
(1996) 07 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 205 of 1995

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Khem Chand and Others

RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140(2)

Citation : (1997) ACJ 926

Hon'ble Judges : Arun Kumar Goel, J;A.L. Vaidya, J

Bench : Division Bench

Advocate : Lalit Sharma, for the Appellant; Rajnish Maniktala and Y. Paul, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—This appeal at the instance of the insurance company hereinafter referred to as respondent No. 3 is directed against the order dated 15.3.1995 passed by Motor Accidents Claims Tribunal (2), Kangra at Dharamshala in M.A.C.P. No. 30-P/95, whereby application u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") filed by the claimants, has been allowed and the appellant has been directed to pay a compensation of Rs. 50,000/- under no fault liability to respondent Nos. 1 and 2 (hereinafter referred to as the claimants).

2. The sole question involved in the present appeal is as to whether the amendment of Section 140 (2) of the Act as amended vide Motor Vehicles (Amendment) Act, 1994 is applicable from the date of its amendment or is applicable retrospectively to the pending cases also. In the background of this case the facts are within very narrow campus.

3. Admitted facts are that the accident in the instant case took place on 16.6.1994 and the Motor Vehicles (Amendment) Act, 1994 (hereinafter referred to as "the Amendment Act") came into force on and with effect from 14.11.1994,

whereby Section 140 (2) was amended. As a result of such amendment, the amount under no fault liability payable under the Act was increased from Rs. 25,000/- to Rs. 50,000. In the instant case, the learned Tribunal below has allowed the application of the claimants u/s 140 of the Act and thus ordered the appellant to pay the compensation under the amended provisions of the Act.

4. Dr. Lalit Sharma, appearing on behalf of the appellant, has submitted that provision allowing compensation under no fault liability in the sum of Rs. 50,000/- is applicable to accidents after 14.11.1994 and not to such accidents which are prior to this date. According to him cause of action had arisen to the claimants on the day of accident, i.e., 16.6.1994 and, as such, their right to claim compensation in law was crystallised on this date and law governing the same on this date would cover the instant case and thus according to learned Counsel for the appellant, the Tribunal below has fallen into error in allowing the compensation of Rs. 50,000 instead of Rs. 25,000/-. Dr. Sharma has further pointed out that the matter relating to payment of compensation u/s 166 or Section 140 of the Act is not a provision governing procedure and therefore cannot be made retrospectively applicable and according to him retrospectivity cannot be given to provisions of substantive law as in the present case.

5. On the other hand, Mr. Rajnish Maniktala, learned Counsel appearing on behalf of the claimants, has refuted the submissions made on behalf of the appellant and has submitted that in the instant case, the appeal merits dismissal. It was further argued by him that the provision for payment of compensation under no fault liability is beneficent provision and is retrospectively applicable to the pending cases also. According to him, the law applicable on the date when claim petition was filed by the claimants would determine the rights of the parties and according to him, the amended provisions of Section 140 (2) of the Act were applicable on this date. According to the learned Counsel for the claimants the payment of compensation under no fault liability is otherwise subject to adjustment in the award that may be finally passed. By applying the provisions of amended Act retrospectively, the Tribunal below has acted in a manner so as to achieve the object which was there while amending the section and thus no fault can be found with such order.

6. Before considering the submissions of the learned Counsel for the parties with reference to the case law applicable in this behalf, it is necessary to consider the background whereunder the provisions of no fault liability were incorporated in the Act of 1939 in the shape of Sections 92-A to 92-E and thereafter in the Act of 1988 which was amended in the year 1994 vide Amendment Act supra and thus the amount of no fault liability has been increased from Rs. 25,000/- to Rs. 50,000/-. The concept of liability under the law of Torts was based on the basis of wrong or negligent acts. According to Salmond one of the primary conditions required by law for liability in action for tortious act is the existence of either an intentional wrongful intention or culpable negligence on the part of the opposite side. Over a long period of time this concept has undergone a sea change

inasmuch as whereas initially under the common law the claimant was required to strictly prove the negligence of the opposite side, during the last two decades this concept has been diluted enormously. For the first time a demand for introducing the concept of no fault liability was highlighted by a Division Bench of Madhya Pradesh High Court in *Kamla Devi v. Kishan Chand* 1970 ACJ 310 . G.P. Singh, J. speaking for the Bench, after quoting eminent jurists like Friedman and Lord Kilbrandon had suggested that law should be reformed on the lines of granting compensation under no fault liability. Thereafter, Krishna Iyer, J. in his inimitable style in *Kesavan Nair v. State Insurance Officer* 1971 ACJ 219 , has observed:

Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing negligence of the operator of the vehicle, a blanket liability must be cast on the insurer, instead of its being restricted to cases where the vehicle operator has been shown to be negligent. This is more a matter for the legislature and not for the court. But this is a lacuna in the law which I think it would be just to rectify.

7. Thereafter, the Apex Court while considering this aspect in *Manjushri Raha v. B.L. Gupta* 1977 ACJ 134, had observed that time was right for serious consideration of creating no fault liability keeping in view the Directive Principles of State Policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of the insurance of motor vehicles and nationalisation of the general insurance companies and bus transport. This view was again reiterated by the Apex Court in *State of Haryana v. Darshana Devi* 1979 ACJ 205, wherein again Krishna Iyer, J. recommended that no fault liability should be introduced. Similar observations were made by the Apex Court in its subsequent pronouncement in *Concord of India Ins. Co. v. Nirmala Devi* 1980 ACJ 55.

8. Thus it is evident that it was only due to the untiring efforts of the judiciary who gave forceful judgments and made recommendations including those of the Supreme Court that the law makers were finally convinced for making provisions to provide compensation under no fault liability in case of motor accidents. Accordingly, Motor Vehicles Act, 1939 was amended by Motor Vehicles (Amendment) Act, 1982 applicable on and with effect from 1.10.1982. By such amendment Section 92-A was introduced when Rs. 15,000/- was held payable in case of death and Rs. 7,500/- in case of permanent disability. This amount was enhanced to Rs. 25,000/- and Rs. 12,000/- respectively under the provisions of 1988 Act which again has been further enhanced to Rs. 50,000/- and Rs. 25,000/- respectively by the Amendment Act of 1994. The applicability of these provisions, as pointed out here in this judgment, is the bone of contention in the present case.

9. Another aspect which may be referred with advantage at this stage is that the amount payable under no fault liability was very meagre and in fact it did not reduce the litigation because the sum so awarded was not sufficient and

commensurate with the well settled principles of ascertaining the quantum of compensation. Keeping these things in view as well as with a purpose to minimise delay and speedy decision regarding payment of compensation both, under no fault liability as well as for the purpose of enabling the claimant to claim compensation on fulfilment of certain conditions and without the protracted litigation, provisions of Section 163-A and Section 163-B have been incorporated by the Amendment Act of 1994. The structured formula for payment of compensation u/s 163-A contained in the Second Schedule inserted by Motor Vehicles (Amendment) Act, 1994 has already been added to the Act, however, it may be clarified that for the determination of the controversy involved in the present case, we are not adverting to the same and we have just made a passing reference to it while considering the history as to how these provisions have come to be incorporated on the statute book.

10. Dr. Lalit Sharma has pointed out that in the present case the amending Act of 1994 does not expressly provide for retrospective applicability of the amended provisions of Section 140 (2) and by no stretch of imagination, it can be held that legislature intended to make it applicable retrospectively. He further pointed out that when the language is simple and meaning is plain, the provision of the Act has to be given literal meaning and external aids need not be pressed into service for interpreting such provisions as well as for holding that the provision of law was intended to be made retrospectively applicable, as in the present case. In support of his this submission, he has referred to a Division Bench decision of Karnataka High Court in Rukmanlyamma Vs. A.M. Venkata Swamy, wherein it has been held that repealing enactment has expressly made Section 6 of the General Clauses Act applicable which saves the rights and liability under the repealed law. There is nothing in provision of Section 217 of the Act or any other provision in the 1988 Act which increases "no fault liability" of the owner or the insurer with retrospective effect. When the legislature has not chosen to enhance the liability in the cases instituted under the 1939 Act, it is not permissible to increase the liability by interpretation. In K.S. Paripoornan Vs. State of Kerala and Others, Dr. Sharma has placed reliance on the observations made therein with special reference to paras 44 to 50:

(44) A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless; it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by

reason of their failure to comply with formal requirements subsequently imposed nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings.

