
(1994) 10 AP CK 0014

In the Andhra Pradesh High Court

Case No : C.M.A. No"s. 315 and 354 of 1993

New India Assurance Co. Ltd.

APPELLANT

Vs

Jaddu Inna Reddy and Others

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140, 144, 217

Citation : (1994) 3 ALT 715 : (1995) 1 APLJ 63

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : S.V.R.S. Somayajulu and S. Rajakumar, for the Appellant; C. Yadagiri, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Raikote, J.—These two appeals give rise common questions of facts and law and therefore, they are disposed of by this common judgment.

2. Respondents Nos.1 and 2 in C.M.A. No. 315 of 1993 filed a Claim Petition i.e., O.P. No. 114/1988 before the Motor Accidents Claims Tribunal, (Addl. District Judge) Nalgonda, claiming certain compensation from the present appellant and respondents 3 and 4, who are the Insuree Company, owner and driver of the lorry bearing No.ATT 6867. They claimed to be the parents of the deceased Jaddu Kiran Reddy, who died in the Motor accident that occurred on 2-3-1988. Likewise, Respondents Nos.1 to 6 in C.M.A. No. 354 of 1993, who are the legal representatives of the deceased Mudiga Iddamma, filed a claim petition i.e., O.P. No. 115/88 before the same Motor Vehicles Accidents Claims Tribunal, Nalgonda, claiming certain amount of compensation against the present appellant, Respondents Nos. 7 and 8, who are the Insurance Company, owner and driver of the lorry bearing No. ATT 6867, respectively, for the death of the deceased Iddamma in the same accident. The Motor Accidents Claims Tribunal has awarded Rs. 25,000/- in each claim petition, towards compensation on the basis

of no fault liability u/s 140 of the Motor Vehicles Act, 1988, hereinafter referred to as the "New Act".

3. Aggrieved by the same, the New India Assurance Company Limited, has preferred these appeals contending that the Claims Tribunal ought not to have awarded the compensation at Rs. 25,000/- in each claim petition under "no fault liability", but it should have restricted the same to Rs. 15,000/- in each claim petition under the Motor Vehicles Act, 1938, hereinafter referred to as the old Act" on the basis of the allegation that the accident has occurred on 2-3-1988 prior to the Motor Vehicles Amendment Act, 1988 (new Act). It is contended that on the date when the accident occurred, it was the old Act that applied to the facts of the case and u/s 92-A of the old Act, the Tribunal ought not to have fixed the compensation under "no fault liability" at Rs. 15,000/-.

4. I have heard the learned Counsel for the appellants as well as the respondents.

5. To appreciate the contentions of both sides, it is necessary to narrate a few facts hereunder:

6. It is alleged by the claimants in both the appeals that on 2-3-1988, Jaddu Kiran Reddy and Mudiga Iddamma and others were travelling in the lorry bearing No.ATT 6867 with their baggage and all other cooking utensils and that they had paid the fare to the driver of the lorry. It is contended that the deceased were sitting in the cabin when the lorry was being driven by the driver Hussain Bin Ali and the lorry belonged to M/s. Economic Road Ways Corporation, Hyderabad. It is alleged that when the lorry was getting down a slope of the ghatnearbandal quarry on Nagarjuna sagar-Hyderabad road, the driver of the lorry drove it in a rash and negligent manner at a high speed and when he applied sudden brakes, the iron boulders slipped ahead and both the deceased were crushed to death in between the iron boulders and the cabin and on that basis, the respective petitioners in their different O.Ps. claimed Rs. 50,000/- towards compensation.

7. As stated above, the Claims Tribunal by the impugned award has awarded Rs. 25,000/- in each petition towards compensation under "no fault liability" with certain costs. Being aggrieved by the said judgment and award, it is the Insurance Company which has preferred these appeals contending that the compensation shall be fixed at Rs. 15,000/- under "no fault liability" under the old Act and therefore, the claims tribunal is in error in awarding Rs. 25,000/- towards compensation under the old Act.

