

(1996) 08 KL CK 0042
In the High Court Of Kerala

Oriental Insurance Co.

APPELLANT

Vs

Sheela Ratnan

RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

General Clauses Act, 1897 — Section 6
Land Acquisition Act, 1894 — Section 23, 30
Motor Vehicles Act, 1988 — Section 140, 141, 142, 143, 144

Citation : (1996) 3 ILR (Ker) 525 : (1997) 1 RCR(Civil) 400

Hon'ble Judges : K.K. Usha, J;K. Narayana Kurup, J;G. Sivarajan, J

Bench : Full Bench

Judgement

K.K. Usha, J.—The question referred for consideration of the Full Bench is whether amendment to Section 140 of the Motor Vehicles Act, 1988 by the Motor Vehicles (Amendment) Act, 1994 enhancing the quantum of compensation is applicable to claims for compensation in respect of death or permanent disablement resulting from accidents which occurred prior to 14.11.1994, the date on which the Amending Act came into force. In *New India Assurance Co. Ltd. v. Thankam* 1995 (1) KLT 323 a Bench of this Court, while considering a claim arising out of an accident which occurred prior to 1.7.1989, namely, the date on which Motor Vehicles Act, 1988, came into force, took the view that it is the provision contained u/s 140 of Motor Vehicles Act, 1988 which should be applicable to the case and not the provisions contained u/s 92A of the Motor Vehicles Act, 1939. The correctness of this decision is also under challenge.

2. The concept of no-fault liability was introduced for the first time in the Statute by way of amendment to the Motor Vehicles Act, 1939 under Amending Act 47 of 1982, which came into force on 1.10.1982. Section 92A provided that where death or permanent disablement of any person has resulted from an accident arising out of a use of motor vehicle, the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement to the extent of Rs. 15,000/- and Rs. 7,500/- respectively. When the Motor Vehicles Act, 1988 came into force on 1st July, 1989, provision regarding "no-fault liability" was

incorporated in Section 140. The amount of compensation was enhanced as Rs. 25,000/- and Rs. 12,000/- for death and permanent disablement respectively. The above provision underwent amendment by Act 54 Of 1994, which came into force on 14.11.1994, further enhancing the amount of compensation as Rs. 50,000/- and Rs. 25,000/" respectively. In all these cases, which have come up by way of reference, the accident had happened before 14.11.1994 and the proceedings were pending when the amendment came into force. The Tribunals applied the amendment provisions contained u/s 140 and passing interim awards on that basis, relying on the principles laid down in the Bench decision of this Court in 1995 (1) KLT 323 (supra).

3. The question whether amount of Rs. 25,000/-fixed under the unamended Section 140 of the Motor Vehicles Act, 1988 in case of death, can be applied where death has occurred in a motor accident which took place before the 1988 Act came into force, was considered by a Bench of this Court in *United India Insurance Co. Ltd. v. Padmavathy* 1990 (1) KLT 750. The Division Bench took the view that even in respect of an accident happened before the coming into force of 1988 Act, the enhanced amount of compensation, as provided u/s 140 of 1988 Act would apply. This view was sought to be reconsidered later at the instance of the *New India Assurance Co. Ltd.* relying on a Bench decision of the Bombay High Court in *Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another*, . The arguments put forward by the Insurance Co. were rejected in 1995 (1) KLT 323 (supra), affirming the view taken in 1990 (1) KLT 750 (supra).

4. Before we go into the detailed discussion of the arguments put forward by both sides, we may refer to yet another Bench decision of this Court in *Oriental Insurance Co. Ltd. Vs. Murugan*, where it was held as follows:

When an accident has occurred before the commencement of 1988 Act no-fault liability can be granted as per Section 92A of the repealed Act and not u/s 140 of the 1988 Act.

When the above decision was relied on in MFA No. 382/95, a Division Bench of this Court took the view that the above mentioned decision was rendered per incuriatn without referring to 1990 (1) KLT 750 (supra) and the Division Bench reaffirmed the earlier decisions in 1990 (1) KLT 750 (supra) and 1995 (1) KLT 323 (supra).