(45) These principles are equally applicable to amendatory statutes. According to Crawford: "Amendatory statutes are subject to the general principles relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transaction, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospectively."

(46) The dictum of Lord Denman, C. J. in *The Queen v. St. Mary Whitechapel* 1848 (12) QB 120, that a statute which is in its direct operation prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing, which has received the approval of this Court, does not mean that a statute which is otherwise retrospective in the sense that it takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, will not be treated as retrospective. In *Alexander v. Mercouris* (1979) 3 All ER 305, Goff, L.J., after referring to the said observations of Lord Denman, C.J., has observed that a statute would not be operating prospectively if it creates new rights and duties arising out of past transaction. The question whether a particular statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to the past transactions. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself.

(47) In the instant case we are concerned with the application of the provisions of Sub-section (1-A) of Section 23 as introduced by the amending Act to acquisition proceedings which were pending on the date of commencement of the amending Act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending.

[See Halsbury's Laws of England, 4th Edn., Vol. 44, para 922]. Similar is the approach of the courts in India. In AIR 1941 16 (Federal Court) Sulaiman, J. has observed:

Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits, courts have undoubtedly leaned very strongly against applying a new Act to pending action, when the language of the statute does not compel them to do so. (at p. 37).

To the same effect are the observations of Varadachariar, J., who has stated:

There can be little doubt that there is a well recognised presumption against construing an enactment as governing the rights of the parties to a pending action. ... There are two recognised principles, that vested rights should not be presumed to be affected and that the rights of the parties to an action should ordinarily be determined in accordance with the law as it stood on the date of the commencement of the action. The language used in an enactment may be sufficient to rebut the first presumption, but not the second. Where it is intended to make a new law applicable even to pending actions, it is common to find the legislature using language expressly referring to pending actions." (at pp. 46 and 47).

(48) In the words of S.R. Das, C.J., "The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed." [See Garikapatti Veeraya Vs. N. Subbiah Choudhury, In order that the provisions of a statute dealing with substantive right may apply to pending proceedings the court has insisted that the law must speak in language which expressly or by clear intendment, takes in even pending matters. [See Smt. Dayawati and Another Vs. Inderjit and Others, : (1966) 3 SCR 275 and Lakshmi Narayan Guin and Others Vs. Niranjana Modak,

(49) The provisions of Section 23 (1-A) have to be construed in the light of the aforementioned principles. If thus construed, it would be evident that u/s 23 (1-A) an obligation to pay an additional amount by way of compensation has been imposed. Such an obligation did not exist prior to the enactment of the said provision by the amending Act. If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transactions already past. We are, therefore, unable to agree with the view expressed in Union of India (UOI) and Another Vs. Zora Singh and Others, that Section 23 (1-A) would only operate prospectively and will not have retrospective operation if it is construed as applying to proceedings which were pending before the reference court on the date of the

commencement of the amending Act and in which the reference court makes the award after the commencement of the amending Act.

(50) The next question which needs to be considered is whether any indication has been given by Parliament that Section 23 (1-A) 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. The learned Counsel for the claimants have urged that such an indication has been given by the words "in every case" used in Section 23 (1-A). We are, however, of the view that Parliament has given a clear indication of its intention in this regard in Section 30 (1) of the amending Act. Since express provision is contained in Section 30 (1) of the amending Act indicating the intention of Parliament as to the extent to which the provision of Section 23 (1-A) would apply to pending proceedings there is no scope for speculating about the said intention of Parliament by reading Section 23 (1-A) in isolation without reference to Section 30 (1) of the amending Act.

