

(1986) 08 BOM CK 0035

In the Bombay High Court

Case No : First Civil Appeal No. 70 of 1983

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Shantabai S. Dhume and Others

RESPONDENT

Date of Decision : 14-08-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 92

Citation : (1987) 1 ACC 453 : (1987) ACJ 198 : AIR 1987 Bom 52 : (1986) 88 BOMLR 689 : (1989) 65 CompCas 206 : (1987) MhLj 35

Hon'ble Judges : G.F. Couto, J

Bench : Single Bench

Advocate : H.R. Bharne, for the Appellant; S.D. Lotlikar and Amicus Curiae, for the Respondent

Judgement

1. Whether the provision of S. 92-A, Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") is applicable even to pending cases relating to accidents that took place prior to its coming into force is the short but interesting question that this appeal by the original sixth respondent gives rise to and that falls for my determination.

2. A traffic accident took place on 9-8-1982, and as a result thereof, the husband and the father of respondents 1 to 6 herein came to die. By an application dated 28-1-1983, the said respondent sought a compensation under S. 110-A of the Act and, thereafter by another application dated 21-7-1983, they sought the benefits given by the newly introduced S 92-A. This application was allowed by order dated 5-8-1983 and the Presiding Officer of the Motor Accidents Claims Tribunal, Margao accordingly ordered the appellant and the National Insurance Company Limited to deposit, each of them, a sum of Rs. 7,500 to be paid to respondents 1 to 6 in case they were able to prove to be the legal representatives of the deceased.

3. It is against this order that the present appeal is directed the appellant's case being that the impugned order is bad in law inasmuch as the Tribunal has

wrongly held that the provision of S.92-A of the Act is applicable to the facts and circumstances of the case Mr. Bharne the learned counsel appearing for the appellant has indeed submitted that the amendment through which S. 92-A was inserted in the Act came into force only on 1-10-1982 i.e sometime after the date on which the accident took place. In fact, the accident took place on 9-8-1982, and, therefore when the cause of action arose the provision of S 92-A of the Act was not yet in force He then contended that in the premises and since the applications to get the compensations under Ss. 110-A and 92-A were filed only on 28-1-1983 and 21-7-1983. respectively, the latter provision of law ought not and could not have been applied with retrospective effect as it was done by the Tribunal.

4. Though duly served the respondents did not put in an appearance at the hearing, nor were they represented and thus, in order to get adequate and proper assistance the Court appointed Mr. S. D. Lotlikar amicus curiae. Dealing with the submissions of Mr. Bharne, the learned amicus curiae urged that it is quite clear from the facts of the case that the Tribunal has not applied the provision of S.92-A retrospectively, but on the contrary its application was prospective for S. 92-A came into force on 1-10-1982 and the application was prospective for S. 92-A came into force on 1-10-1982 and the application for compensation, both under Ss. 110-A and 92-A, were filed much after Thus, it would be wrong to hold, he contended, that S. 92-A was applied in this case retrospectively. This apart, according to him, it is obvious that the said provision ofit was introduced to remove the then existing evil which was, in practice, depriving the victims of a traffic accident or their legal representatives of the benefits of compensation. He contended that as held by the Supreme Court in Lakshmi Narayan Guin and Others Vs. Niranjan Modak, the new law applies even to pending matters if, by express language or by clear intendment, it can be inferred that there was the intention expressed by the Legislature and, therefore since the intention of the Legislature while inserting S. 92-A was to enable to victims of the accidents or their representatives to receive a compensation in all cases on the principle of no fault, it necessarily follows that the said provision of law applies to all pending cases, even if some rights had been accrued to the other parties. In fact he further argued in Guin's case the Supreme Court held that although right and been vested in a party if the intendment of the Legislature is to apply the law with retrospective effect the existence of the vested right will not be a bar for such application.

