

(1991) 04 MP CK 0033

In the Madhya Pradesh High Court

Case No : Civil Revision No. 14 of 1991

New India Assurance Co. Ltd., Gwalior

APPELLANT

Vs

Nafis Begam and Others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

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

Citation : (1991) ACJ 960 : AIR 1991 MP 302 : (1991) 36 MPLJ 700 : (1991) MPLJ 700

Hon'ble Judges : S.K. Jha, C.J.; K.M. Agarwal, J.; D.M. Dharmadhikari, J

Bench : Full Bench

Advocate : K.K. Labori, for the Appellant;

Judgement

D.M. Dharmadhikari, J.

The order passed by us in this revision shall govern the disposal of Miscellaneous Appeal No. 191 of 1990 (The New India Assurance Company Ltd. Gwalior v. Smt. Kasturibai w/o Late Shri Radheshyam Gautam and others) also.

The learned single Judge (S.K. Dubey, J.) at the Gwalior Bench of this Court has referred the legal question involved for decision by a Full Bench in view of the cleavage of opinions between the two Division Bench decisions of this Court reported in the case of Karuram and Others Vs. Omprakash and Others, (decided by P.D. Mulye and K.L. Shrivastava, JJ. of the Indore Bench) and the decision in the case of Indramani Makhriva v. General Manager M.P.S.R.T.C. 1990 Jab LJ 560 (decided by Division Bench consisting of Faizan Uddin and Y.B. Suryavanshi JJ. of the main seat at Jabalpur.

The question also came up for consideration before a learned single Judge at the Gwalior Bench, namely, B.C. Lahoti J. on a difference of opinion between Dr. T.N. Singh J. and K.K. Verma J. The third Judge to whom the case was referred for resolving the dispute (R.C. Lahoti J.), agreed with the opinion expressed by K.K.

Verma J. The opinions of three Judges of the Gwalior Bench are reported in the case of Bhagwandas v. National Insurance Co. Ltd. 1990 MPJR 578.

The question arising before the Full Bench is whether the provisions providing for interim compensation based on the principle of no fault liability contained in Section 92-A, which was introduced by Amendment Act No. 47 of 1982 and brought into force with effect from 1-10-1982 of the M.V. Act 1939 (now repealed by M.V. Act of 1988 w.e.f. 1-7-1989), can also apply and govern the rights and liabilities of the parties in a pending claim before a Claims Tribunal in respect of accidents which occurred prior to 1-10-1982. In other words, the question is whether Section 92-A of the Act has to be given only prospective operation in relation to accidents which occurred after 1-10-1982 or even to those which occurred prior to the above date.

At the outset it may be stated that the Act of 1939 stands repealed by the Act of 1988 with effect from 1-7-1989 and similar provision as contained in Section 92-A of the repealed Act had been re-enacted in Section 140 of the 1988 Act with the only difference that the amounts of no fault compensation have been increased from Rs. 15,000/- to Rs. 25,000/- in case of death and from Rs. 7,000/- to Rs. 12,000/- in case of permanent disablement.

For the decision of the above legal question which is relevant both for the purpose of the provisions in Section 92-A of the repealed Act and Section 140 of the Act of 1988, it would be necessary to consider the nature and content of the various legal provisions involved. Section 92-A is a part of Chap. VII-A introduced by the Amendment Act No. 47 of 1982 and is in par materia with Section 140 of the Act of 1988. Section 92-A under consideration before us reads as under :--

"92-A. Liability to pay compensation in certain cases on the principle of no fault.-- (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

Section 1 (I) "& (2) of the Amendment Act No. 47 of 1982 by which Section 92-A was introduced in the repealed Act reads as under;--

"1. Short title and commencement.-- (1) This Act may be called THE MOTOR VEHICLES (AMENDMENT) ACT, 1982.

(2) It shall come into force on such date as the Central Government may, by notification in the Official gazette, appoint and different dates may be appointed for different provisions of this Act."

