
(1992) 07 PAT CK 0018
In the Patna High Court
Case No : A.F.O.O. No. 684 of 1990 (R)

New India Assurance Co. Ltd.

APPELLANT

Vs

Bajrang Kumar Gupta and Others

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Citation : (1992) 07 PAT CK 0018

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—In this appeal, the question to be decided is:

As to whether in an appeal filed after the Motor Vehicles Act, 1988 (Act No. 59 of 1988) (hereinafter referred to as "the new Act") came into force against an award arising out of a proceeding under the Motor Vehicles Act, 1939 (Act 4 of 1939) (hereinafter to be referred to as "the old Act"), the appellant is required to comply with first proviso to Sub-section (1) of Section 173 of the new Act?

2. In this appeal, applicability of Section 173 of the new Act is point in issue. It is not disputed that in this appeal, the claimant (respondent No. 1) had filed his claim petition under the old Act but the appeal has been filed in this court after coming into force of new Act.

3. This appeal has been admitted for final hearing by order dated 28.10.1990 and notices were issued on respondent Nos. 1 and 2 under registered cover. While respondent No. 2 has appeared through Mr. P.C. Roy, Advocate, nobody has appeared on behalf of respondent No. 1 and by order dated 30.1.1992, the service of notice on respondent No. 1 has been accepted as valid.

4. It appears from the record of the case that after the admission of the appeal, a further stamp report has been made on 21.4.1992 by which the appellant has been required to follow the amended provision of law according to new Act and to file receipt showing deposit of the amount of Rs. 7,500 as contemplated in the first proviso to Sub-section (1) of Section 173 of the new Act. With the further stamp report, the matter has been placed before me and counsel for the parties

have argued at length on this stamp report.

5. Mr. M.Y. Eqbal, the learned counsel appealing on behalf of the appellant, urged that despite repeal of the old Act, the right of the appellant to file appeal u/s 110-D of the old Act survives and the appellant cannot be compelled to deposit the amount in terms of the first proviso to Sub-section (1) of Section 173 of the new Act. Further contention of Mr. Eqbal is that by repeal of the old Act and its substitution by the new one on the same subject, the substantive right of the parties cannot be adversely affected and the right as provided under the old Act is still available.

6. Mr. P.C. Roy, the learned counsel appealing on behalf of respondent No. 2, on the other hand, has submitted that as because the old Act has been repealed, the right of the appellant to file an appeal u/s 110-D of the old Act does not survive, the appeal has to be filed u/s 173 of the new Act after fulfilling the conditions laid down in first proviso to Sub-section (1) of Section 173. In support of their respective contentions, learned counsel for the parties referred to various decisions of the High Courts as well as the Supreme Court.

7. It has been contended by Mr. Eqbal that under the old Act the appellants have a right to file an appeal without depositing any amount and this right is preserved by reasons of Section 217(4) of the new Act read with Section 6 of the General Clauses Act, 1897 (hereinafter referred to as "the G.C. Act"). Reliance has been placed on clauses (c) and (e) of Section 6 of the G.C. Act. Relevant portions of the sections read thus:

217. Repeal and savings.-

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, with regard to the effect of repeals.

Similarly, Section 6 of the Act reads as under:

6. 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) xxx xxx xxx (b) xxx xxx xxx (c) affect any right, privilege, obligation or liability acquired, accrued, or inclined under any enactment so repealed; or

(d) xxx xxx xxx (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.

8. Mr. M.Y. Eqbal, on the basis of such provisions of law, has contended that the

appellant had an accrued right or privilege under the old Act of which it then has not been deprived by the repealing legislation. The question is whether the appellant has been deprived of an accrued right or privilege by the new Act. There is no dispute regarding the provision of law that under the old Act when an appeal was to be filed u/s 110-D, the appellant was not required to deposit any amount as a condition precedent for maintainability of the appeal. This provision of law under the old Act postulates that the appellant had a right to file an appeal under the old Act without any rigour and this right accrued to it when the claim petition was filed under the old Act.