5. It is contended by the Insurance Companies who are appellants, that the amendment which came into force on 14.11.1994 has no retrospective effect and in respect of accidents which happened prior to 14.11.1994, pursuant to which death or permanent disablement was occurred, the unamended provisions of Section 140 are to be applied. They also contended that the provisions contained in Section 140 of Motor Vehicles Act, 1988 cannot be applied to a claim arising out of an accident happened before 1.7.1989, the date on which the Act came into force. According to them, in such cases, the provisions contained u/s 92A of

1939 Act would apply. They would submit that the different views taken by the Division Bench in the above mentioned decisions are in conflict with the dictum laid down by two Full Bench decisions of this Court , namely, Neeli v. Padmanabha Pillai 1992 (2) KLT 807 and National Insurance Co. v. Roy George 1993 (1) KLT 308. According to the appellants, the view that enhanced compensation provided u/s 140 has to be granted, irrespective of the date of occurrence of the accident, is against the principles laid down by the Supreme Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , Padtiia Srinivasan v. Premier Insurance Co. Ltd. 1982 ACJ 191 R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, , M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, and Ramesh Singh and another Vs. Cinta Devi and others, . Reliance was also placed by the appellants in support of their contention on the following decisions of High Courts : Kochu Velu v. Joseph and Ors. 1984 KLT (SN) 79 (MFA 572/81), New India Assurance Co. Ltd. v. Nafis Begum and Ors. 1991 (2) ACJ 960 (MP), Laxmi-narain @ Kaka and Anr. v. Balbir Kaur and Ors. 199 9 ACJ 705 and Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another, , Rukmanlyamma Vs. A.M. Venkata Swamy, , Gujarat State Road Transport Corpn. Vs. Kashiben deceased through LR"s and Another, ; Trilok Chand Anand Vs. Om Prakash and Others, ; United India Insurance Co. Ltd. Vs. Jhamku Bai and Others, and Oriental Insurance Co. Ltd. Vs. Murugan,

6. On the other hand, it was contended on behalf of the respondent-claimants that the provisions contained u/s 140(2) is procedural in nature and, therefore, it has to be made applicable to pending cases. It was further submitted that Section 92A of 1939 Act and Section 140 of 1988 Act are pieces of beneficial legislation. Therefore, widest possible interpretation has to be given to these provisions. Reliance was placed on the decision of the Supreme Court in Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, . Respondents further contended that if the enhanced amount is denied in respect of claims which arose out of the accidents happened before 1.7.1989 or 14.11.1994 as the case may be, and, at the same time, such amounts are granted in respect of claims relating to accidents which happened after 1.7.1989 and 14.11.1994, even when both categories of applications were pending at the time when the 1988 Act and its amendment came into force, it will amount to unreasonable classification offending the equality clause under the Constitution of India. Reliance was placed on the decision of the Supreme Court in Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others, , in support of the above contention. It was also submitted that when there is an animality which, according to the respondents, would arise if the above mentioned two classes of claimants are differently treated, the golden rule of interpretation can be deviated from.

Whether Section 140(2) is substantive law,

7. We will first consider the question whether the provisions contained u/s 140(2) of the Motor Vehicles Act, 1988 deal with substantive law or whether it is a

provision which is only procedural. A Full Bench of this Court in *Neeli v. Padmanabha Pillai* 1992 (2) KLT 807, had to deal with specific issue in relation to Section 92A of the Motor Vehicles Act, 1939. After elaborate consideration, the Full Bench came to the conclusion that Section 92A deals with the substantive law and that it does not lay down a rule of procedure or refer to rule of evidence. While coming to the above conclusion, the Full Bench had relied on two decisions of the Supreme Court in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, and *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, . Apart from contending that the provisions contained u/s 140(2) is procedural in nature, no serious arguments were addressed before us as to why interpretation given to Section 92A by this Court as well as the Supreme Court cannot be made applicable in case in Section 140. It is relevant to note that even in 1990 (1) KLT 750 (supra) and 1995 KLT 323 (supra) where the Division Bench had taken the view that amended provisions will apply to pending proceedings, it is not held that the provisions contained u/s 140 are procedural in nature. Section 140 of the 1988 Act and its amendment in 1994 had brought in substantial change in the measure of damages. According to Salmond, "The substantive part of the criminal law deals, not with crimes alone, but with punishments also. So, in the civil law, the rules as to the measure of damages pertain to the substantive law, no less than those declaring what damage is actionable", (Salmond on Jurisprudence, Twelfth Edition, Page 461). We, therefore, reject the contention taken by the claimant-respondents that the provisions contained u/s 140(2) are procedural in nature. We hold that Section 140(2) deals with substantive law. Whether application of Section 6 of General Clauses Act, 1897 (10 of 1897) with regard to the effect of the repeal of Motor Vehicles Act, 1939 is excluded.

8. Section 217 of Motor Vehicles Act, 1988 deals with repeal and savings. Sub-section (1) repeals the Motor Vehicles Act, 1939 (4 of 1939). Under Sub-section (2), reference is made to different aspects of the repealed enactment which are saved in spite of the repeal. Sub-section (4) reads as follows:

(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.