11. He has also placed reliance on a Division Bench judgment of Madhya Pradesh High Court in Govind Das and Another Vs. Yaqub Khan and Others, wherein it has been held that:

It is next contended that the Tribunal which awarded no fault liability of Rs. 15,000/- as the law then stood, had failed to award interest, as it ought to have done. We find on verification that the Tribunal awarded interest at the rate of 6 per cent per annum. The rate does not appear to be low since the accident took place in 1983 and the impugned order was passed without any delay. There is a further contention that this Court should award additional no fault liability of Rs. 35,000/- in view of the amendment introduced in the Motor Vehicles Act with effect from 14.11.1994. We are not satisfied that the amendment has any retrospective effect to enable this Court to award Rs. 50,000/- in an accident which took place in 1983.

12. In Surinder Kaur Vs. Lakhbir Singh and Others, the learned single Judge of Punjab & Haryana High Court has also taken a similar view holding that the no fault liability which was enhanced from Rs. 25,000/- to Rs. 50,000/- w.e.f. 14.11.1994, the claimants are not entitled to the enhanced amount in a case where accident took place prior to the amendment.

13. On the other hand, Mr. Maniktala has pointed out that in the present case it is implicit in language of the amending provision that it is retrospective in its applicability and in order to support his this submission, has referred to principles of pronouncement made by the different courts as well as by the Apex Court and has submitted that the provision of Section 140 (2) of the Act which was amended w.e.f. 14.11.1994, is applicable retrospectively and has prayed for upholding the impugned order. Reference is being made to the law cited by him in this behalf hereinafter. In Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others, in which it has been held that:

In interpretation of statutes, courts have steered clear of the rigid stand of looking into the words of the section alone but have attempted to make the object of the enactment effective and to render its benefits to the person in whose favour it is made. The legislators are entrusted with the task of only making laws. Interpretation has to come from the courts. Section 17-B in its terms does not say that it would bind awards passed before the date when it came into force. The respondents' contention is that a section which imposes an obligation for the first time, cannot be made retrospective. Such sections should always be considered prospective. In our view, if this submission is accepted, we will be defeating the very purpose for which this section has been enacted. It is here that the court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the court's duty to discern the intention in the context of the background in which a particular section is enacted. Once such an intention is ascertained, the courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that the acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-nots and the underdog and which would lead to injustice should always be avoided. This section was intended to benefit the workmen in certain cases. It would be doing injustice to the section if we were to say that it would not apply to awards passed a day or two before it came into force.

14. In *Union of India and another Vs. Pradeep Kumari and others*, it has been held that:

We may, at the outset, state that having regard to the Statement of Objects and Reasons, referred to earlier, the object underlying the enactment of Section 28-A is to remove the inequality in the payment of compensation for the same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court u/s 18 of the Act. This is sought to be achieved by providing an opportunity to all the aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the reference court u/s 18 of the Act. Section 28-A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the civil court u/s 18 of the Act. In relation to beneficent legislation, the law is well-settled that while construing the provisions of such a legislation the court should adopt a construction which advances the

policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it. The provisions of Section 28-A should, therefore, be construed keeping in view the object underlying the said provision.

A perusal of the provisions contained in Sub-section (1) of Section 28-A of the Act would show that after an award is made under Part III whereby the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, a right accrues to a person interested in the other land covered by the same notification under Sub-section (1) of Section 4 who is also aggrieved by the award of the Collector but who had not made an application to the Collector u/s 18, to move an application before the Collector for redetermination of the amount of compensation payable to him on the basis of the amount of compensation awarded by the court. This application for redetermination of the compensation is required to be made within three months from the date of the award of the court. The right to make the application u/s 28-A arises from the award of the court on the basis of which the person making the application is seeking redetermination of the compensation. There is nothing in Sub-section (1) of Section 28-A to indicate that this right is confined in respect of the earliest award that is made by the court after the coming into force of Section 28-A. By construing the expression "where in an award under this part" in Sub-section (1) of Section 28-A to mean "where in the first award made by the court under this part", the word "first", which is not found in Sub-section (1) of Section 28-A, is being read therein and thereby the amplitude of the said provision is being curtailed so as to restrict the benefit conferred by it. In the matter of construction of a beneficent provision it is not permissible by judicial interpretation to read words which are not there and thereby restrict the scope of the said provision. [See: Jnan Ranjan Sen Gupta and Others Vs. Arun Kumar Bose,