9. Reading of the relevant portion of Section 217 of the new Act together with Section 6 of the G.C. Act leaves no iota of doubt that the legal proceeding instituted before repeal ought to be continued as if the new Act had not been passed at all.

10. I have already observed that by virtue of the provisions laid down in Section 110-D of the old Act, admittedly right or privilege accrued to the appellant for filing, the appeal without there being any condition of depositing Rs. 25,000/- or 50 per cent of the amount so awarded which is a new condition imposed by the first proviso to Sub-section (1) of Section 173 of the new Act. In the case of M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, , while considering the question that if an application filed by an operator for renewal of his permit u/s 58 of the old Act became extinct and was rendered nonexistent, in the eye of law, after coming into force of the new Act or it being a right within meaning of Clause (c) of Section 6 of the G.C. Act survived and continued despite repeal of the old Act, the Supreme Court observed that:

The objective of the provision is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability.

In the aforesaid case, the Supreme Court after considering the provision of Section 58 (2) of the old Act along with the provisions laid down in Sub-section (4) of Section 217 of the new Act has observed as thus:

Therefore, it is a right which is enforceable in law. This right accrued to the appellant as he had already applied for renewal and his application had been notified. The legal machinery was set in motion by him. He, therefore, had a right to get his application for renewal processed and considered in accordance with 1939 Act. It would be too artificial to say that it was not a right or it had not accrued under 1939 Act. Therefore, in our opinion, by virtue of Section 6(c) of the General Clauses Act the right of the appellant to get his application considered and decided in accordance with law was saved by Sub-section (4) of Section 217 of the Motor Vehicles Act.

11. Mr. P.C. Roy urged that the language of first proviso to Sub-section (1) of Section 173 of the new Act clearly makes the section retrospective. The new

proviso, it is pointed out, peremptorily requires the appellate court not to entertain the appeal unless it is accompanied by a satisfactory proof of the payment of the amount as laid down in first proviso to Sub-section (1) of Section 173. He further contended that after the amendment the appellate court has no option in the matter and it has no jurisdiction to entertain any appeal unless the amount is so deposited. It follows, therefore, by necessary implication, according to Mr. Roy, that the new provision applies to an appeal arising from a proceeding which had commenced before the new Act as well as to an appeal from an order arising out of a proceeding filed after that date. The contention of Mr. Roy shall have to be answered in the negative in view of decision in the case of Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, .

12. The facts of Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, , can be stated in short for appreciation of the aforesaid decision of the Supreme Court. The appellant in the aforesaid case as the assessee submitted sales tax return in Form IV for the first quarter and notice in Form XI calling upon the assessee to produce evidence in support of the said return having been issued by the Sales Tax Officer, the assessee produced his account books. The Sales Tax Officer by inspecting the account books was not satisfied regarding the correctness of the return and was of the opinion that taxable turnover exceeded Rs. 2,00,000/- and as such he submitted the case to the Assistant Commissioner, Sales Tax, for assessment. A fresh notice was issued in Form XI u/s 11 and fixed the case for disposal. After various hearings the Assistant Commissioner assessed the assessee, to the best of his judgment, in the sum of Rs. 51,657.14 and a copy of the order in Form XIV was sent to the assessee. Being aggrieved by the said order, the assessee preferred an appeal before the Sales Tax Commissioner u/s 22 (1) of the Central Provinces and Berar Sales Tax Act, 1947 (hereinafter referred to as "the said Act"). The appeal was not accompanied by any proof of the payment of the tax in respect of which the appeal had been preferred and as such the authorities after giving the assessee several adjournments, declined to admit the appeal. The assessee moved the Board of Revenue against the said order and contended that his appeal was not governed by the proviso to Section 22 (1) of the said Act as amended on 25.11.1949 by the Central Provinces and Berar Sales Tax (Second Amendment) Act (Act 57 of 1949) but was governed by the proviso to Section 22 (1) of the Act as it stood when the assessment proceedings were started, i.e., before the said amendment. The Board of Revenue took the view that as the order of assessment was made after the amendment of the section and the appeal was filed thereafter such appeal must be governed by the provisions of law as they existed before the filing of the appeal could not apply to the case. Being aggrieved, the assessee moved the High Court in its writ jurisdiction but the High Court also dismissed the said application. The Supreme Court granted SLP because the High Court also dismissed the application for leave to appeal to the Supreme Court. While granting special leave to appeal, it was limited to the question of the effect of the amendment to Section 22 of the said Act on the