It is contended by the appellants that in view of the above provision, application of Section 6 of the General Clauses Act is not excluded. Section 6 of the General Clauses Act reads as follows:

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) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

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

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(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, contained or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The relevant provision is Clause (c). If the amendment by which quantum of no-fault liability is increased, has the effect of affecting any right, privilege, obligation or liability acquired, accrued or incurred under the 1939 Act or under the unamended 1988 Act, the enhancement of the quantum of compensation cannot be made applicable to pending proceedings, unless a different intention appears in the provisions of Motor Vehicles Act, 1988 or the 1994 amending Act. This is the contention raised by the appellants. Thus, the enhancement of the quantum of compensation which affects the right of the claimant as well as liability of the owner of the vehicle cannot be applied to proceedings, where the right was acquired and liability incurred much before the coming into force of 1988 Act or 1994 amendment Act. According to the appellants, the right of compensation is acquired and the liability to pay compensation accrued on the date of the accident and not when the application comes up for consideration.

9. A plain reading of Section 217 would show that application of Section 6 of the General Clauses Act is not excluded by the provisions contained in Section 217. But, according to claimant-respondents, Section 144 would indicate that as far as provisions contained in Sections 140 - 144 coming under Chapter X of the Motor Vehicles Act, 1988 are concerned, Section 6 of General Clauses Act cannot have any application. Section 144 reads as follows:

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

According to the respondents, the mandate of Section 144 is that the provisions contained in Chapter X must be given effect to notwithstanding anything contrary in any of the law including Section 6 of the General Clauses Act.

10. It is relevant to note that in the Motor Vehicles Act, 1939 also, there was a similar provision u/s 92E including in Chapter VIIA dealing with "no-fault liability". Section 92E provided that the provisions of Ch. VIIA shall have effect notwithstanding anything contained in any other provision of the Act or of any

other law for the time being in force. Even though, the above mentioned argument was found favour with a Division Bench of this Court in 1990 (1) KLT 750 (supra), with great respect to the learned Judges, we find it difficult to accept that view. The provisions contained in Ch. VILA of Motor Vehicles Act, 1939, and Chap. X of Motor Vehicles Act, 1988 relate to "no-fault liability". None of the sections included in the above mentioned chapters deals with repeal of the earlier enactment or the effect of the repeal in the existing provisions of law. Therefore, when reference is made to other provisions in the enactment or provision of any other law, it can relate only to provisions of law relating to claim for compensation in respect of any injury sustained or death resulted from an accident arising out of the use of motor vehicle: This will be clear from the wording of Sub-section (5) of Section 140 and Sub-section (1) of Section 141 as amended by Act 154 of 1994, which reads as follows:

140(5). Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A.

Section 141(1). The right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall be in addition to any other right except the right to claim under the scheme referred to Section 163A (such other right hereinafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

11. It cannot be taken that reference is made in Section 144 of the provisions of General Clauses Act, 1897 which is an enactment containing provisions of proper interpretation of all Central Acts made after the commencement of the Statute, We are unable to understand the provisions of Section 92E or Section 144 as excluding a Statute containing provisions regarding general law. With great respect, we are constrained to disagree with the view taken by the learned Judges in 1990 (1) KLT 750 (supra) as to the applicability of Section 6 of the General Clauses Act in the light of Section 144 of the Motor Vehicles Act, 1988. We therefore, hold that Section 6 of the General Clauses Act, 1897 is not included in considering the effect of repeal of the Motor Vehicles Act, 1939.

12. Supreme Court had considered the applicability of Section 6 of General Clauses Act to the provisions of the repealed Act in M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, . In this case, an application was filed by an operator for renewal of his permit u/s 58 of the Motor Vehicles Act, 1939. The question arose was whether, after coming into force of Motor Vehicles Act, 1988, the application became extinct and was rendered nonexistent, in the eye of law,

or whether it being a right within the meaning of Clause (c) of Section 6 of the General Clauses Act survived and continued despite repeal of Motor Vehicles Act, 1939. It was observed that the objective of Section 6(2) is to ensure protection of any right or privilege under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly or impliedly provide against continuance of such right, obligation or liability. Supreme Court took the view that the right of the appellant to get his application considered and decided in accordance with repealed law, by applying Section 6(c) of General Clauses Act, was saved by Sub-section (4) of Section 217 of the Motor Vehicles Act, 1988.

