
(1992) 02 KAR CK 0011
In the Karnataka High Court
Case No : M.F.A. No's. 297 and 472 of 1992

National Insurance Co. Ltd.	Vs	APPELLANT
Lachha		RESPONDENT

Date of Decision : 24-02-1992

Acts Referred:

General Clauses Act, 1897 — Section 6 (e)
Motor Vehicles Act, 1988 — Section 166, 166 (3), 217 (1)

Citation : (1993) ACJ 97 : (1992) ILR (Kar) 2383 : (1992) 3 KarLJ 7

Hon'ble Judges : Rama Jois, J; Hanumanthappa, J

Bench : Division Bench

Advocate : O. Mahesh, for the Appellant; V.S. Prasad and S.P. Shankar, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J

1. In these two Appeals preferred against the judgment and award made by the Motor Accidents Claims Tribunal, Bangalore City, on a claim petition presented u/s 166 of the Motor Vehicles Act, 1988 ("the Act" for short), one by the Insurance Company aggrieved by the allowing of the claim petition and another by the claimant seeking enhancement of the compensation, the following questions of law arise for consideration:

(1) As the accident which gave rise to the cause of action for presenting the claim petition, had occurred on 3-4-1988 prior to the date of coming into force of the Motor Vehicles 1988 Act ("the 1988 Act" for short) on 1-7-1989, whether after that date the petitioner could file the claim petition u/s 110-A of the Motor Vehicles Act, 1939 ("the 1939 Act" for short) which was in force on the date of the accident and consequently the Tribunal had the jurisdiction to condone the delay of more than six months in presenting the claim petition exercising its powers u/s 110-A(3) of the 1939 Act?

(2) Though the accident, which gave rise to the cause of action for presenting the claim petition, had occurred on 3-4-1988, prior to the date on which the 1988 Act came into force, as the claim petition was presented after 1-7-1989 on which date the 1988 Act came into force, whether the Tribunal erred in not dismissing the claim petition on the ground that it was barred by Section 166(3) of the 1988 Act as it was presented after one year from the date of the accident?

2. Brief facts of the case, are these:

(i) On 3-4-1988 when the claimant was crossing T.C.M.Royan Road near Ayyappaswamy temple in the City of Bangalore, a scooter bearing registration No. MYV 9473 insured with the appellant - National Insurance Company dashed against the claimant, as a result of which the claimant sustained grievous injuries resulting in permanent disability. It is not disputed that at the time the respondent-claimant had the right to present a claim petition u/s 110-A of the 1939 Act, which reads:

"110.A. APPLICATION FOR COMPENSATION:

(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made -

(a) by the person who has sustained the injury; or (aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be;

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application,

(2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed:

Provided that where any claim for compensation u/s 92A is made in such application the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(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."

(Underlining by us)

As can be seen from the Section, a claim petition had to be presented within six months from the date of the accident. The Tribunal, however, was given the power to entertain a petition at any time thereafter, if it were to be satisfied with the reasons given for the delay in presenting the petition.

(ii) The respondent presented the claim petition on 6-10-1989. In the meanwhile the 1988 Act came into force. The corresponding provision in the 1988 Act for presenting the claim petition is Section 166. It reads:

"166. APPLICATION FOR COMPENSATION:

(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed:

Provided that where any claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(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) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks necessary so to do, treat the report as if it were an application for compensation under the

Act."

(Underlining by us)

Under this Section while the time fixed for filing claim petition is six months, a ceiling of six months is imposed for condoning the delay in the presentation of a claim petition. According to the learned Counsel for the respondent-claimant, he presented the petition u/s 110-A of the 1939 Act, as in view of Section 217(4) of the 1988 Act read with Section 6(e) of the General Clauses Act, the claimant could institute proceedings u/s 110-A of the 1939 Act even after 1-7-1989 and once the claim petition could be and was presented u/s 110-A of the Act, the Tribunal had the power to condone the delay u/s 110(3) of the Act.

Section 217 of the 1988 Act is the repealing Section. The relevant portion of the same reads;

"217. Repeal and savings: (1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State are hereby repealed:

xxx xxx xxx (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 (10 of 1897) with regard to the effect of repeals."