petitioner's appeal to Sales Tax Commissioner. During the final hearing of the appeal before the Supreme Court, the Supreme Court was concerned only with the limited question of the effect of the amendment to Section 22 of the Act.

Section 22 (1) which has been quoted in the aforesaid judgment reads as thus:

Section 22 (1) of the Act was originally expressed in the following terms:

22. (1) Any dealer aggrieved by an order under this Act may, in the prescribed manner, appeal to the prescribed authority against the order:

Provided that no appeal against an order of assessment, with or without penalty, shall be entertained by the said authority unless it is satisfied that such amount of tax or penalty or both as the appellant may admit to be due from him has been paid.

The relevant portion of Section 22 as amended runs as follows:

22. (1) Any dealer aggrieved by an order under this Act may, in the prescribed manner, appeal to the prescribed authority against the order:

Provided that no appeal against an order of assessment, with or without penalty, shall be admitted by the said authority unless such appeal is accompanied by a satisfactory proof of the payment of the tax, with penalty, if any, in respect of which the appeal has been preferred.

13. I may conveniently quote para 9 of the said judgment which reads as thus:

(9) Mr. Ganapathy Aiyar urges that the language of Section 22 (1) as amended clearly makes the section retrospective. The new proviso, it is pointed out, peremptorily requires the authority not to admit the appeal unless it be accompanied by a satisfactory proof of the payment of the tax in respect of which the appeal is preferred and this duty the authority must discharge at the time the appeal is actually preferred before it. The argument is that after the amendment the authority has no option in the matter and it has no jurisdiction to admit any appeal unless the assessed tax be deposited. It follows, therefore, by necessary implication, according to the learned advocate, that the amended provision applies to an appeal from an assessment order made before the date of amendment as well as an appeal from an order made after that date. A similar argument was urged before the Calcutta Special Bench in *Sadar Ali and Others Vs. Doliluddin Ostagar*, , namely, that after the amendment the court had no authority to entertain an appeal without a certificate from the single Judge. Rankin, C.J., repelled this argument with the remark at p. 643:

Unless the contrary can be shown, the provision which takes away jurisdiction is itself subject to the implied saving of the litigants' right.

In our view the above observation is apposite and applies to the case before us. The true implication of the above observation as of the decisions in the other cases referred to above is that the preexisting right of appeal is not destroyed by

the amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purposes of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right. The argument that the authority has no option or jurisdiction to admit the appeal unless it be accompanied by the deposit of the assessed tax as required by the amended proviso to Section 22 (1) of the Act overlooks the fact of existence of the old law for the purposes of supporting the pre-existing right and really amounts to begging the question. The new proviso is wholly inapplicable in such a situation and the jurisdiction of the authority has to be exercised under the old law which so continues to exist. The argument of Mr. Ganapathy Aiyar on this point, therefore, cannot be accepted.

14. Mr. Roy further submitted that the requirement as to the deposit of the amount as contemplated in first proviso to Sub-section (1) of Section 173 of the new Act does not affect intact the right of appeal itself which still remains but only introduces a new matter of procedure. Developing his argument, Mr. Roy submitted that the conditions which have been imposed u/s 173 is a pre-requisite for filing an appeal are in fact not onerous in nature. He urged that the Motor Vehicles Act, the part of which deals with award for compensation for death or disablement arising out of an accident is a social legislation for the benefit of the victim of the accident. Thus the argument proceeds that if the law enjoins deposit of money, it is only to protect the interest of the claimants who are in any case the worst sufferers. Mr. Roy further submitted that in order to give succour to them by making at least a part of compensation awarded available to them, it cannot be said that this condition would be an onerous imposition of liability. In my opinion, the argument of Mr. Roy is to be noticed and rejected.