We tried in vain to search for the notification issued in terms of Section 1 (2) of the Amendment Act to ascertain the date of enforcement of the provisions of Section 92-A, but from the various opinions expressed by the Judges of this Court and by order of the referring Judge we take it that Section 92-A was brought into force by notification with effect from 1-10-1982. the Division Bench at the main seat in which opinion is expressed for the Bench by Y.B. Suryawanshi J. takes the view that Section 92-A would be applicable to all pending claims even if the accident occurred prior to 1-10-1982, that is, before enforcement of Section 92-A of the Act. The Division Bench at the main seat preferred to agree with the view expressed by Bombay High Court on the subject and dissented from the views expressed by Division Benches of Allahabad and Rajasthan High Courts. The reasoning is contained in paragraph 12(f) of the opinion expressed by Suryawanshi J., which may be quoted as under :--

"12 (f). With respect we are unable to agree with the view expressed by the D.B. of Allahabad High Court and the Rajasthan High Court in the above said decisions. We are inclined to accept the view expressed by the Bombay High Court in *Shantibai*'s case (supra), more so, for the reason that so far as pending cases are concerned, to draw a distinction between accidents which had occurred before 1-10-1982 or thereafter is an artificial distinction suppose a man died on or sustained injuries on 30-9-1982 and in another case such incident happened on 1-10-82 would be illogical and unreasonable and even discriminatory to hold that the benefits of the social welfare legislation could not be given in the former case. There is much substance in the submission, that after all, an appeal is continuation of a suit and, therefore, this beneficial provision has to be extended not only in a pending case but also in a pending appeal."

A similar view agreeing with the view of Suryawanshi J. has been expressed in the case of *Bhagwandas v. National Insurance Co. Ltd.* 1990 MPJR 578 by Dr. T.N. Singh, J but on his own reasonings contained in paragraph 70 of the report reproduced below:--

"70. Needless to reiterate that the interpretation of Section 92-A herein made has emphasized the pre-existing liability of an owner and insurer of a motor vehicle involved in an accident to focus on the procedural duty of the court/Tribunal created thereunder and in that connection the universally respected rule of construction that presumption against retrospective operation of statute is not extended to matters of procedure may be recalled (See Colonial Sugar Refining Co. v. Irving, 1905 AC 369. Garikapatti Veeraya Vs. N. Subbiah Choudhury, We may also profitably refer to Apex Court's recent decision in Mithilesh Kumar and Another Vs. Prem Behari Khare, wherein it was observed that "a statute is not properly called retrospective statute because of a part of the requisite for its action is drawn from a time antecedent to its passing". It was further observed that the court must look at the general scope and purview of the statute and at the remedy sought to be applied and consider what was the former state of law and what the legislation contemplated."

The third learned single Judge (R.C. -Lahoti J.) expressed a contrary opinion agreeing with K.K. Verma J. in the above case and held that the piece of legislation under consideration is not a procedural law, but a substantive law. His opinion contained in paragraphs 92 and 93 may be quoted as under:

"92. The substantive law defines remedy and right while the law of procedure defines the modes and conditions of the application of one to the other. The law or procedure may be defined as that branch of law which governs the process of that action. In civil law the rules as to measure of damage pertain to the substantive law, not less than those declared that damages are actionable (See Salmond on Jurisprudence, XIth edition, Chapter XII. at pages 503-504).

A new head of liability having been created and a new measure of damages having been brought into existence taking a long march in the field of law of torts, the amendment is clearly within the domain of substantive law and not procedural law. The common law recognised concept of liability in road accidents only on proof of negligence and hence enactment of "no fault liability" cannot be termed as providing procedure merely for enforcement of such liability."

Indore Division Bench of this Court held the provision of Section 92-A only prospective and applicable to accidents happening after coming into force of the said provision, but there is not much discussion on the legal aspect of the case.

It is in the above background of the legal provisions and the various opinions expressed by Judges of this Court that the question has to be considered. The settled canon of interpretation is that a law enacted is to operate prospectively unless it is expressed to be retrospective in operation, by the legislature itself or the nature of the law is such that it is to operate on passed events and transactions as well. Craies on Statute Law in the Sixth Edition states the above principle in the following words:--

"The general rule of law undoubtedly being that except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is

not to receive a retrospective construction and perhaps no rule of construction is more firmly established than this -- that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment."

Maxwell on The interpretation of Statutes, Twelfth Edition at page 216 has quoted Craies with approval in the following words :--

"Statute is retrospective which takes away or impairs any vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect to transactions or consideration already past..... but a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing."

