
(1990) 10 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No's. 209 and 210 of 1990

Mohini Chandrakant Naik and Another

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 05-10-1990

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1988 — Section 166, 217

Citation : (1991) ACJ 354

Hon'ble Judges : H.D. Patel, J;G.D. Kamat, J

Bench : Division Bench

Advocate : S.S. Usgaonkar, for the Appellant; S.K. Kakodkar, E. Afonso and S.G. Dessai, for the Respondent

Judgement

H.D. Patel, J.—On December 28, 1988, the petitioner in Writ Petition No. 209 of 1990 filed an application claiming compensation arising out of an accident which occurred on July 2, 1984, before the respondent No. 3, the Presiding Officer of Motor Accidents Claims Tribunal, Panaji (Goa), u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the old Act"). Since there was delay of three years, eleven months and twenty-seven days in filing the claim petition, an application for condonation of delay was also simultaneously moved under Sub-section (3) of Section 110-A of the old Act. The petitioner explained therein that on account of several injuries sustained by her, she was required to undergo treatment for a considerably long time and she was under the bona fide belief that the criminal case pending would safeguard her interest also in respect of compensation. The application for condonation of delay was resisted by the respondent No. 1, the New India Assurance Co. Ltd. By an order dated April 24, 1990, the respondent No. 3 dismissed the claim petition as well as the application for condonation of delay holding that he was barred from entertaining the petition in view of Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the new Act") which came into force on and from July 1, 1989. It is against the said order that Writ Petition No. 209 of 1990

is filed.

2. On March 15, 1990 the petitioner in Writ Petition No. 210 of 1990 filed an application for compensation arising out of an accident which occurred on January 22, 1989, before the respondent No. 4, the Presiding Officer of the Motor Accidents Claims Tribunal. Simultaneously an application for condonation of delay was also moved because the claim petition was filed late by 237 days. In that application the petitioner claimed that he was required to be operated twice at Bombay and third operation is awaited. It was for this reason that the claim petition could not be filed. By an order dated July 10, 1990, the respondent No. 4 dismissed the claim petition as well as the application for condonation of delay in view of Sub-section (3) of Section 166 of the new Act holding that the delay beyond the period of six months was not liable to be condoned. It is this order which is now challenged in Writ Petition No. 210 of 1990.

3. The controversy involved in these two petitions is very limited and also identical. The question that falls for determination is, whether the claim petition as filed by the petitioner in each of the two petitions would be governed by Sub-section (3) of Section 110-A of the old Act or by Sub-section (3) of Section 166 of the new Act? It may be relevant to observe here that the claim petition which is the subject-matter of Writ Petition No. 209 of 1990 was filed much before the new Act came into force, whereas the claim petition in Writ Petition No. 210 of 1990 was filed much after the enforcement date of the new Act. Since the question involved is identical in both the petitions, they are being disposed of by this common judgment.

4. It would be proper at this stage to reproduce the relevant provision for proper appreciation. Sub-section (3) of Section 110-A of the old Act is as follows:

110-A (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, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

A bare reading of the sub-section would show that it was open for the claimant to file an application even after expiry of the period of limitation and there was no bar for the Tribunal to entertain such claim, if it is satisfied that the claimant was prevented by sufficient cause from making the application in time. Sub-section (3) of Section 166 of the new Act, however, introduces an outer limit also for filing the claim petition. To appreciate it better it reads as under:

166 (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.

According to the above provision, the Tribunal is empowered to entertain only those applications which are filed after the expiry of the period of six months, but not later than twelve months and that too upon satisfaction that the claimant was prevented by sufficient cause from making the application in time. Therefore, there is also a bar prescribed for entertaining the claim petition after the expiry of twelve months from the date of cause of action for filing the claim petition accrues. The learned Tribunal dismissed either of the claim petitions as having been filed after the expiry of twelve months from the date of occurrence of the accident since governed by the provisions of Sub-section (3) of Section 166 of the new Act.

