

(1993) 11 AP CK 0019

In the Andhra Pradesh High Court

Case No : A.A.O. No's. 1351 to 1374 of 1990

Oriental Insurance Co. Ltd.

APPELLANT

Vs

P. Mariyamma and Others

RESPONDENT

Date of Decision : 04-11-1993

Acts Referred:

General Clauses Act, 1897 — Section 6

Motor Vehicles Act, 1988 — Section 140, 161, 165, 173, 217

Citation : (1994) ACJ 1219

Hon'ble Judges : D. Rama Reddy, J

Bench : Single Bench

Advocate : M. Srinivasa Rao, for the Appellant; M. Ramachandra Rao and S.R. James, for the Respondent

Final Decision : Dismissed

Judgement

D. Rama Reddy, J.—These 24 appeals are filed by the Oriental Insurance Co. Ltd. against the common order passed by the Motor Accidents Claims Tribunal, Khammam, awarding compensation to the various respondents ranging from Rs. 2,000/- to Rs. 7,500/- with interest at 12 per cent per annum. All O.Ps. arise out of the accident that took place on 31.8.1987 involving the lorry bearing No. ADB 1765 and were filed before 1.7.1989. These 24 persons who were among 70 agricultural coolies travelling in that lorry sustained grievous and multiple injuries in the accident that took place as a result of rash and negligent driving of the driver of the lorry.

2. The Tribunal by its common award dated 6.4.1990 held that the accident took place due to the rash and negligent driving of the lorry driver and awarded compensation against the owner and driver of the lorry and the insurance company. Against this order, the insurance company filed appeals on 5.10.1990.

3. A preliminary objection was taken by the respondents that the appeals are not maintainable u/s 173(2) of the Motor Vehicles Act, 1988, (hereafter referred to as "the new Act") inasmuch as the amounts in dispute in all the appeals are less

than Rs. 10,000/-. Under the Motor Vehicles Act, 1939, (hereafter referred to as "the old Act") the limit was Rs. 2,000/-. The learned counsel for the appellant opposes this preliminary objection saying that as the claim petitions were filed before 1.7.1989, the date of coming into force of the new Act, Section 110-D of the old Act applies and the appeals are maintainable.

4. The new Act which is an Act to consolidate and amend the law relating to motor vehicles came into force from 1.7.1989. Section 217 of the new Act repeals the old Act and under Sub-section 2(a), anything done, or any other action taken under the repealed enactment and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of the new Act, be deemed to have been done or taken under the corresponding provision of the new Act. The other sub-clauses are not material for the purpose of these cases. It is stated under Sub-section (4) of Section 217 of the new Act that 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, with regard to the effect of repeals.

5. Mr. M. Ramachandra Rao, the learned counsel for the respondents-claimants, contends that though the Us has commenced before 1.7.1989, since the appeals in question were filed after the new Act came into force, the new Act is applicable.

6. At the outset it is to be noted that the question here is whether the appeals are maintainable u/s 173(2) of the new Act and the question whether the condition of deposit of half of the amount awarded or Rs. 25,000/-, whichever is less, along with the appeal laid down in proviso to Section 173(1) of the new Act has to be fulfilled or not, does not arise. Section 173(1) of the new Act reads as follows:

173. Appeals.-(1) Subject to the provisions of Sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in appeal is less than Rs. 10,000.

7. Proviso to Sub-section (1) is new while there was a provision analogous to Sub-section (2) in the old Act, but with only difference that under the old Act, the limit was Rs. 2,000/-. It is now well settled that right of appeal is substantive right and such a right existing on the commencement of li.s continues till the rest

of its career unless the Amending Act takes it away either by express words or by necessary intendment. Similarly, in the case of repealing Act, if there is a savings section saving the rights accrued either by specific provision to that effect or by virtue of applicability of Section 6 of the General Clauses Act, the vested substantive right of appeal will be available to the party. However, if the new Act expresses its intention either expressly or by necessary intendment that such a vested interest is taken away then that intention has to be given effect to. This is now settled by the decision of the Supreme Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, .