13. In *Ramesh Singh and another Vs. Cinta Devi and others*, , the question came up for consideration before the Apex Court was whether appellant is bound to make deposit as provided under the proviso to Section 173 of 1988 Act, when an appeal is filed after the 1988 Act came into force, from an award passed under 1939 Act. After referring to the provisions contained under Sub-section (4) of Section 217 of 1988 Act and Section 6 of General Clauses Act, Supreme Court observed that 1988 Act does not expressly or by necessary implication, make the relevant provision retrospective in character. The right to appeal would crystallise in the appellant on the institution of the application, in the Tribunal of the first instance and that vested right of appeal would not be dislodged by the enactment of 1988 Act. The appellant was held entitled to file the appeal without being required to make any payment under the proviso to Section 173 of 1988 Act.

14. A similar view had been taken by a Bench of this Court in *Philip v. Surendran* 1992 (2) KLT 556. In the above decision, this Court took the view that the question as to whether Section 217 has the effect of divesting the vested right has to be decided in the light of Section 6 of General Clauses Act, 1897.

Wliendoes the right accrue or a liability incurred u/s 140.

15. Sub-section (1) of Section 140 provides that where death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle, the owner of the vehicle will be liable to pay compensation in accordance with the provisions of the Section. Therefore, the right or the liability relates to the date of the accident which had resulted in death or permanent disablement. In *Pratap Narain Singh Deo v. Shrinivas Sabata & Am.*, (supra), Supreme Court had occasion to consider the question of liability of employer arising out of an injury sustained by the employee. It was held that the employer became liable to pay compensation as soon as personal injury was caused to the workman by the accident which arose out of and in the course of employment. The contention that compensation would fall due only after the Commissioner's order u/s 19 was rejected. Penalty was liable to be imposed on the employer on his failure to pay compensation and for that purpose, it cannot be contended that the compensation did not become due till the Commission passed orders u/s 19. The principle laid down is that the liability arise as soon as injury was sustained

and not when the quantum is assessed.

16. In *Padma Srinivasan v. Premier Insurance Co. Ltd.*, (supra), Supreme Court had occasion to consider the question as to the crucial date that is relevant while considering the liability of the insurer u/s 95(2). In that case, the policy was issued on 30.6.1969 and it was valid for a period of one year. It provided coverage for the statutory liability under the Motor Vehicles Act, 1939. An amendment to Section 95(2) was brought in by Act 56 of 1969 increasing the quantum of liability w.e.f. 2.3.1970. The accident happened on 5.4.1970. While rejecting the contention put forward by the Insurance Co. that the crucial date is the date on which they entered into an agreement with the owner of the vehicle and therefore their liability is under the unamended provisions of Section 95(2), Supreme Court held that the crucial date for assessing the liability is the date of accident.

17. On the basis of the principles laid down in the above decisions as also on the wording of Section 140(1), it has to be held that the right accrues and liability is incurred on the date of the accident and not on the date of consideration of the claim.

Whether there is any express or implied provision under the enactment which would indicate application of Section 140 to death or permanent disablement occurred in an accident before 17.1.1989 or for applying the amended provision of Section 140 to an accident which happened before 14.11.1994.

18. The Motor Vehicles Act, 1988 came into force on 1.7.1989 as per the notification issued by the Central Government, dated 22.5.1989 and published in Gazette of India (extra-ordinary) dated 22.5.1989. Sub-section (2) of Section 1 of the Motor Vehicles (Amendment) Act, 1994 provides that the Act 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 the Act and any reference in any such provision to the commencement of the Act shall be construed as a reference to coming into force of the provision. The amendment to Section 140 for increasing quantum of compensation payable under no-fault liability was brought into force w.e.f. 14.11.1994 alongwith other provisions. If the Legislature intended to give effect to the amended provision from an earlier date, notification to that effect could have been issued. Having not done so, it has to be taken that the Legislature intended to apply the amended provisions only from 14.11.1994.

19. As to the line of enquiry to ascertain whether the vested right continues to subsist in cases of repeal and re-enactment, Supreme court in *State of Punjab v. Mohar Singh Pratap Singh* AIR 1955 SC 84, observed as follows:

Whenever, there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by

fresh legislation on the same subject, we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot, therefore, subscribe to the broad proposition that Section 6, General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law.