Section 6 of the General Clauses Act, which is made applicable for the repeal of the 1939 Act by Section 216(4) of the 1988 Act reads:

"6. 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:

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

XXX XXX XXX (e) affect any investigation, legal proceedings 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, any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed."

(Underlining by us)

According to the learned Counsel for the respondent, he presented the claim petition u/s 110-A of the 1939 Act as the right to initiate proceedings which has accrued under the 1939 Act was saved by virtue of Section 217 of the 1988 Act read with Section 6(e) of the General Clauses Act even after the 1988 Act came into force and once the petition could be and was presented u/s 110-A, the Tribunal had the power to condone the delay exercising its power u/s 110-A of the 1939 Act. He submitted that after the petition was presented u/s 110-A of

the Act, he changed the provision of law under which it was presented and made it as u/s 166 of the 1988 Act in view of the office objection.

3. Before the Tribunal, the appellant - Insurance Company, raised a plea to the effect that the petition was barred by limitation. The claimant had filed an application for condonation of delay in presenting the claim petition. A reading of paragraph 8 of the judgment indicates that though the Tribunal answered the second issue, which was to the effect whether the petition was barred by limitation, in the affirmative, actually the Tribunal considered the grounds put forward by the claimant for condonation of delay in presenting the claim petition and condoned the delay. Thus the Tribunal treated the petition as the one presented u/s 110-A of the Act and condoned the delay in presenting the petition, though it exceeded six months. As far as the quantum of compensation is concerned, the Tribunal awarded a compensation of Rs. 49,400.00 together with interest at 9% per annum from the date of the petition till the date of deposit.

4. Aggrieved by the said award, both the Insurance Company and the owner of the vehicle as also the claimants have preferred these Appeals.

5. The learned Counsel for the appellant - Insurance Company, contended that the 1988 Act came into force on 1-7-1989 and therefore on or after that date the claim petition could have been presented only u/s 166 of the 1988 Act. He further submitted that as u/s 166(3) of the 1988 Act the period of limitation fixed for presenting the claim petition was six months, and the maximum period of delay which could be condoned by the Tribunal was only six months and as in the present case the accident on the basis of which the claim petition was presented took place on 3-4-1988 and the claim petition was presented on 6-10-1989, that is after the expiry of one year from 3-4-1988, it was barred by time.

6. In support of the above contention, the learned Counsel for the Insurance Company relied on the Judgment of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, The relevant portion of the Judgment reads:

"We are unable to agree. Clause (e) is not attracted because by the enactment of the new law the remedy of the appellant has not been affected at all. His right to claim compensation by filing the claim within the same period of limitation has been preserved. And there was no application for condonation of delay in a proceeding pending at the time of repeal so as to allow him to claim any privilege available under the old Act. So far the applicability of Clause (c) is concerned, the question depends on whether the appellant had got an accrued right or privilege under the law which he could not have been deprived of by the repealing legislation.

6. Even independent of the General Clauses Act, it is firmly established that unless a new statute expressly or by necessary implication says so, it will not be presumed that it deprives a person of an accrued right. On the other hand, a law

which is procedural in nature and does not affect the rights, has to be held to be retrospectively applicable. The question is whether the appellant has been deprived of an accrued right or privilege in the present case.

7. It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature and has to be governed by the new Act subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is whether the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March 1967 the Claims Tribunal u/s 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the Civil Court and prescribing 60 days as the period of limitation. The respondent filed the application in July 1967. It was held that not having filed a suit before March 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law, it was held that the application could be filed within a reasonable time after the Constitution of the Tribunal and that the time of about four months taken by the respondent in approaching the Tribunal after its Constitution could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110A(3).