8. It is not in dispute that the accident had occurred on 2-3-1988 and on the date of the accident, it was the M. V. Act, 1939 which was in force. The M.V. Act, 1988 (new Act) which repealed the old Act, has been given the commencement with effect from 1-7-1989. Having regard to these circumstances, the learned Counsel for the appellant in both the appeals contended that under the old Act, the compensation towards "no fault liability" was only Rs. 15,000/- and as such, the Claim Tribunal ought not to have awarded the sum at Rs. 25,000/-. Therefore, to the extent of the excess compensation, the impugned award and

judgment are liable to be set aside.

9. On the other hand, the learned Counsel for the respondents-claimants in both the appeals contended that the provisions of Section 140 of the new Act are applicable even to the pending proceedings, in view of the fact that Chapter-X under the heading "Liability without fault in certain cases" has been given overriding effect u/s 144 of the new Act. At any rate, the relevant provisions under the new Act and beneficial provisions and, therefore, the same are applicable to the accidents which occurred prior to the commencement of the new Act if the proceedings pertaining the same are pending. Therefore, the learned Counsel for the respondent-claimants contended that the judgment and award of the claims tribunal do not call for any interference,

10. I have given a very anxious consideration to the rival contentions submitted by both sides.

11. Section 140 of the new Act corresponds to Section 92-A of the old Act. In substance, Section 140 of the new Act is a replica of Section 92-A of the old Act/ except to the extent that instead of Rs. 15,000/- provided earlier, now the new Act provided Rs. 25,000/- as compensation under "no fault liability". We are not immediately concerned with the other part of the Section. Section 143 of the new Act makes this Chapter X applicable even to the claims regarding the accidents under the Workmen's Compensation Act, 1923. Section 144 of the new Act gives an overriding effect to the provisions of this Chapter X. It is necessary to quote Section 144 of the new Act, which reads as follows:

"The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force"

12. Section 217 of the new Act provides that the old Act and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State were hereby repealed.

13. Sub-section (4) of Section 217 of the new Act provides as follows:-

"The mention of particular matters in this section shall not be held to prejudice or effect the general application of Section 6 of the General Clauses Act, 1987 with regard to the effect of repeals."

14. From these provisions, it is clear that this repeal shall be subject to the provisions of Section 6 of the General Clauses Act, 1987. The relevant portion of Section 6 of the General Clauses Act, 1987 reads as under:

"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).....

(b).....

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

15. From the reading of Section 6 of the General Clauses Act, 1987, it is clear that unless a different intention appears, the repeal of an Act would save the liability accrued or incurred under the old Act. But in the instant case, we are concerned with the question, whether a different intention appears from the new Act regarding the "no fault liability" or not?

16. From Section 144 of the new Act, it is clear that Chapter X pertaining to the liability without fault has been given overriding effect notwithstanding anything contained in any other provisions of the new Act or of any other law for the time being in force. From this, it is clear that notwithstanding the repeal of the M.V. Act, 1939 by virtue of Section 217 of the new Act, this Chapter shall be given overriding effect. Therefore, it follows that even regarding the accidents occurred when the old Act was in force and notwithstanding such repeal, this chapter shall have the overriding effect. It is clear that the intention of the Legislature by enacting the new Act, particularly Chapter X is to give overriding effect to Chapter X of the new Act, notwithstanding such repeal of the old Act, 1939. This Act being a beneficial legislation deserves a liberal interpretation. From this principle the only inference that is possible is that under Chapter X of the new Act regarding "no fault liability" the intention of the Legislature is to confer benefit even to the accidents which occurred earlier to the commencement of the new Act. I am fortified in this behalf by a Division Bench decision of this Court in *Dorakonda Venkatrama Seshachalapathi Vs. Vijayawada Co-operative Central Bank, Vijayawada and Another*, . In that case, this Court interpreted Section 92-A of the old Act, which was incorporated by Act No. 47 of 1982, which came into force with effect from 14-04-1982. Relying on an earlier judgment reported in *T. Srinivasulu Reddy Vs. C. Govardana Naidu and another*, . it was held that the benefit of Section 92-A of the M.V. Act, 1939 was applicable even to cases where the accidents had taken place prior to 1-10-1982 the date on which Section 92-A of the M.V. Act had come into force. In other words, it was held in the said decision that Section 92-A was applicable to the pending proceedings in respect of the accidents which occurred prior to the date when the provisions came into force. In this decision, however, the effect of overriding provisions of Section 92-A of M.V. Act, 1939, which is pari materia similar to Section 144 of the M.V. Act, 1988, has not been considered. It is to be noted herein that Section 92-A of the old Act or Section 140 of the new Act is a matter of departure from common law principle that the claimants are entitled for damages on the basis of the principle of negligence but in the case of no fault liability, whether there is a fault or not, or whether there is negligence or not, the liability is saddled with the person who caused the accident. It is pertinent in this context to refer to a decision rendered by the Hon'ble Supreme Court in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai*, 1987 ACJ 561 (SC), in which it is observed thus:-