15. In the first place the onerous condition is an impediment in the exercise of the right of appeal. Further there cannot be any doubt that new requirement touches the substantive right of appeal vested in the appellant. It cannot be overlooked that such a requirement is calculated to interfere with or fetter, if not to impair or imperil the substantive right which has accrued to the appellants. My aforesaid view is supported by the decision of Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, , wherein their Lordships have categorically laid down that a provision which is calculated to deprive the appellant of the unfettered right of appeal cannot be regarded as a mere alteration in procedure. Indeed the new requirement cannot be said merely to regulate the exercise of the appellant's pre-existing right but in truth whittles down the right itself and cannot be regarded as a mere rule of procedure.

16. Mr. P.C. Roy, in support of his submission, relied on a Full Bench decision of

Madhya Pradesh High Court in the case of Gaya Prasad and Another Vs. Suresh Kumar, and submitted that in an appeal preferred u/s 173 of the new Act after 1.7.1989 irrespective of the date of accident and date also of the award (whether passed u/s 110-B of the old Act or Section 168 of the new Act), the appellate court would be required, as statutorily mandated under the first proviso to Section 173(1), to pass necessary order in regard to the requisite deposit to be made for the appeal to be heard and decided. For this legal proposition, Full Bench of the Madhya Pradesh High Court has relied upon the Division Bench decision of the Allahabad High Court in Oriental Insurance Co. Ltd., Haldwani Vs. Dhanram Singh and others, In Oriental Insurance Co. Ltd. (supra), the Division Bench of the Allahabad High Court held that the appeal filed without the appellant's first complying with the provisions of Section 173(1) of the new Act was not maintainable and further held that a right of appeal accruing under the old Act being a substantive right is saved even after repeal by the new Act, but as the appeal is lodged after 1.7.1989, it must be u/s 173 of the new Act and must comply with the conditions as laid down in that section. With these observations, the said Division Bench has declined to entertain the appeal.

17. It is significant to note this very decision of the Allahabad High Court has been subsequently reviewed by the same Division Bench which is also reported in Oriental Insurance Company Ltd., Haldwani Vs. Dhanram Singh and others, The Division Bench has modified its earlier decision reported in Oriental Insurance Co. Ltd., Haldwani Vs. Dhanram Singh and others, The Division Bench of Allahabad High Court, subsequently, after noticing various decisions of the Supreme Court, especially the decision in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, , reviewed its earlier judgment and held as follows:

For the foregoing reasons, in our opinion, the application for review deserves to be allowed and order dated 4th August, 1989, is reviewed to the extent that the sentence in the penultimate para "and must comply with the conditions such as are laid down in that section", and the last para should be deleted and we would substitute the last para as under:

We, therefore, hold that an appeal from a proceeding initiated u/s 110-A of the Motor Vehicles Act, 1939, would be maintainable u/s 173 of the Act 59 of 1988 and that the provisions of the old Act would continue to apply to all appeals which arise from proceedings initiated prior to the date of enforcement of the said Act.

18. In para 28 of the judgment, the Full Bench in Gaya Prasad and Another Vs. Suresh Kumar, observed as follows:

(28) What survives now is to note merely the other decisions which counsel cited to establish the accepted position with which there is no quarrel. Reference is made to the decisions in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, ; State of Punjab v. Mohar Singh AIR 1955 SC 24

Garikapatti Veeraya Vs. N. Subbiah Choudhury, ; State of Bombay v. S.G. Films Exchange AIR 1960 SC 980; Mukund Deo (Dead) represented by his legal representatives Kasibai and Others Vs. Mahadu and Others, ; Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, ; T.S. Baliah Vs. T.S. Rengachari, and Jayantilal Amrathlal Vs. The Union of India (UOI), . We have gone through those decisions, but we do not find that view taken by us is indented in any manner by anything stated in those cases. Suffice it to say this much that different saving clauses in different enactments were construed in some of those cases and the construction evidently was founded upon the language of statutory provisions in each case.