8. The learned Counsel strenuously contended that the present case must be considered as one where an accrued right has been affected, because the option to move an application for condonation of delay belatedly filed should be treated as a right. This cannot be accepted. There is a vital difference between an application claiming compensation and a prayer to condone the delay in filing such an application. Liberty to apply for a right is not in itself an accrued right or privilege.

xxx xxx xxx 11. In the case before us the period of limitation for lodging the claim under the old as well as the new Act was same six months which expired three weeks after coming in force of the new Act. It was open to the appellant to file his claim within this period or even later by 22-7-1989 with a prayer to

condone the delay. His right to claim compensation was not affected at all by the substitution of one Act with another. Since the period of limitation remained the same there was no question of the appellant being taken by surprise. So far the question of condonation of six months delay was concerned, there was no change in the position under the new Act. In this background the appellant's further default has to be considered. If in a given case the accident had taken place more than a year before the new Act coming in force and the claimant had actually filed his petition while the old Act was in force but after a period of one year, the position could be different. Having actually initiated the proceedings when the old Act covered the field a claimant could say that his right which had accrued on filing of the petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condonation of delay can be governed only by the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes applicability of the enactment when the need arises to take its benefit. In the present case the occasion to take the benefit of the provision for condonation of delay in filing the claim arose only after repeal of the old law. Obviously the ground for condonation set up as "sufficient cause" also relates to the time after the repeal. The benefit of the repealed law could not therefore be available simply because the cause of action for the claim arose before repeal. "Sufficient cause" as a ground of condonation of delay in filing the claim is distinct from "cause of action" for the claim itself. The question of condonation of delay must, therefore, be governed by the new law. We accordingly hold that the High Court was right in its view that the case was covered by the new Act, and delay for a longer period than six months could not be condoned. The appeal is dismissed, but in the circumstances without costs,"

In view of the above Judgment, the learned Counsel submitted that the claim petition presented by the claimant was liable to be dismissed as barred by time.

7. The learned Counsel for the claimant submitted that if a petition claiming compensation for the death of or injury to any person as a result of a motor accident which had occurred prior to 1-7-1989, the date on which the new Act came into force, was required to be presented u/s 166 of the 1988 Act then the claim petition presented in this case was certainly barred by limitation. He, however, submitted that a petition claiming compensation for the death or injury caused by a motor accident on any date prior to 1-7-1988 on which date the 1988 Act came into force, could be presented u/s 110-A of the 1939 Act even after 1-7-1988 and there being no limit in Section 110-A of the 1939 Act, regarding the power of the Court to condone the delay, the said power could be invoked by the claimant and could be exercised by the Tribunal. He submitted that in the present case though the petition was actually presented u/s 110-A of the Act, in view of the office objection which was on account of a mistake in law, the claim petition was made as the one u/s 166(3) of the Act. He urged that the petition must be treated as the one having been made u/s 110-A of the Act and consequently the order of the Tribunal condoning the delay in presenting the

claim petition must be held to be within its jurisdiction.

8. Elaborating his contentions, the learned Counsel for the claimants submitted as follows: Chapter VIII was introduced into the Motor Vehicles Act, 1939, for the purpose of providing remedy for securing compensation for the death of or injury to any person in any motor accident. Section 110 of the Act provided for the establishment of Claims Tribunal for the purpose of adjudicating upon the claim for compensation in respect of accidents involving death or bodily injury to any person arising out of the use of motor vehicles or damages to any third party or arising out of such use or both. Section 110-A provided right to a remedy by way of approaching the Tribunal constituted u/s 110 for various kinds of reliefs specified u/s 110-A of the Act. Section 110-A read with Section 110 conferred a right to a remedy of a new nature, namely, instead of filing a suit for recovery of damages relying on the provisions of the Fatal Accidents Act, the Legislature conferred a new right to a remedy u/s 110-A of the Act, which a person entitled to claim compensation in respect of death of another person or a person entitled to claim compensation in respect of the injury sustained by him, in a motor accident could avail. According to Section 110-A of the Act, the period of limitation fixed for making an application was six months from the date of the accident. But under the proviso to Sub-section (3), power was conferred on the Tribunal to entertain the application even after the expiry of the period six months, if the Tribunal were to be satisfied in a given case that the applicant was prevented by sufficient cause from making the application in time,

9. In support of this submission that the above Section conferred right to a remedy, the learned Counsel relied on the Judgment of the Supreme Court in the case of G.S.R.T. CORPORATION, AHMEDABAD v. RAMANBHAIR AIR 1987 SC 1691

"These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies."