20. It is contended on behalf of the appellants that there are no provisions in the Motor Vehicles Act, 1988 or the Amending Act, 1994 which would indicate that the provisions of Section 140 are to be given effect from an anterior date to the dates on which the original Section as well as its amendment came into force. Apart from Section 144, no other provision was brought to our notice by the learned Counsel for the respondents, which according to them, would indicate applicability of the provisions with an earlier date so that it would cover pending proceedings. We have already considered this contention and taken the view that Section 144 cannot have any such effect. But, learned Counsel of the respondents made a further submission that since the provisions contained u/s 140 are in the nature of beneficial legislation, it has to be given a wider interpretation in favour of the beneficiaries. Reliance was placed on certain observations in Principles of Statutory Interpretation by G.P. Singh, V. Edition, pages 485, 488 & 489. Reliance was also placed by learned Counsel on the decision of the Privy Council in *Municipal Council of Sydney v. Margaret Alexandra Troy* AIR 1928 P.C. 128, and the decisions of the Supreme Court in *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, and *K.S. Paripoornan Vs. State of Kerala and Others*, .

21. In the facts of the case, in *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, , it was found that in view of the amendment to the Calcutta Thika Tenancy Act, 1949 to the effect that the provisions of the Calcutta Thika Tenancy Act, 1949 as amended., shall apply and be deemed to have always applied to all suits, appeals and proceedings pending, the applications filed by tenants u/s 28 and pending at the time of the amendment cannot be proceeded with. Such a view was taken after referring to in the principles that are to be applied for interpretation of statutory provisions. In the very same decision, Supreme Court considered the argument that in the case of beneficial legislation, if possible, an interpretation in favour of the beneficiaries, shall be given. It was then observed:

It is difficult not to feel sympathy for these tenants. As we have already mentioned it is a sound rule of interpretation or beneficent legislation that in cases of ambiguity the construction which advances the beneficent purpose

should be accepted in preference to the one which defeats that purpose. In their anxiety to advance the beneficent purpose of legislation Courts must not however yield to the temptation of seeking ambiguity when there is none.

22. In AIR 1928 P.C. 128 (supra), it was held that the provisions regarding: payment of interest at 6% in a statute which came into operation on 17th September, 1924 would apply even in cases when compensation to be paid for land acquired prior to coming into force of the Act. A reading of the judgment would show- that it was not by giving retrospective effect to the provisions such a view was taken. On the other hand, it was held that the provisions did not make any distinction between land acquired before the Act and that acquired after. We do not think that the decision is of any help to the respondents in contending that the provisions of the repealing Act, before or after amendment, would apply to the pending proceedings in the present case.

23. So, also, the decision reported in K.S. Paripoornan Vs. State of Kerala and Others, is of no assistance to the respondent's claim. The matter arose under the Land Acquisition Act, 1894 as amended by Land Acquisition (Amendment) Act, 1984. Supreme Court held that the provisions contained u/s 23(1A) imposing obligation to pay additional amount by way of compensation will have retrospective operation so as to be applicable to acquisition proceedings which were commenced prior to the date of enactment of the said provision, as Parliament had given a clear indication of its intention to give such retrospective effect in Section 30(1) of the amending Act. There are express provisions contained in Section 30 of the Amending Act indicating intention of the Parliament as to the extent to which the provisions of Section 23(1A) would apply to pending proceedings. As mentioned earlier, no such provision in the Motor Vehicles Act, 1988 or the amending Act of 1994 was brought to our notice by the respondents.

24. In Moti Ram Vs. Suraj Bhan and Others, , while considering the retrospective effect of an amendment to East Punjab Urban Rent Restriction Act, (3 of 1949), Supreme Court observed that where the legislation intends to make substantive provision of law, retrospective in operation, it generally makes its intention clear by express provisions in that behalf. No such express provision is brought to our notice in the present case.

25. In R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, , Supreme Court considered a case where in respect of death of two persons, only an amount at the rate of Rs. 8,000/- was granted by the Tribunal in the absence of proper evidence. By the time Supreme Court disposed of the appeal on 15.11.1989, the Motor Vehicles Act. 1988 had come into force on 1.7.1989. Supreme Court assessed the compensation for each of them at Rs. 20,000/- in the absence of any specific evidence. It was then observed:

This is keeping in view the quantum of no-fault liability now provided by the Statute prospectively.

The above would show that the Supreme Court was not inclined to apply the provisions contained u/s 140 to a pending claim. On the other hand, if the new Act was to be applied to the case, in respect of death of each person, Rs. 25,000/- could have been awarded.

26. In *K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn.*, appeal was in respect of an accident which happened in the year 1987. It was the provisions contained u/s 92A, which was in force at the time of the accident, that was applied and not the provisions u/s 140, even though the case was disposed of in the year 1996.