5. On behalf of the petitioner in either of the writ petitions it was sought to be submitted that both the claim petitions would be governed by the old Act since the accidents occurred prior to coming into force of the new Act. Reliance was also placed on Section 217 of the new Act which provides for repeal and savings and in particular Sub-section (4) thereof by which Section 6 of the General Clauses Act, 1897 is made applicable. On behalf of the respondent No. 1, insurance company, it was vehemently tried to support the order of the learned Tribunal, which, we must say, was very short and cryptic. Either of the parties relied upon various case laws which we shall shortly refer.

6. We may first consider the decision of this court in *District School Board of Belgaum v. Mohamad Mulla* AIR 1945 Bom 377, on which either of the parties has placed reliance. This judgment was rendered by Chagla, J. as he then was and the principle laid down is as under:

it is clear that as a rule the statute of limitation being a procedural law must be given retrospective effect in the sense that they must be applied to all suits filed after they came into force. This general rule has got to be read with one important qualification and that is that if the statute of limitation, if given retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party for exercise of his vested right of action, then the courts would not give retrospective effect to the statute of limitation.

We may point out that in this case the Bombay Primary Education Act, which reduced the period of limitation to six months from the date of the act or default complained of, was published on 27th May, 1938 and came into force on 1st July, 1938. A notice of thirty days was to be given to the authorities concerned before a suit could be filed, but still a period of six days was left for filing necessary suit. Even though the period was extremely short, it was not possible to hold that the respondents in the case were deprived of an opportunity of exercising their right of action vested in them. The learned Judge accordingly dismissed the suit, though most reluctantly, as barred by limitation except for a period of six months immediately preceding the suit.

7. The principle laid down in the aforesaid decision was approved by a Division

Bench of this court in Chotmal Ganeshram Bharadia Vs. Ramchand Tarachand, , though it was held that the principle as laid down was not applicable to the particular amendment which fell for interpretation in this case.

8. In New India Assurance Co. Ltd. v. Shanti Misra 1976 ACJ 128 , an amendment was effected in the Motor Vehicles Act, 1939 (the old Act) by which original Section 110 was deleted and new Sections 110-A to 110-F were introduced. The Claims Tribunals were, however, not constituted by the State Governments at one and the same time. They were constituted with different dates for different areas. Until and unless the Claims Tribunals were constituted, the provisions of the new sections introduced in the year 1956 could not be availed of. The law of the change of forum affected the limitation provided for in Sub-section (3) of Section 110-A of the old Act.

The question was answered thus:

(1) Time for the purpose of filing the application u/s 110-A did not start running before the constitution of the Tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.

(2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation.

The emphasis is on the word "suddenly" as appearing in the last sentence of the second principle enunciated above. It is not unusual that when a law is amended, some period is allowed to pass between the publication of the Act and the enforcement thereof so that the intention of the legislature is clearly discernible that the new law shall have retrospective effect and during the intervening period the Act was as if in the state of suspension, advantage of which can be taken by the litigant for moving the court in time. But the difficulties do arise when no time limit is provided in the Amending Act, which comes into force immediately. It is in this background that the Supreme Court has observed that "nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation". The very same principle is also emphasised by the Calcutta High Court in Khondkar Mahomed Saleh and Others Vs. Chandra Kumar Mukerji and Others, . The relevant portion is extracted below:

Statutes of limitation cannot be considered as anything else than matters relating to procedure and ordinarily such statutes have their operation from the date fixed in the statute and govern all matters before the court after the announcement of the operation of the statute. There is, however, one exception

and it is that where under the Act as amended the application could not be made the amendment will not apply retrospectively, for the principle is that the effect of an amendment is to regulate and not to confiscate a vested right.

9. Many other cases were cited at the Bar and some of the relevant ones are referred to herein. In *C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others*, , the Supreme Court has laid down the same principle as in the case of *District School Board of Belgaum AIR 1945 Bom 377* , that the law of limitation is procedural law and the procedure as on the date of suit would apply. A Full Bench of Rajasthan High Court in *Government of Rajasthan and Another Vs. Sangram Singh and Others*, , has laid down, to state, that it is not always true to say that the law of limitation is only a law of procedure and does not bar the remedy altogether so as to destroy the right. It also lays down that the new law of limitation would not revive a barred right. At the same time it can also be taken as well settled proposition that the new law of limitation cannot be construed retrospectively so as to destroy altogether the remedy of litigant to enforce his right in a court of law.