5. Section 92-A of the Act provides for liability to pay compensation in certain cases on the principle of no fault. It constitutes a beneficial piece of legislation undoubtedly meant to give a quick and effective relief to the victim of a traffic accident, or to his legal representatives in case of death Sub-section (1) of S 92-A provides that 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 the said section. Sub-section(2) fixes the amount of compensation in Rs. 15,000/- in case of death and in Rs. 7,500/- for permanent disablement. Sub-section (3) provides that the claimant shall not be required to placed and establish that the death or permanent disablement 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. And sub-s.(4) finally postulates that a claim for compensation under sub-s.(1) shall not be defeated by reason of any wrongful act, 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. It thus flows from the above provisions of law that in any case where a death or a permanent disablement takes place as a result of an accident involving motor vehicles, a compensation is to be paid irrespective of the negligence or of any wrongful act done by either party. In other words, the liability to pay compensation is not linked with negligence or with any tortious act, and the principle of no fault liability is clearly laid down. The legislative intendment appears thus clear and what was apparently meant is to provide for compensation in all accident cases involving motor vehicles where death or permanent disablement occurred, the question sad to whether the accident was due to the fault of the driver of the vehicle, or of the victim, or due to a mechanical failure, or to force major, bing entirely irrelevant and immaterial. The legislative intendment is mainfestly to give some relief to those e who have the misfortune of meeting with such accident or ;to their families. S. 92-A embodies and is, as such, a piece of welfare legislation which requires a liberal interpretation so as its benefits may be extended to all victims of accidents or their families, especially when nowhere in the said provision of law it is postulated that the benefit is given prospectively only and and on the contrary it would appear from its wording that the said benefit is to be given in all cases where an accident occurred and as a result thereof, a death or a permanent disablement was occasioned. The Statement of Objects and Reasons of the Amendment Act to some extent corroborates this view for it particularly indicates that the intention of the Legislature was to remove the evil and mischief that people who suffered the accident had to face, bing sometimes unable to prove the negligence or rashness of the driver or the owner of the vehicle and, therefore, unable to get the compensation they were entitled to. It is indeed stated therein that incidents of road accidents by motor vehicles had reached serious proportions and the victims of the accidents are generally pedestrians belonging to the less affluent sections of society that the provisions of the Act as to compensation in respect of accidents can be availed of only incases of accidents which can be proved to have ;taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Therefore, it is further stated:--

Having regard to the mature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of

the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation, It is therefore, considered necessary to amend the Act suitable to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solarium in cases in which the identity of the vehicle causing an accident is unknown."

The above quoted portions of the Statement of Objects and Reasons make it clear that the Bill for the amendment of the Act was introduced having in view the mischief that existed, i.e., that victims of accidents had to prove the rashness and negligence in driving of the vehicle by the owner or driver thereof and that in many cases, namely, in cases of hit-and-run accidents there was difficulty in identifying the vehicle itself. Therefore considering also that generally pedestrians are the victims of such accidents and they do not belong to the affluent sections of the society, the Legislature felt it proper to make the owners and the drivers of the vehicles liable to pay a compensation on the principle of no fault. That Statements of Objects and Reasons cannot be used for interpreting a statute is, no doubt, true But also no less true is, as observed by the Supreme Court in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, , that they may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a statute. They thus indicate the.....a particular piece of legislation and serve the purpose of helping in the search for the intendment of the Legislator in enacting an Act. S. 92 A is intended to provide social justice by giving compensation without proof of fault or negligence by the driver or owner of the vehicle and as such, in my view it is manifest that the question as to whether the cause of action arose prior to its coming into force or not becomes irrelevant for the material consideration for the purpose of awarding compensation under the said provision of law being whether the case giving rise to that liability is still pending.

6. It was however contended by Mr. Bharné that the Act has necessarily to be given prospective effect, as it is clear from the Amendment Act itself that the amendments were to come into force on such dates as notified by the Central Government in the Official Gazette and by a notification published in the Government of India Official Gazette dated 15-9-1982, different dates were notified for coming into force of several amended sections of the Act. Besides S 92 A is a completely new provision of law and for the first time, the liability on the principle of no fault has been introduced According to the learned counsel this being so, if the intention of the Legislature was to apply the said provision of law with retrospective effect then that much would have been expressly stated in the act and this much was not done.