For the reasons already stated, I am in respectful disagreement with the decision of the aforesaid Full Bench of Madhya Pradesh High Court in Gaya Prasad and Another Vs. Suresh Kumar, Mr. Roy has also drawn my attention to the case of Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, . He has drawn my attention particularly to the observations made by the Supreme Court in para 9 of the said judgment which reads as follows:

(9) Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

19. There is no dispute with regard to the legal position but, in my opinion, this observation of the Supreme Court also does not help the respondents, inasmuch as, in the aforesaid case, the Supreme Court was dealing with the provisions as laid down in Sections 129A and 129E of the Customs Act, 1962, while interpreting the provisions as laid down in Section 129E of the Customs Act, the Supreme Court has held that the aforesaid section provides a conditional right of appeal in respect of an appeal against the duty demanded or penalty levied. Although the section does not expressly provide for rejection of the appeal for non-deposit of duty or penalty yet it makes it obligatory on the appellant to deposit the duty or penalty pending the appeal, failing which the appellate Tribunal is fully competent to reject the appeal. In that case, the contention was raised on behalf of the petitioner that in a situation of this type, the condition for deposit of penalty was bad as it whittled down the appellants' right of appeal. The Supreme Court noticed the case of Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, and while rejecting the argument on behalf of the appellant, has held as follows:

The aforesaid observations, in our opinion, have no application to the instant case. Here the right that was granted was a right held with a condition. There was no question of change of that right. In the instant case the only substantive right is the right of appeal as contemplated under Sections 129A and 129E of the Act and that right is a conditional one and the legislature in its wisdom has imposed that condition. No question of whittling down that right by an alteration of procedure arises in this case.

20. From the aforesaid pronouncement of the Supreme Court, it can easily be concluded that under the old Act, the appellant had a right to file appeal without there being any condition laid down in Section 110-D. Thus, when a claim was filed under the old Act, a right accrued to the appellant for filing an appeal without depositing any portion of the award. This condition for deposit u/s 173(1) certainly whittles down the appellant's right of appeal and when the right to appeal is a vested right and the change in law after initiation of proceedings before the Claims Tribunal has not divested the vested right of the appellant because the right of appeal is not a matter of procedure, and this right becomes vested in a party when the proceedings are first initiated in the inferior court and such a right cannot be taken away except by express enactment or necessary intendment.

21. Similarly, in the case of State of Bombay Vs. Supreme General Films Exchange Ltd., , the Supreme Court has held in para 12 of the judgment as follows:

(12) It is thus clear that in a long line of decisions approved by this court and at least in one given by this court, it has been held that in impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.

22. From all the discussions made hereinabove including the law laid down by the Supreme Court, it is clear that by the old Act the right of appeal with regard to claims filed under the old Act has not in any way impaired or imperilled by giving retrospective effect either expressly or by necessary intendment, the first proviso to Section 173(1) of the new Act shall have no application to this case.

23. This court very recently by its order passed in New India Assurance Co. Ltd. v. B. Venkata Ramani M.A. No. 240 of 1991 (R); decided on 23.4.1992, under the similar circumstances has held that the appellant is not required to deposit the statutory amount in terms of first proviso to Sub-section (1) of Section 173 of the new Act.

24. Having given my anxious consideration, I am of the view that in the instant case the appellant is not required to deposit the amount in terms of the first proviso to Sub-section (1) of Section 173 of the new Act. I, therefore, hold that the appeal is maintainable even without depositing the required amount as laid down in the first proviso to Sub-section (1) of Section 173 of the new Act.