According to the learned author "we must look at the general scope and purview of the statute, and at the remedy sought to be applied and consider what was the former state of law, and what it was that the legislature contemplated".

The piece of legislation under consideration before us is undoubtedly a social welfare legislation. The object of the enactment is obviously to provide quicker relief to the victims of the motor accidents irrespective of the fact whether there is negligence or not on the part of any of the parties to the accident. The right of compensation based on principle of no fault liability to the victims and the corresponding liability of the owner and insurer of the vehicle arises on the occurrence of the accident. The accident is the cause of giving rise to the rights and liabilities of the parties involved in it. The state of law existing on the date of the accident should govern the rights and liabilities of the parties. We derive support from the decision of the Supreme Court in the case of Padma Srinivasan Vs. Premier Insurance Company Limited, and particularly the following passage contained in paragraph 5 thereof.

"Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In this behalf the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy."

The question before the Supreme Court was whether the insurer's liability for the third party risks under the statutory policy must be held to be limited to Rs. 20,000/- according to the relevant legal provision as it existed on the date on which the policy came into force or, whether that liability can be extended to Rs. 50,000 - in accordance with the legal provision as it stood on the date of the accident, the accident having occurred during currency of the policy. The above

opinion was expressed by the Supreme Court in the context of the above question and it was held that the contracting parties to the insurance policy referred to the provisions of Chapter VIII of the Act which was construed by the Supreme Court, as meaning "the provisions of Chapter VIII as in force at any given time", the given time being the date on which the right to sue accrues or correspondingly the liability arises.

It can thus be held that the rights and liabilities under the Act arise on happening of the accident and not on any subsequent date. The filing of the claim petition before the Claims Tribunal has no relevance with regard to the rights and liabilities of the parties which should be governed by the state of law existing on the date of the accident and not on the state of law existing on the date of filing of the claim petition or of the filing of the appeal in the case. If the rights and liabilities of the parties were held to depend on any change of law affected subsequent to the accident, discriminatory situation is likely to arise between the parties involved in accidents happening even on the same date. A concrete illustration may make the above situation clear. An accident takes place on 1-8-1982 i.e. prior to introduction of Section 92-A. The parties involved in the accident amicably settled the claim and the owner and the insurer discharged their liabilities on the basis of state of law existing. On the same date i.e. 1-8-1982 another accident takes place and the victims are required to prefer a claim before the Claims Tribunal on or after 1-10-1982 by which time Section 92-A has come into force. Grant of benefit of new law in the latter situation in a pending case before the Claims Tribunal would give rise to an unjust and discriminatory situation where fortuitous circumstances of no amicable settlement reached between the parties in the latter case would result in benefits on the victims with no scope of claiming similar benefit by the victims in the former case who chose to settle the claim amicably. Interpretation of law which is likely, to result in such unjust and discriminatory situations has to be avoided. Craies on Statute Law at page 390 has referred to the opinion of N. Section Wales C.I. in *Midland Ry. v. Pye* in the following words "a retrospective operation ought not to be given to the statute unless the intention of the legislature that it should be so construed is expressed in plain and unambiguous language, because it manifestly shocks our sense of justice that an act, legal at the time of doing it should be made unlawful by some new enactment". On the basis of the above principle, accidents happening prior to and after change of law should be governed by uniform principle to avoid such unjust and unequal results. The date of accident should, therefore, be taken as the date of application of the state of law existing then.

As an internal aid to the construction of the statute contained in provisions of Section 92-A of the Act, reference may be made to Section 1 (2) of the Amendment Act already quoted above. The legislature thereby has reserved to itself the rights to enforce several provisions of the Amendment Act from a suitable date to be notified in the official gazette. The very fact that the provisions of Section 92-A have been brought into force with effect from

1-10-1982 and not from any date prior to it is, in our opinion, a sure indication that the legislature never intended to give benefit of the new provisions based on no fault liability to parties involved in accidents taking place prior to coming into force of the said provision.

It is not to be forgotten that the provisions under consideration create new rights in favour of victims involved in motor accidents and impose new liabilities on owners and insurers. A retrospective operation of changed law to past accidents is bound to adversely increase liabilities of the owners and insurers. It seems apparently unjust to impose fresh liabilities on owners and insurers for past events on the basis of subsequent change in law which was not in contemplation of the parties either at the time of insurance or accident. The illustration given by Surya-wanshi, J. in his opinion in the case arising at the main seat (supra) needs a comment at this stage. When a change in law is brought about prospectively, it has always the result of application of unamended law to past events and the amended to the subsequent happenings. A cut off date based on the coming into force of new provisions is always in contemplation of legislature while enacting a law prospectively. This cannot be said to be unjust result of change in law.