"From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous, "hit and run" cases, where the drivers of the motor vehicles who have caused the accidents are not known, are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet, to some extent, the responsibility of the society to the deaths and injuries caused in-road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicle accidents as a liability without fault. In order to meet the above social demand, Chapter VII-A was introduced in the Act. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent, the substantive law of the country stands modified."

17. From this, it is clear that Chapter X of the new Act (Chapter VII-A of the old Act) is to have the compensation from the opposite party, whether the opposite party was guilty or not. This amount of compensation was fixed by the Statute itself irrespective of any such right or liability. But having regard to the inflationary trends in India, the new Act provides the compensation of Rs.25,000/- towards "no fault liability" as against Rs. 15,000/- u/s 92-A of the old Act. This aspect and also the fact of overriding effect of Section 144 of the new Act has been specifically considered by the Division Bench of Kerala High Court in the decision reported in United India Insurance Co. Ltd. Vs. Padmavathy and Others, . It would be convenient to extract a part of the said Judgment, which reads as under:-

"In this context, we may profitably refer to another decision of the Supreme Court which really paved the way for enhancing the quantum of compensation under "no fault liability". In M.K. Kunhimohammed v. P.A. . Ahked Kutty, (1987 ACJ 872 SC), Venkataramaiah, J. (as he then was) made special notice of certain provisions in the Motor Vehicles Bill No. 56 of 1987 (which later became the New Act). Their Lordships felt that these clauses in the Bill which corresponded to the provisions in Chapter VII-A of the repealed Act did not in fact retain the original concern for the victims as the amount of compensation under no fault liability suggested in the bill remained trip same as in the repealed Act. Hence, their Lordships made the following observations:-

"Having regard to the inflationary pressures and the consequent loss of purchasing power of the rupee we feel that the amount of Rs. 15,000 / - and the "ampunt of Rs. 7,500/- in the above provisions appear to have become unrealistic. We, therefore, suggest that the limits of compensation in respect of death and in respect of permanent disablement, payable in the event of there being no proof of fault, should be raised adequately to meet the current

situation."

18. The, said suggestion of the Supreme Court was given due respect by the law making machinery when the bill was finally introduced in Parliament. This fact can be discerned from the Statement of Objects and Reasons prefaced in the new Act. Therefore, in effect the Parliament has only retained the same right which was conferred on the victims through Chapter VII-A of the reported Act. The difference in the quantum; of compensation is only intended to make the right realistic and at par with the earlier fixed amount. Hence Section 6 of the General Clauses Act would not impede the enforcement of Section 140 of the New Act in relation to an accident which occurred prior to the coming into force of the new Act."