27. From the decisions of different High Courts relied on by the Appellants, it is seen that High Courts of Madhya Pradesh, Bombay, Karnataka and Gujarat have taken the view that Section 140 has no application to the pending proceedings. In *Andhra Pradesh State Road Trans. Corpn. Vs. Azizunnisa Begum and Others*, the High Court of Andhra Pradesh has also taken similar view. In *Trilok Chand Anand Vs. Om Prakash and Others*, High Court of Madhya Pradesh has held that the provisions contained u/s 163A relating to the structured formula brought in by the Amendment Act 54 of 1994 w.e.f. 14.11.1994, has no retrospective application. In 1984 KLT(SN) 79 (supra), it was held that under Workmen's Compensation Act, 1923, the injury gives rise to the compensation and obligation to pay is fastened on the employer on that date, though the actual payment may be postponed.

28. In the light of the above discussion, we hold that there is no express or implied provision under the Motor Vehicles Act, 1988, which would indicate legislative intent to apply Section 140 to death or permanent disablement resulted in an accident occurred before 1.7.1989. We also hold that there is no provision under the Amending Act, 54 of 1994 indicating the intention of the legislature to apply the amended provisions of Section 140 to accidents which had happened before 14.11.1994.

29. Yet another contention of the claimant-respondents that has to be considered is whether non-application of the provisions contained in Section 140 and its amendment to all cases irrespective of the date of occurrence of the accident would amount to an unreasonable classification and in order to avoid such a situation, whether Court should deviate from normal rule of interpretation was held in 1986 SC 1499 (supra). We find no merit in this contention. On the other hand, if the contention of the respondents is accepted, it will lead to anomalous situations. For example, if two persons in two different accidents occurred on 1.4.1989, and the owner of the offending vehicle in one case pays the compensation amount under the no-fault liability, immediately, the claimant will get only Rs. 15,000/- u/s 92A of the Motor Vehicles Act, 1939. But, if the owner of the other offending vehicle delays the payment to a date after 1.7.1989, the claimant will get Rs. 25,000/- as per the provisions of Section 140 of the Motor Vehicles Act, 1988. If the claim is settled still later, namely, after 14.11.1994, the claimant will have to be paid Rs. 50,000/- as per amended provision of Section

140. On the other hand, if the date of the accident is taken as the relevant date, there will be uniformity in the quantum of compensation in respect of claims arising on the same date or during the same period. The delay in payment is being compensated by awarding interest at an appropriate rate.

30. The appellants seek reconsideration of the view taken by the Division Bench of this Court in the decisions reported in 1990 (1) KLT 750 (supra) 1995 (1) KIT 323 (supra) and MFA 382/95. In the first two decisions, the question considered was whether the enhanced amount provided in Section 140 of the Motor Vehicles Act would be applicable in the case of claim for compensation relating to an accident happened before the commencement of the Act. In the third case, the issue was whether the enhanced amount of compensation under 1994 Amendment can be granted in a claim relating to an accident which happened before 1994 Amendment came into force. In all the three cases, uniform view taken is that it is the law relating to compensation available at the time of consideration of the application that has to be applied.

31. Division Bench took the view that by Section 140 of Motor Vehicles Act, 1988, no new right has been created in favour of the victims under Chapter X of 1988 Act. It was observed:

In effect, the Parliament has only retained the same right which was conferred on the victims through Chapter VII of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on a par with the entire fixed amount.

On the above basis, the Division Bench took the view that the provisions contained u/s 6 of the General Clauses Act would not impede enforcement of Section 140 of the new Act in relation to an accident which occurred prior to coming into force of the new Act. Secondly, the Division Bench took the view that Section 144 in Chapter X of the new Act gives over-riding effect to all the provisions in Chapter X which would therefore, exclude application of the provisions contained u/s 6 of the General Clauses Act.

32. In the second decision, Division Bench has affirmed the view taken in the first decision and it was observed as follows:

The nub of the decision in Padmavathy's case is that no new right has been created, nor has any additional liability been imposed through Section 140 of the new Act. All that Parliament did through the enactment of the said provision was only to update or attune the right with the prevailing money value. In other words, the amount of Rs. 15,000/- during the pre-new Act period, when calculated in terms of the fall in the currency value, is the same as Rs. 25,000/- during the post-new Act period. If the actual payment was made only after the coming into force of the new Act, the mere fact that date of accident was before the new Act does not matter.

In the third decision, there is no detailed discussion on the proposition. The

earlier two decisions are followed and it was held that claimants are entitled to compensation under no-fault liability for the amount as per law which prevailed on the date of passing the award.