8. In *Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay*, , it was held by the Supreme Court that right of appeal is neither an absolute nor an ingredient of natural justice, but only statutory right which can be circumscribed by the conditions in the grant and accordingly it cannot be said that right of appeal is whittled down by a condition that certain amount has to be deposited along with the appeal. Further, the right accrued which is granted u/s 6 of the General Clauses Act must be specific and not abstract as on the date of repealing the Act. In *Lalji Raja and Sons Vs. Firm Hansraj Nathuram*, , the Supreme Court observed as follows:

That a provision to preserve the right accrued under a repealed Act "was not intended to preserve the abstract rights conferred by the repealed Act....It only applies to specific rights given to an individual upon happening of one or the other of the events specified in statute". [See Lord Atkin's observations in *Hamilton Cell v. White* (1922) 2 KB 422. The mere right, existing at the date of repealing statute, to take advantage of provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause. [See *Abbot v. Minister for Lands* (1895) AC 425 and *G. Ogden Industries Pvt. Ltd. v. Lucas* (1969) 1 All ER 121.

9. Thus, it is settled law that though the right of appeal is substantive, the details regulating the appeal like when to file, where to file, how to file or any condition imposed in filing the appeal are all procedural not having the effect of whittling down the right itself and in such a case the provisions of the new enactment will apply to appeals filed after the new enactment. Applying these principles, the appeals filed after the new Act came into force against the awards in claim petitions filed before 1.7.1989 are subject to the condition of depositing the amount as indicated in proviso to Section 173(1) of the new Act. In the new Act, the right of appeal is not taken away completely, but only is restricted to amounts equivalent to and more than Rs. 10,000/-. In *Lalji Raja and Sons Vs. Firm Hansraj Nathuram*, , under the old law, certain foreign decrees were non-executable in a particular area. The law was amended extending CPC to that area. The Supreme Court held that the right of non-executability of the decree, which the judgment debtor had at the time of commencement of new law, cannot be said to be accrued as substantial right. Applying this decision, the right of appellant in these cases to file appeals questioning the awards granting

compensation of amounts less than Rs. 10,000/- but more than Rs. 2,000/- cannot be said to be accrued right as on 1.7.1989. Thus, it is not saved.

10. Even assuming that the right of filing appeal against the awards giving compensation of amount more than Rs. 2,000/- and less than Rs. 10,000/- is a vested substantial right, it has to be examined whether the new Act expressed any intention to the contrary. There is no express intention in the Act to that effect. But whether there is any implied intention has to be seen. It is well settled that the Motor Vehicles Act relating to award of compensation to victims of accidents is a beneficial legislation. The new Act provides far more beneficial measures to the victims of the accidents; for example, in respect of "no fault liability" in case of death, the amount is increased from Rs. 15,000/- to Rs. 25,000/- while in the case of permanent disability the amount is increased to Rs. 12,000/- from Rs. 7,500/- (Section 140 of the new Act). Similarly, in case of victims of "hit and run" accidents, the compensation is increased in the new Act to Rs. 8,500/- in respect of death from Rs. 5,000/- and in the case of grievous hurt from Rs. 1,000/- to Rs. 2,000/- (Section 161 of the new Act). Similarly, u/s 165 of the new Act, compensation in respect of damage to any property of third party can be claimed in the Tribunal. As already stated, the owner or the insurance company has to deposit half of the amount awarded or Rs. 25,000/-, whichever is less, at the time of filing the appeal. Hence, from the various provisions of the new Act, it appears that the Parliament has intended that the restriction of appeals indicated in Section 173(2) of the new Act must apply to all appeals filed after the new Act came into force. Otherwise, it will be many years when this provision can be availed of by the claimants since the appeals against the awards in claim petitions filed before 1.7.1989 will be normally ripe for filing only after couple of years, say July, 1991 and it could not have been the intention of the Parliament that the amending Act will be effective only two years after its introduction.