19. For yet another reason, we can support the said conclusion. Section 6 of the General Clauses Act permits switching over to the repealed Act only if a different intention does not appear in the new statute. Such a different intention, can be discerned from the New Act. It is in Chapter X of the New Act that provision regarding "no fault liability" have been included. The Chapter starts with Section 140 and ends with Section 144. The last section reads as follows:-

"The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force". The different intention manifested in the New Act is that provisions in Chapter X should get predominance over all other laws. The provisions contained in that chapter must be given effect to notwithstanding any contrary proviso in any other law including Sec. 6 of the General Clauses Act. All other provisions, therefore, must yield to the provisions contained in Chapter X of the New Act. This is the Tegislative intention manifested through Section 144 of the new Act".

20. From the principle enunciated by the Division Bench of the High Court of Kerala also it is clear that Section 144 of the New Act has been given overriding effect and, therefore, even regarding the accident that occurred prior to the new Act, the Legislature has provided a compensation at Rs. 25,000/-. However, the learned Counsel for the appellant brought to my notice a single judge decision of this Court reported in *New India Assurance Co. Ltd. Vs. Kramtan Perinayagam and Another*, ., in which Radhakrishna Rao, J. (as he then was) has held that even regarding the "no fault liability" the claimants would be entitled to compensation as per law on the date of the accident and subsequent amendment would not enure to their benefit. I am afraid that this decision of the learned single Judge cannot be accepted in view of the judgment of the Division Bench of this Court in *Dorakonda Venliatrama Seshachalpathi v. Vijayawada Co-op. Central Bank, Vijayawada* (1 supra), since I am prima-facie, bound by the judgment of the Division Bench of this Court.

21. In fact, the view I have taken in this case that Section 140 of the new Act has retrospective application even regarding the accidents that had occurred prior to the new Act is also supported by the Judgment of the High Court of

Madhya Pradesh at Jabalpur reported in National Insurance Co. Ltd. Vs. Ram Kishore Soni and Others, , in which the learned single Judge of that High Court ruled as under:-

"No doubt, bare reading of the provisions of Section 140 of the Act No. 59 of 1986 reveals that the legislature has not provided any provisions so as to directly infer its retrospective operation. However, that is not at all. Retrospective operation could also be inferred even by necessary implication of the language used in the statute and the aims and objects of the enactment".

"Besides, this change in law has to be taken into consideration in subsequent proceedings as well. Therefore, during the pendency of (sic. a claim when) the Act No. 59 of 1988 came into force providing larger benefits to the victims or the family members of the victim, the same cannot be ignored while exercising jurisdiction of granting ex gratia compensation. See Lakshmi Narayan Guin and Others Vs. Niranjana Modak, wherein it has been ruled that change in law pending appeal has to be taken into account. "In Oriental Fire and General Insurance Co., Ltd. v. Shantabai S. Dhule, 1987 ACJ 198 (Bombay), while interpreting provisions of Section 92-A of the Motor Vehicles Act, 1939 (now repealed) it was held that the provision is retrospective. Similarly, the present provision appearing in the Act No. 59 of 1988 is also, being *pan materia* to the provisions of Section 92-A of the repealed Act, retrospective in operation in awarding compensation."

"From the discussions aforesaid provisions of Section 149 of the Act No. 59 of 1988 providing no fault liability has got retrospective operation and the trial Court has not exceeded its jurisdiction in awarding ex gratia compensation to the tune of Rs. 25,000/-"

22. To the same effect is also the Division Bench Judgment of the High Court of Punjab & Haryana reported in Mosmi and Another Vs. Ram Kumar and Others, .

23. Having regard to the interpretation I have placed on Section 140 read with Section 144 of the new Act and also having regard to the judgment of this Court and other judgments of other High Courts, the impugned Judgment and award of the claims tribunal, awarding Rs. 25,000/- towards no fault liability under new Act even though the accident occurred prior to the commencement of the new Act i.e., the Motor Vehicle Act, 1988, does not call for interference. Accordingly, these two appeals are dismissed. But in view of the facts and circumstances of the case, there shall not be any order as to costs.