In *New India Assurance Co. Ltd. v. Ramesh Kalita* 1989 ACJ 607, (Gauhati), a learned single Judge of Gauhati High Court has held that:

It may also be noted that undoubtedly full compensation was recoverable on the proof of rashness or negligence for which the claim was pending when by the amendment a socially beneficial provision extending some immediate relief was engrafted on the law where-under the claim was pending and, therefore, it may not be even considered as giving retrospective operation to the law. Just because the claim under it related to an accident that occurred before the law came into force, it may also be said that the amendment may not be considered retrospective in the sense under consideration because a part of the requisite for its action is drawn from a time antecedent to its coming into force, that is, the death or permanent disability having occurred before the amendment provision came into force.

For the aforesaid reasons, I am inclined to take the view that in the application of the new provision of Section 92-A in a case where the claim was pending in

respect of an accident which took place earlier than the coming into force of the said provision, it should not be considered as giving retrospective effect to it in the sense under consideration, and even if it is to be so considered, being a socially beneficial legislation in such a case, it should be given retrospective effect.

Similarly, in *Madhya Pradesh State Road Trans. Corporation v. Sukhiya Bai* 1989 ACJ 1124, the learned single Judge has held:

Whether a particular provision has got prospective or retrospective effect is to be considered by the particular provision, looking to its history as to how and why that provision has been introduced. If the provisions of Section 92-A of the Act are tested with the abovesaid touchstone, it will be seen that the said provisions have been introduced to give immediate and effective relief to the victims of road accidents. Thus, the provisions of Section 92-A of the Act are beneficial piece of social legislation. Further, to know whether a particular piece of legislation or a particular provision in an Act has got retrospective or prospective effect, the courts are expected to take into account the change in law and accordingly to extend such benefits to the concerned parties in pending matters. This view is fortified by the view expressed by the Apex Court of the land in *Lakshmi Narayan Guin and Others Vs. Niranjan Modak*, .

In *Oriental Fire & Genl. Ins. Co. Ltd. v. Shantabai S. Dhume* 1987 ACJ 198 , it has been held that the provisions of Section 92-A of the Act have got a retrospective effect and in a pending matter, the Tribunal or the court may take into consideration the effect of the provisions and accordingly interim award may be awarded. In *Chunnilal v. Ram Akhtyar Singh* Misc. Appeal No. 81 of 1983; decided on 7.8.1987, this Court has taken the view that this provision of Section 92-A of the Act has got retrospective effect.

This being so, the Tribunal has not committed any error in interpreting the provisions of Section 92-A of the Act having retrospective operation and in awarding the interim award.

15. These are a few cases to which references are being made. Besides this, he has also drawn our attention to *K.P. Ali and Another Vs. V. M. Madhavan and Others*, wherein it has been held by the Division Bench of the Kerala High Court that the provisions of Section 92-A are applicable to pending cases relating to accidents which occurred prior to coming into force of this provision, to similar effect. *Oriental Fire & Genl. Ins. Co. Ltd. v. Shantabai S. Dhume* 1987 ACJ 198, was also relied wherein it has been held that the provision of Section 92-A of the Motor Vehicles Act, 1939, is applicable retrospectively in respect of accident which has taken place prior to coming into force of the said provision. It has been further held in the said judgment that this provision is intended to provide social justice by giving compensation without proof of fault or negligence by the driver or the owner of the vehicle. It is manifest that question, as to whether 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. Where a right has been vested in a particular party retrospective application of a new law can be made if such is the intendment of the legislature. Section 92-A does not expressly restrict its application to the future cases and it being a piece of welfare legislation has to be interpreted literally and is to be applied to all pending cases irrespective of the date on which accident occurred and the fact that the amendment Act postulates that the amendment will come into force on the dates notified in the government Gazette would be of no consequence.

16. In *Vilasini v. Kerala State Road Trans. Corporation* 1988 ACJ 755, it has been held that Section 92-A is a completely new provision of law and if the intention of the legislation was to give retrospective effect, nothing prevented the legislature from expressly providing for such retrospective operation. This argument appears to be attractive but on a deeper consideration of the purpose, for which the law was enacted and the mischief and evil that were sought to be removed by the enactment, the court was not inclined to accept the said argument and finally it was held that the provision is applicable to the pending cases relating to accidents prior to the date of coming into force of Section 92-A of the Motor Vehicles Act.

