.A. (F) 55/93 and both the cases will be heard together.