33. With great respect to the learned Judge of the Division Bench who have rendered the above mentioned judgments, we are constrained to disagree with their above view. It may be that no new category of right or liability has been created by Section 140 of the Motor Vehicles Act, 1988. But the quantum of damages payable under "no-fault liability" has been increased u/s 140 of Motor Vehicles Act, 1988 from what was provided u/s 92A of Motor Vehicles Act, 1939. The intention of the Parliament to provide for such increase when Motor Vehicles Act, 1988 was enacted, may be to set off the effect of devaluation of money, and to keep pace with inflation. But, it cannot be gainsaid that the result is enhancement of the liability of the owner as also the right of the claimant to get enhanced compensation. In order to apply the provisions of Section 6(c) of General Clauses Act, it is not necessary that a new right or liability is created. It is sufficient that the existing right or liability is affected by the repealing Act.

34. In the result, we overrule the decisions in 1990 (1) KLT 750 (supra) 1995 (1) KLT 323 (supra) and MFA 382/95 and approve the decision in 1995 (1) ACJ 164 (supra). We further hold that Section 6(c) of General Clauses Act would apply in this case and the provisions contained u/s 140 of Motor Vehicles Act, 1988, namely, the Repealing Act, cannot be made applicable to a claim put forward on the basis of an accident happened before 1.7.1989, the date on which the Repealing Act came into force. The provisions contained in Section 92A of the Motor Vehicles Act, 1939 will be applicable in such cases. On the same principle, we hold that the enactment of compensation by way of amendment to Section 140 by Amendment Act, 57 of 1994, cannot be made applicable to claims as a result of accidents which had occurred before 14.11.1994, namely, the date of coming into force of the amendment.

Now, we will consider the facts in each appeal.

MFA No. 442 of 1995

35. This is an appeal at the instance of Oriental Insurance Co. Ltd., challenging the interim award passed by the Addl. Motor Accidents Claims Tribunal, Mavelikkara granting an amount of Rs. 50,000 /- as no-fault liability to the claimants who are impleaded as respondents 1 to 4 in the appeal. Husband of the 1st respondent died in a motor accident on 13.9.1994. Respondents 5 and 6 are the driver and owner of the offending vehicle. The appellant-Insurance Co. had admitted insurance coverage of the offending vehicle. Since the accident had happened on 13.9.1994, i.e., two months before Section 140 was amended enhancing the compensation for death as Rs. 50,000/- we hold that the claimants are entitled to compensation only at the rate provided under the unamended provisions of Section 140, which is to the extent of Rs. 25,000/-. The interim award granted in favour of respondents 1 to 4 is reduced to Rs. 25,000/-.

The appeal stands allowed.

MFA No. 904 of 1995-C

36. This is an appeal at the instance of Oriental Insurance Co. Ltd., challenging the award passed by the Motor Accidents Claims Tribunal, Irin-jalakuda in O.P. (MV) 3053/93. The claim petition was filed by respondents 1 to 8 seeking compensation for the death of one Raman in a motor accident occurred on 29.4.1991. Even though, the petitioners claimed that he was aged 70 at the time of his death, according to the ppst-mortem report, he was aged about 80. Tribunal found that under different heads, the claimants are entitled to a total compensation to the extent of Rs. 32,500/- and then the Tribunal awarded an amount of Rs. 50,000/- on the ground that as per the amended provisions contained in Section 140 of the Motor Vehicles Act, 1988, claimants are entitled to an amount of Rs. 50,000/-. Even though, several other grounds are taken, it was submitted by learned Counsel for the appellant before us that the main contention taken is against the finding of the Tribunal that the claimants are entitled to an amount of Rs. 50,000/- as compensation by applying the provisions contained under the amended provisions of Section 140. Since the accident occurred on 29.4.1991, the amended provision which came into force only on 14.11.1994, cannot have any application. Therefore, the amount that will be payable u/s 140 is only Rs. 25,000/- and not Rs. 50,000/-. We, therefore, find that the claimants are entitled to compensation only to the extent of Rs. 32,500/- which was the amount assessed by the Tribunal without reference to the provisions contained u/s 140. We, therefore, reduce an amount of Rs. 17,500/- from what has been awarded in favour of respondents 1 to 8. The appeal stands allowed as above.

MFA No. 1000 of 1995

37. This is an appeal filed by the Oriental Insurance Co. Ltd., challenging an interim award passed by the Motor Accidents Claims Tribunal, Kozhikode in O.P. (MV) No. 1456 of 1993. The husband of the first respondent died in a motor accident which occurred on 4.3.1993. The applicants claimed a sum of Rs. 25,000/- under no-fault liability. But the Tribunal passed an award granting Rs. 50,000/- u/s 140. Since the accident happened much before the amended provisions of Section 140 came into force, the claimants are entitled to only Rs. 25,000/- under no-fault liability. We therefore, reduce the amount granted as interim award by Rs. 25,000/-. The appeal stands allowed as above.