(Underlining by us)

Relying on the above Judgment, the learned Counsel submitted that the claimant in the present case acquired a right to a remedy by way of making application before the Tribunal u/s 110-A of the Act on 3-4-1988 on which date the accident took place. He submitted that though the 1939 Act was repealed by Section 217 of the 1988 Act, Sub-section (4) of Section 217 provided that Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals would apply and that according to the language of Section 6(e) of the General Clauses Act, the remedy which accrued to the claimant on 3-4-1988 when the

1939 Act was in force could be resorted to as if the 1988 Act had not come into force. He submitted that in respect of accidents which had taken place on any date earlier to 1-7-1988 claim petition could be filed even after 1-7-1989 u/s 110-A of the Act as if it was not repealed, in view of the express provision contained in Section 6(e) of the General Clauses Act.

10. The learned Counsel also relied on the Judgment of the Supreme Court in Andhra Pradesh State Electricity Board Vs. Union of India (UOI) and Another, The relevant portion of the same reads:

"The assumption basic to the argument is that the "Act" is a temporary statute which expired by efflux of time on 10-1-1968 and that the proceedings subsequently commenced on 29-11 -68 were without jurisdiction. Section 6 of the General Clauses Act is held inapplicable to a case of expiry of a temporary-statute on the view that Section 6 is attracted wherever there is a repeal and that the case of expiry of a statute by efflux of time is not a case of repeal. Whatever be the principles of construction of temporary-statutes and the effect on the rights and obligations under them of the expiry of the statute itself, the "Act" in the present case contains specific provisions preserving the rights and obligations. The "Act" invokes the provisions of Section 6 of the General Clauses Act. The matter is placed beyond controversy by the pronouncement of this court in Amadalavalasa Cooperative Agricultural and Industrial Society Ltd. and Another Vs. Union of India (UOI) and Another,

".... Therefore, if u/s 5 of the Factories Act or u/s 7 of the Goods Act the liability to pay the premia on full insurable value was incurred before the expiry of the Act, Section 6 of the General Clauses Act would enable the ascertainment of the extent of liability for the evaded premia by an officer who was authorised when the act was in force or by an officer authorised after the expiry of the Act. The principle behind Section 6 of the General Clauses Act is that all the provisions of the Acts would continue in force for purposes of enforcing the liability incurred when the Acts were in force and any investigation, legal proceeding, remedy, may be instituted, continued or enforced as if the Acts had not expired."

Contention (c) is accordingly also held and answered against the appellant."

(Underlining by us)

Relying on the above Decision, the learned Counsel submitted that even though the 1988 Act which came into force on 1-7-1989 repealed the 1939 Act, in view of specific provision contained in Section 217(4), applying Section 6(e) of the General Clauses Act regarding the effect of repeal, so long as the cause of action for filing claim petition u/s 110-A of the 1939 Act had arisen prior to 1-7-1989, that is, the accident giving rise to the claim petition had taken place prior to 1-7-1989 the owner and insurer who had incurred the liability to pay compensation under the 1939 Act cannot be heard to contend that the petition u/s 110-A was not maintainable just because it was filed after 1 -7-1939. He submitted that if the claim petition beyond one year after the date of the