7. SectionMotor Vehicles Amendment Act 1982 provides that the

said Act would 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 the Act. It would thus appear that Mr. Bharné is correct in his submission. But on a deeper consideration of the problem I am of the view that it is not so. No doubt, a law is ordinarily prospective in its operation, but its retrospective application may be expressly provided for or may flow by necessary implication, from its language. The amendment to the Act was enacted with the aim to give a quick and effective relief to the victim of a motor vehicle accident or to his family and it would appear from the language of S. 92-A that the Legislature intended to extend such benefits to all the persons who had been affected by a traffic accident resulting in a death or in a permanent disablement. Now it has been observed in *Rafiquennessa Vs. Lal Bahadur Chetri (Dead)* through his Representatives and Others, that where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective unless the provision in question relates merely to a procedural matter. It was further added that the Legislature is competent to take away vested rights by means of retrospective legislation and that similarly the Legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties, but unless a clear and unambiguous intention is indicated by the Legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. The Supreme Court then observed that retrospective operation of a statutory provision can be inferred even in cases where such retrospective operation appears to be clearly implicit in the provision construed in the context where it occurs. This view was approved by the Supreme Court in several other cases, inter alia, in *Lakshmi Narayan Guin and Others Vs. Niranjana Modak*, Their Lordships of the Supreme Court had deeded observed in the latter case that a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties as has been laid down in *Ram Sarup Vs. Munshi and Others*, and then quoted with approval the observations made in *Smt. Dayawati and Another Vs. Inderjit and Others*, to the effect.

"If the new law speaks in language which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal may give effect to such a law even after the judgment of the Court of first instance"

I already said that the legislative intendment was to give a quick relief to the victims of motor vehicle accidents or to their families on the principle of no fault. I also said that S. 92-A does not expressly restrict its application to future cases and it being a piece of welfare legislation, has to be interpreted liberally. I am, therefore, of the considered view that the above tests laid down in *Dayawati's* case being applied to the case at hand, fully warrant the conclusion that S. 92 A is to be applied to all pending cases irrespective of the date on which the

accident occurred, the fact that the Amendment Act postulates that the amendments will come into force on the dates notified in the Government Gazette being of no consequence, Similarly, the circumstance that S. 92-A is an entirely new provision in no manner negatives the view taken by me.

8. Mr. Bharne last contended that in the present case, some rights had accrued to the Insurance Company. In fact, at the time of insuring a vehicle, considering the risk involved, a premium is calculated. The insurance policy does not include payment of compensation on the principle of no fault and therefore, the said provision of S. 92-A cannot be applied to cases where the accident occurred before its coming into force, as the vested right accrued to the Insurance Company will be taken away. I, however, find it difficult to accept these submissions of Mr Bharne, No doubt, at the time of the entering into contract of insurance, the risks involved are taken into consideration and possible the premium is fixed on such basis. But this does not mean that rights accrued to the Insurance Company will be taken away if the provision of S. 92-A is applied even to cases arising out of accidents occurred before its coming into force. I say so, because if ultimately, the Insurance Company is not, under the terms of the insurance policy liable to pay compensation, then, it will be always open to it to get from the owner of the vehicle the refund of the moneys paid to the victim of the accident or to his family. A part from this, it may be pointed out that it flows from Guin's case that even where a right had been vested in a particular party, retrospective application of a new law can be made if such is the intendment of the Legislature. In my view, therefore, the benefit of S. 92-A of the Act is to be extended to all cases arising out of the motor vehicle accidents which are pending disposal even if the cause of action, i.e., the accident occurred prior to the coming into force of the said provision of law.

9. Be that as it may, in the present case, the applications for compensation had been filed on 28-1-1983 and 21-7-1983, i.e., much after the coming into force of S.92-A of the Act, and in the circumstances, it is apparent, as rightly pointed out by Mr. Lotlikar, that the application of S. 92-A of the Act by the Tribunal was prospective and not retrospective, although the accident took place on 9-8-1982.

10. The result is, therefore, that this appeal fails and is, consequently, dismissed with costs. I may, however, before parting with this case, record my deep appreciation for the fair approach to the problem by both the counsel and in particular, by the learned amicus curiae and also for the valuable assistance given by them, which rendered the task of the Court simpler easier and pleasant.

11. Appeal dismissed.