17. In *Mithilesh Kumar and Another Vs. Prem Behari Khare*, it has been held that:

A retrospective operation is not to be given to a statute so as to impair 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. Before applying a statute retrospectively the court has to be first satisfied that the statute is in fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the illegality of past transactions, or impair contracts, or impose new duty or attach new disability in respect of past transactions or considerations already passed. However, 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. The general scope and purview of the statute and the remedy sought to be applied must be looked into and what was the former state of law and what the legislation contemplated has to be considered. Every law that impairs or takes away rights vested agreeable to existing laws is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individuals and the community as a whole may relate to a time antecedent to their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature may be said to have so expressed its intention.

18. Another case on which reliance has been placed by Mr. Rajnish Maniktala is a Division Bench judgment of this Court, titled as *Sadh Ram Vs. State of Himachal Pradesh and Another*, The point involved in this appeal was whether the provisions of Section 166 regarding limitation as it stood amended vide Act No. 54 of 1994 which also came into force w.e.f. 14.11.1994 thereby prescribing no period of limitation would be applicable to all the cases pending of accidents which had taken place before this amendment coming into force. While considering the matter, the Division Bench had held that the Amendment Act whereby Sub-section (3) of Section 166 providing for limitation for filing a claim petition under the Motor Vehicles Act, 1988 would be applicable to all the cases and thus, it was further held that now no period of limitation is prescribed and such amendment would govern the cases pending at all stages whether original or in appeal.

19. We have considered the submissions made by the learned Counsel for the parties and have also taken note of the cases cited at the Bar. In order to appreciate the general scope and the purview of the statute the remedy sought to be applied must be looked into and what was the former state of law and as the legislation contemplated has to be considered. Every law which impairs or takes away rights vested agreeable to existing laws is retrospective. It cannot be laid as an invariable rule that a statute cannot be made applicable retrospectively unless it is so expressed in the terms thereof. The purpose of payment of compensation under no fault liability is that prompt and immediate compensation is to be paid and it is in spirit of social welfare legislation and it should be interpreted beneficially in favour of the claimant. In this context it may be appropriate to mention that technicalities of law should not be allowed to have an upper hand to unduly crush the spirit of legislation for social justice. Further whenever a court is called upon to interpret the amendment provision it has to bear in mind the history of the provision, the mischief which the legislature attempted to remedy, the remedy provided by amendment and the reason for providing such remedy.

20. The purpose of social welfare legislation by enacting Section 92-A in 1939 Act, w.e.f. 1.10.1982 was aimed to remove the difficulties faced by the victims to establish the rashness and negligence on the part of the driver. This provision was incorporated by enhancing the amount from Rs. 15,000/- to Rs. 25,000/- in Section 140 (2) of the Motor Vehicles Act, 1988, which has further been enhanced under no fault liability in case of death to Rs. 50,000/-. In this behalf, a reference to Section 140 (3) of the Motor Vehicles Act, 1988 shows the intention of the legislature that claimant shall not be required to plead and establish the death or permanent disablement being the result of any wrongful act, neglect or default. This further shows that the providing of compensation under no fault liability is without any loss of time and with utmost promptitude.

21. In view of the above discussion, we have not been able to persuade ourselves to accept the submissions made on behalf of the appellant by the

learned Counsel. In case the claim of the appellant is upheld, it would not only defeat but would further negative the legislative purpose and injunction with which the provision had been enacted and the amount of compensation was made payable, under no fault liability.

22. From whatever angle the case may be viewed, it would be just and reasonable as well as with legislative purpose and intendment to hold that the provisions of Motor Vehicles Act, 1988 relating to payment of compensation u/s 140 (2) as amended by Motor Vehicles (Amendment) Act, 1994, Act No. 54 of 1994, are retrospective in its application and would govern all the pending cases on this date and the plea to the contrary raised on behalf of the appellant is negatived. Parties are left to bear their own costs.