accident could have been filed on any date earlier and even on 30-6-1989, the owner and insurer cannot be heard to contend that just because in a given case the claim petition was tiled on or after 1-7-1989 it was not maintainable, when Section 6(e) of the General Clauses Act enables the institution of legal proceedings as if the 1939 Act has not been repealed. He submitted that the objection of the appellant would lead to the result, namely, that a claim petition by a claimant in respect of an accident which had taken place on 1-1-1988 u/s 110-A could be filed upto and even on 30- 6-1989 and could be entertained and if another claimant injured in the same accident were to present the claim petition on 1-7- 1989, it had to be presented u/s 166 of the 1988 Act, in which event it would be barred by time in view of Section 166(3) of the 1988 Act. Therefore, every claim petition arising out of a motor accident which had taken place earlier to 1-7-1989 could be and has to be presented only u/s 110-A, whether the same was presented before 1-7-1989 or after 1-7-1989 and from this it follows that period of limitation and power of condonation attached to Section 110-A of the 1939 Act governs such application and not Section 166(3) of the 1988 Act. He submitted that the principle that limitation being a matter of procedure, whatever is the law for the present applies, could have been applied if Section 110-A itself was amended and maximum period of delay which could be condoned by the Tribunal was prescribed in that Section. But in the case of repeal, as is the present case, Section 110-A continues to apply to claims arising out of accidents which had taken place prior to 1-7-1989. Therefore, he submitted that the Tribunal had the jurisdiction to condone the delay as Section 110-A alone applied to this case. The learned Counsel also relied on a Division Bench Ruling given by this Court in NEW INDIA ASSURANCE COMPANY v. K.R. MURALIDHAR, MFA 2049/1 990 DD 12-10-1990 to the effect that for appeals presented even after 1-7-1989 out of claim petitions presented u/s 110-A of the Act the provisions of Section 110-D of the 1939 Act was applicable and not Section 173 of the 1988 Act. In that case the office had raised an objection that as it was an appeal presented after 1-7-1989 it cannot be entertained unless fifty per cent of the amount awarded or Rs. 25,000-00, whichever was lower, was deposited. The Advocate who had presented the appeal u/s 173 of the 1988 Act took the plea that the appeal should be treated as u/s 110-D of the 1939 Act as the accident out of which the claim arose, occurred earlier to 1-7-1989. A Division Bench of this Court overruled the office objection and upheld the plea of the learned Counsel. The order reads:

"Since the accident claim has arisen prior to the coming into force of the Motor Vehicles Act 1988, the provisions of Section 173 of the Act are not attracted. The appeal although filed u/s 173 of the Act shall be deemed to have been filed u/s 110-D of the M.V. Act, 1939. In that view of a matter, the office objection is overruled. Register and post for admission."

The learned Counsel submitted that just as Section 110-D of the 1939 Act applies to appeals presented even after 1-7-1989 and not Section 173 of the 1988 Act, in view of Section 217(4) of the 1988 Act read with Section 8(e) of the

General Clauses Act, for presenting claim petitions in respect of death of or injury caused to any person in a motor accident, on any date when the 1939 Act was in force, Section 110-A applies.

11. The learned Counsel submitted that on a reading of the Decision of the Supreme Court on which the learned Counsel relied, it appears that the claim petition concerned in that case could and should have been presented u/s 110-A of the Act but it was presented u/s 166 of the 1988 Act and therefore the Supreme Court considered the wording of Section 166(3) of the Act and applied the principle that limitation is a matter of procedure and held that the claim petition was barred by time. He submitted that in the said Decision, no argument was advanced to the effect that the right to a remedy, namely, to file a claim petition u/s 110-A of the 1939 Act had arisen prior to the coming into force of the 1988 Act and therefore the said claim petition concerned in the said case should have been treated as the one made u/s 110-A of the 1939 Act and if the claim petition was considered as the one filed u/s 110-A of the 1939 Act, as regards the power of the Tribunal to condone the delay Section 110-A of the Act itself had to be looked into and not Section 166(3) of the 1988 Act. He submitted that as this aspect has not been canvassed before Hon"ble the Supreme Court, the ratio of the Decision of the Supreme Court should be distinguished and we should hold that as the accident which gave rise to the claim petition in this case had taken place earlier to 1-7-1989 the petition has been rightly treated by the Tribunal as u/s 110-A of the 1939 Act and therefore as under that Section it had the jurisdiction to condone the delay and the Tribunal having condoned the delay in presenting the claim, this Court should not interfere with the entertaining of the claim petition by the Tribunal, The learned Counsel for the claimant next submitted that if the arguments advanced by the insurance Company were to be accepted, namely, that on or after the coming into force of 1988 Act on 1-7-1989 the claim petition could be presented only u/s 166(3) of the Act, it would lead to anomalous results. He pointed out that on the facts of this case and in all such similar cases, the claim petition could be presented on 30-6-1989 u/s 110A of 1939 Act and that if the claim petition could be presented on 30-6-1989 it could be entertained by the Tribunal and the delay in presenting the claim petition however long it may be, could be condoned for sufficient grounds but with effect from 1 -7-1989 on the coming into force of the new Act, the claim gets time barred with effect from the anterior date. He pointed out that in the present case as the accident took place on 3-4-1988, the claim petition could have been validly filed u/s 110-A of the 1939 Act even on 30-6-1989 and if on and after 1-7-1989 Section 166(3) of the 1988 Act were held to apply, it becomes time barred with effect from 3-4-1989 itself, that is, even three months prior to the coming into force of the 1989 Act and such a result could not have been intended by the Legislature.