As explained by us above, the legislation before us is a piece of substantive law creating new rights and liabilities. Retrospective operation cannot be given, treating it as a procedural law, as is sought to be done by Dr. T. N. Singh, J. in his opinion expressed in the case which arose at the Gwalior Bench (supra),

We derive some assistance in our above view by the following observation of the Supreme Court in the case of R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others,

"We assess compensation for each of them at Rs. 20,000.00 in the absence of any specific evidence. This is keeping in view the quantum of no fault liability now provided by the statute prospectively."

The decision on the subject matter of the Gwalior Bench referred to above in the case of Bhagwandas v. National Insurance Co. Ltd. 1990 MPJR 578 was taken up in SLP to the Supreme Court in SLP No. 11593 of 1989 (National Insurance Company v. Bhagwandas), decided on 10-12-1989 in which the following observations have been made by the Supreme Court which also support the view taken by us:

"Heard Mr. Sharma in support of the special leave petition. We accept his submission that in view of the fact that the accident took place prior to insertion of Section 92-A into the Motor Vehicles Act, 1939, the High Court had no jurisdiction to refer to that provision for fixing liability for the compensation on the insurer."

To conclude we, therefore, hold that the provisions of Section 92-A cannot be availed of by the parties involved in accidents which took place before 1-10-1982, i.e. the date of coming into force of Section 92-A of the Act.

The revision and the appeal may now be listed before the learned single Judge at Gwalior for decision of the case on merits.

S.K. Jha, C.J. (Agreeing with D. M. Dharmadhikari, J.)

I entirely concur in the judgment and Order of my learned brother Dharmadhikari J. In deference, however, to the erudite scholarship of the learned Judges of the High Courts exhibited in their divergence of views, I feel obliged to say a few words of my own in support of the Order of my learned brother.

To my mind, the point referred to this Full Bench is a rather simple one. The question of any retrospectivity attaching to the provisions of Section 92-A of the Motor Vehicles Act, 1939 (The Principal Act) becomes a simple one if I highlight one aspect of the matter. As has already been noticed in the leading judgment in the case, Section 92-A which forms part of Chapter VII-A, was inserted in the statute book by the Motor Vehicles (Amendment) Act (hereinafter to be referred to as the Amending Act), 1982 (No. 47 of 1982). It received the President's assent on 31-8-1982 and was published in the Gazette of India (Extraordinary), dated 1-9-1982. It may be noticed in Section 1(2) of the Amending Act that "it shall come into force on such date as the Central Government may, by notification in the official gazette, appoint and different dates may be appointed for different provisions of this Act". (Underlining is mine for the sake of emphasis.) Therefore, the legislative intent is clearly reflected in the express language used by the Parliament. For various provisions of the Amending Act, different dates may be appointed. For instance, Section 69-B was inserted in the Principal Act by Section 8 of the Amending Act and it was notified to come into effect from 10-12-1982. So also Section 70(1) of the Principal Act was amended by Section 9 of the Amending Act with effect from 10-12-82. It is not necessary to multiply the different dates for the different provisions. Suffice it to say that Section 92-A of the Principal Act was brought for the first time in the statute book by the Amending Act by inserting a new chapter altogether, namely, Chapter VII-A. The whole of Chapter VII-A of the Principal Act was made effective from 1-10-82. The legislative intent is clear from the express language used. There is no scope for any legal dynamism or idea of progressive social welfare involved in determining the date from which Section 92-A is to take effect. One has to look merely at what is clearly said. There is no room for any intendment. There is no scope for equity or the progressive nature of the legislative amendment coming into play. There is no scope for reading into the Amending Act something about which it is unambiguous and unequivocal. Nothing is to be implied. One has only to look fairly at the language used.

In the context of what I have said above with regard to the different dates for the applicability of the different provisions of the Amending Act, I have no hesitation in holding that the Amending Act *ex proprio vigore* is and must be held to be prospective only.