MFA No. 1051 of 1995

38. This is an appeal filed by United India Insurance Co. Ltd., challenging the interim award passed by the Motor Accidents Claims Tribunal, Thalassery in O.P. (MV) No. 1070 of 1994. The husband of the 1st respondent died in a motor accident which occurred on 21.4.1994. In the interim award, the Tribunal granted an amount of Rs. 50,000/- invoking the provisions of Section 140 of the M.V. Act, 1988 as amended. Since the accident occurred before the coming into force of

the amended provision, the claimants are entitled to only Rs. 25,000/- u/s 140. We, therefore, reduce an amount of Rs. 25,000/- from the interim award granted in favour of respondents 1 to 4. The MFA stands allowed as above.

MFA No. 1108 of 1995

39. Appeal is by United India Insurance Co. Ltd., challenging an interim award passed by the Motor Accidents Claims Tribunal, Perumbavoor in O.P. (MV) No. 105/94. The claimants are impleaded as respondents 1 to 7 in this appeal. Husband of 1st respondent died in a motor accident which occurred on 3.1.1994. The Tribunal granted an amount of Rs. 50,000/- u/s 140 of the Motor Vehicles Act, 1988 as amended in 1994. Since the accident occurred before the amendment came into force, the claimants are entitled to only 25,000/- u/s 140. The amount of Rs. 25,000/- is, therefore, reduced from the interim award. MFA stands allowed as above.

MFA No. 1212 of 1995

40. The appellant is National Insurance Co. Ltd. It challenges the judgment of Motor Accidents Claims Tribunal, Perumbavoor in O.P. (MV) No. 3756/90. Claimants are respondents 1 to 9 in the appeal. They claim compensation for the death of one Eliamma who died in a motor accident on 17.3.1990. She was aged 72 years at the time of death. The Tribunal found that there was no evidence regarding the income of the deceased as alleged by the claimants. But, the Tribunal without assessing the quantum of damages under different heads awarded an amount of Rs. 50,000/- on the ground that even though at the time when the petition was filed as per the provisions of Section 140 of the Motor Vehicles Act, 1988, compensation payable for no-fault liability was only of Rs. 25,000/- the claimants are entitled to the benefit of the amended provision enhancing the amount to Rs. 50,000/-. The Tribunal relied on the decision of this Court in 1995 (1) KLT 323 (supra) and awarded an amount of Rs. 50,000/-. We hold that the Tribunal has committed a mistake in applying the amended provision of Section 140 iii this case as the accident happened much before the amendment came into force. Therefore, the claim that can be put forward u/s 140 is only to the extent of Rs. 25,000/-. Since the Tribunal has not made assessment of the compensation payable under different heads and since no arguments were addressed by the appellants before us on the quantum of compensation that would be payable under different heads, this aspect will have to be considered by Division Bench on merits. For this limited purpose, the appeal is sent back to the Division Bench.

MFA No. 1254 of 1995

41. M/s. Oriental Insurance Co. Ltd. is the appellant. Challenge is against the interim award passed by the Motor Accidents Claims Tribunal, Kozhikode in O.P. (MV) No. 3808/93. Respondents 1 to 3 are the claimants. The husband of 1st respondent died in a motor accident on 10.9.1993. The Tribunal passed an interim award on 12.9.1995 granting Rs. 50,000/- as compensation u/s 140.

Since the accident had happened on 10.9.1994, the claimants are not entitled to the benefit of the amended provisions of Section 140. In view of the above, we reduce an amount of Rs. 25,000/- from the interim award passed by the Tribunal. MFA stands allowed as above.

MFA No. 179 of 1996

42. This is an appeal at the instance of Oriental Insurance Co. Ltd., from the interim award in O.P. (MV) Mo. 423/93. The 1st respondent was the claimant. He was granted an amount of Rs. 25,000/- as compensation for permanent disability invoking Section 140. The accident in which he sustained injury happened on 24.3.1993. Therefore, the amended provisions of Section 140 are not applicable in his case. He is entitled to Rs. 12,000/- as compensation for permanent disability. We, therefore, reduce an amount of Rs. 13,000/- from the award granted to the 1st respondent. MFA stands allowed as above.

We wish to place on record our appreciation for the assistance rendered by Advocates M/s. Mathews Jacob, Jacob Murikan, Siby Mathew and Rajan P. Kaliyath learned Counsel for the appellants and Advocates M/s. V.V. Surendran, M.A. George, Sunny Mathew, B.N. Sivasankar, George Kuruvila, T.R. Ravi and C.K. Syed Mohammed Ali, learned Counsel for the respondents in these appeals.