12. Alternatively, the learned counsel submitted that if Sub-section (3) of Section 166 is held applicable even to past cases, then the period of six months delay which can be condoned by the Tribunal must be computed from 1-7-1989 and

not from the date of expiry of six months from the date of accident, as it would lead to unjust results. In support of this line of argument, the learned Counsel relied on a Full Bench Decision of this Court in C. Mohamed Zafrulla Sheriff Vs. Regional Transport Authority, which arose under the 1988 Act in a different context. The question arose for consideration was, whether a draft scheme published u/s 68-C of the 1939 Act ceased after the expiry of one year, though there was no such a condition imposed in the 1939 Act as such a condition was imposed by the corresponding Section 100 of the 1988 Act. The Full Bench held that a draft scheme published u/s 68-C of the 1939 Act lapses if within one year it was not finalised, in view of Section 100 of the 1988 Act, though no such condition was prescribed under the 1939 Act. However, the Full Bench held that the period of one year having been fixed only u/s 100 of the 1988 Act, the said period of one year should be counted from 1-7-1989, the date on which the 1988 Act came into force. The relevant portion of the Judgment reads:

"5. We have given our careful consideration to the above arguments. Admittedly, new Motor Vehicles Act, viz., 1988 Act came into force on 1-7-1989. Under these circumstances, the question would arise as to what would happen to draft scheme promulgated u/s 68C of the Motor Vehicles Act, 1939, Section 217 deals with repeal and savings. In Clause (e) of Sub-section (2), it is specifically stated as follows:

"(2) Notwithstanding the repeal Sub-section (1) of the repealed enactments -

(e) any scheme made u/s 68G of the Motor Vehicles Act 1939 (4 of 1939) or under the corresponding law, if any, in force, in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act.

It should be noted carefully Section 68C is specifically referred to here, u/s 68-C, the power to promulgate a scheme was conferred upon the State Transport undertaking. The definition of such an undertaking could easily be covered by referring to Section 68A. We extract the same.

"68A. In this chapter, unless the context otherwise requires,

(a) "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

(b) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by -

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established u/s 3 of the Road Transport Corporations Act, 1950;

xxx xxx xxx (iv) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments or by the Central Government and one or more State Governments."

By a reading of the above, it will clearly show that such a State Transport Undertaking u/s 68A(b) might include the Government or might not include the Government. When it refers to a Scheme permit u/s 68C, it cannot, by any stretch, mean only the scheme framed by a State Government,

Under those circumstances, it is not possible to accept the contention that merely because u/s 99 of the New Act, the Government is given the power to promulgate draft scheme, it would refer to only such of those schemes as was formulated by the Government. Such a construction would amount to reading something into the Act. Therefore, when Section 68C is talked of, it would refer to the draft scheme as proposed by any one of those undertakings under Sub-clauses (i) to (iv) of Section 68A of 1939 Act. With this, we pass on to the next question whether it would refer to only the procedure and not the substantive part thereof. Section 217(2)(e) which has already been extracted states scheme shall be disposed of in accordance with the provisions of Section 100. When it says "disposed of, that means entire gamut of Section 100 will come into play. There is no scope for restricting the word "disposed of only to the procedural aspects. On the contrary, other limitation contained under that Section viz., Section 100, including Sub-section (4) will come into play. Otherwise, it would amount to rewriting Clause (e) of Sub-section (2) of Section 217. "Disposal", in our view, would mean determination not mere procedural aspects. Therefore, there is no escape from Sub-section (4). In this background, we are to analyse the question whether the scheme had lapsed as on today. Sub-section (4) of Section 100 states that within a period of one year from the date of publication, proposal regarding scheme be published in the official gazette under Sub-section (1). In other words, the limitation of one year would, in strict terms, apply only to a scheme published under Sub-section (1) of Section 100. But then what happens to the scheme framed u/s 68C of the old Act? One year limitation will have to be applied here also by construing the Section in a reasonable way. We have already seen that this 1988 Act has come into force on 1-7-1989. Therefore, till 1-7-1990, if it had not been finalised in accordance with Section 100(4), the proposal shall be deemed to have been lapsed. In other words, the reckoning one year period, we must have regard to 1-7-1989 as the starting point of limitation. Otherwise, if the contention of the petitioners were to be accepted, all schemes framed under the old Act would automatically lapse. It should also be noted carefully that though the Motor Vehicles Act, 1939, in terms did not lay down any time limit for approval of the scheme, it is the court which, while interpreting, came to lay down the limitation in the two Supreme Court cases viz K.T. Dharanendrah Vs. Regional Transport Authority and Others, and Onkar Singh and Others Vs. Regional Transport Authority, Agra and Others, Therefore, it is impossible for us to accept that one year period from the date of publication of proposal must be reckoned from the publication of the scheme u/s 68C, firstly because that would not be a reasonable way of interpretation, secondly because Sub-section (4) itself talks of from the date of publication of proposal under Sub-section (1). Accordingly, we hold, as on today the draft