10. What now remains is the decision of the Supreme Court in *Jayantilal Amrathlal Vs. The Union of India (UOI)*, . It lays down that in order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities.

11. It is by now well settled that the law relating to limitation is a procedural law and, therefore, its provisions will apply equally to transactions taking place before the enactment and those taking place after the enactment. The procedural enactment is thus retrospective in the sense that no one has a vested right in the procedure. Therefore, when an existing statute is repealed by another statute the proceedings which arise out of the acts committed when the repealed statute was in force, they will be governed by the repealing statute. Section 6 of the General Clauses Act, 1897 does not save the provisions of the repealed Act as such. It only saves the rights and liabilities which have accrued or incurred under the repealed statute. It only ensures that such rights and liabilities can be enforced notwithstanding the repeal. Even when the repealing Act is inconsistent with the enforcement of rights and liabilities, Section 6 will save only those parts of repealed Act, the operation of which beyond the date of repeal is necessary to give effect to the rights and liabilities.

12. From the aforesaid discussion and review of case laws, the only conclusion which can be arrived at is that the law of limitation is a procedural law and the provisions existing on the date of suit would apply. In other words, the law which is applicable to the suit or proceeding is the law which is in force when it was instituted. It is with a view to avoid hardship resulting from retrospective operation that some time is allowed to pass between the publication of the Amending Act and its enforcement. But the difficulty arises when no such time is

allowed and the Amending Act comes into force immediately on the date of publication. In such a situation, the general rule that the law of limitation is a procedural law and must be given retrospective operation will have to be departed from by not giving such retrospective operation to the new Act. Otherwise, that would destroy the cause of action which a litigant has or makes it impossible for the litigant to exercise his vested right of action. Similar situation may arise when an Amending Act curtails the period of limitation and comes into force at once, the curtailed period should not be given retrospective effect so as to adversely affect the suit which would stand barred at the commencement of the Act.

13. There cannot be any doubt that the new Act was enacted on October 14, 1988 and it was brought into force on July 1, 1989. Therefore for about nine months and some days the new Act was kept in the state of suspension. It was hence not open for the petitioner in Writ Petition No. 210 of 1990 to complain about the hardship which he would face, if retrospective operation to Sub-section (3) of Section 166 of the new Act is given. He had sufficient time before which he could have filed the petition for claiming compensation. Actually the petition was filed on March 15, 1990 for the accident which took place on January 22, 1989. At the time of filing the new Act was in force and, therefore, the provisions existing on the date of filing of proceedings would govern the proceedings. Clearly enough the Motor Accidents Claims Tribunal was precluded from entertaining the claim petition, which was filed beyond twelve months from the date of occurrence of accident. Very reluctantly we are forced to dismiss this petition.

14. With respect to Writ Petition No. 209 of 1990, the claim petition was filed on December 22, 1988 for the accident which occurred on July 2, 1984. The filing of the claim petition was during the period the new Act was in the state of suspension and much before it was brought into force. The petitioner had a right to file the claim petition by seeking condonation of delay and this remedy is not extinguished by coming into force of the new Act. The right which had accrued to the petitioner of claiming compensation is thus saved and will permit continuance of proceedings notwithstanding the enforcement of the new Act. Of course this will be subject to the petitioner showing that she was prevented by sufficient cause from filing the petition in time. The order passed by the Motor Accidents Claims Tribunal is hence not liable to be sustained and must be set aside.

15. In the result, Writ Petition No. 209 of 1990 is allowed and the order impugned is set aside. The case is remitted back to the Motor Accidents Claims Tribunal for deciding the application for condonation of delay on merits in accordance with law. Writ Petition No. 210 of 1990 is without any merit and is accordingly dismissed. The parties in both the petitions are directed to bear their respective costs.