schemes not having been finalised, have lapsed. If this be so, there is no necessity to decide the questions of law that have arisen before us. The matter will have to go before the Tribunal for consideration in the light of the position that the schemes are lapsed and in the light of the provisions of Motor Vehicles Act 1988, With this, matter will go back to the Division Bench for passing necessary orders."

The learned Counsel submitted that applying the same principle, we should hold that even if Section 166 is applicable to claim petitions in respect of accidents which had taken place earlier to 1-7-1989, the period fixed in Section 166(3) should run from the date on which the 1988 Act came into force.

13. The learned Counsel submitted that as the points urged by him were not urged before the Supreme Court in the case of V.G. Raikar, the said Decision should not be regarded as binding precedent and that we should consider the merits of the points urged by him.

14. We are of the view that we cannot entertain the arguments to the effect that the law declared by the Supreme Court is not binding on the ground that arguments as advanced by the learned Counsel for the claimant were not advanced before the Supreme Court, As held by the Supreme Court in Smt. Somavanti and Others Vs. The State of Punjab and Others, the binding effect of a decision does not depend upon whether a particular argument was advanced therein or not so long as the point of law which is cited as precedent had specifically been decided. We are of the view that in view of the ratio of the Decision in V.G. Raikar's case, on which the learned Counsel for the appellant-insurance company relies, there is no other alternative than to hold that the claim petition presented by the claimant, before the Tribunal was barred by time. We have recorded the arguments advanced by the learned Counsel for the claimant as he requested that his arguments be placed on record as he was desirous of approaching the Supreme Court and urge those arguments before the Supreme Court.

15. The learned Counsel also submitted that unless a view is taken to the effect that the claim petition in respect of accidents which had taken place earlier to 1-7-1989 could be presented within one year u/s 166(3) of the 1988 Act, the Section would suffer from vice of arbitrariness. He submitted actually on this ground constitutional validity of Section 166(3) has been challenged in Writ Petition No. 4697 of 1992 before this Court and Rule Nisi has been issued. That is entirely a different point which is not apposite to this case.

16. For the reasons aforesaid, we answer the second Question of Law arising for consideration, as under:

Though the accident which gave rise to the cause of action for presenting the claim petition, had occurred on 3-4-1988 prior to the date on which the 1988 Act came into force, as the claim petition was presented after 1-7-1989 on which date the 1988 Act came into force, the Tribunal erred in entertaining the petition

u/s 110-A of the 1939 Act and condoning more than six months delay in presenting it and in not dismissing the claim petition on the ground that it was barred by Section 166(3) of the 1988 Act as it was presented after one year from the date of the accident.

17. In view of the answer to the second question given as above following the ratio of the Judgment of the Supreme Court in the case of V.G. Raikar, the first question does not survive for consideration.

18. In the result, we make the following order: I. In M.FA No. 472/1992:

(i) The Appeal is allowed:

(ii) In reversal of the order made by the Motor Accidents Claims Tribunal, Bangalore City in M.V.C. No. 2079 of 1989, the claim petition is dismissed;

II. In M.F.A. No. 297/1992:

The Appeal is dismissed.