11. The learned counsel for the respondents relied on the decision in *H. Shiva Rao and Another Vs. Cecilia Pereira and Others*, . That was a case arising under Karnataka Rent Control Act. Section 21(1) of the said Act says that no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant notwithstanding anything to the contrary in any other law or contract. The landlord obtained a decree for eviction in a suit and for possession of the premises in one Pandava village on 30.6.1972. The Rent Control Act was not applicable to this area at the time of passing the decree. But the Act was extended to this area on 18th July, 1983 and when E.P. filed by the landlord to execute the decree came up for hearing the tenant resisted relying on the provisions of Section 21(1) of the Karnataka Rent Control Act. The Supreme Court upholding the contention of the tenant held that rent control legislation being beneficial legislation to the tenant, has to be given a liberal interpretation and while ordinarily substantive rights should not be held to be taken away except by express provision, or clear" implication in the case of Rent Control Act,

it being a beneficial legislation the provision which confers immunity to the tenant against eviction by the landlord though prospective in form operates to take away the right vested in the landlord by a decree of a court which has become final, unless there is express provision or clear implication to the contrary. The Supreme Court further observed that "courts must find out the literal meaning of the expression in the task of construction. In doing so, if the expressions are ambiguous then the construction that fulfils the object of the legislation must provide the key to the meaning. Court must not make a mockery of legislation and should take a constructive approach to fulfil the purpose and for that purpose, if necessary, iron out the creases."

12. Later in para 7, the Supreme Court observed as follows:

(7) For the respondent it was submitted that provision of the section in question should not be read so literally as to rob the decree-holder of his vested rights-permitting Peter to rob for feeding Paul was not social justice, it was urged. Where in a society of acute shortage of accommodation adjustment of rights between the parties is the purpose, we must ask ourselves two questions-does the argument of the appellant on the construction of the section further the purpose of the legislation? and secondly, whether the construction canvassed by the appellant does violence to the language or is contrary to the literal meaning? In our opinion, the answer to the "first question is in the affirmative and to the second in the negative. If so, in our opinion, it must be so read, and the appeal must succeed.

13. Applying this decision, here also the interpretation which is urged by the claimants-respondents furthers the purpose of the legislation and does not do violence to the language or is not contrary to the literal meaning.

14. The decision of Full Bench of the Madhya Pradesh High Court in Gaya Prasad and Another Vs. Suresh Kumar, , interprets only applicability of proviso to Section 173(1) of the new Act. There it was held that all appeals filed after 1.7.1989 have to satisfy the condition of deposit required under proviso to Section 173(1). The question of applicability of Section 173(2) of the new Act did not arise for consideration in that case and one of the learned Judges, R,C. Lahoti, J. in para 58 of the judgment observed that this question does not fall for consideration before the Full Bench. Similarly, the decision of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, , is not directly on the point. In that case, the accident took place when the old Act was in force but the claim petition was filed after one year and after new Act came into force. The question was whether the petition was maintainable as per the old Act which did not restrict any period of delay or not maintainable under the new Act which restricts condonation of delay to six months only. The Supreme Court held that the new Act applies and that Section 6 of the General Clauses Act is not attracted because on the date of commencement of new Act, it cannot be said that the appellant had acquired a right to file belated petition at any time after the accident with a petition to condone delay whatever may be the period.

Hence, it does not help the respondents.

15. The learned counsel for the appellant relied on the decisions in Laxmi Narain alias Kaka and another Vs. Balbir Kaur and others, and in Oriental Insurance Company Ltd., Haldwani Vs. Dhanram Singh and others, . These decisions have dealt with the question of applicability of the first proviso to Section 173 of the new Act and did not consider Section 173(2). The Division Bench of the Punjab and Haryana High Court in Laxminarain's case (supra) applied the decision of the Supreme Court in Padma Srinivasan v. Premier Insurance Co. Ltd. 1982 ACJ 191 , where it was held that the liability of the insurance company has to be decided with reference to the law in force on the date of the accident. Neither Section 217 of the new Act nor the General Clauses Act nor the other decisions of the Supreme Court regarding vested right of appeal were considered in this case and accordingly, it does not throw any light. Similarly, the Division Bench of Allahabad High Court in the Oriental Insurance Co. Ltd.'s case (supra) did not consider the decision of the Supreme Court in Lalji Raja and Sons Vs. Firm Hansraj Nathuram, , in H. Shiva Rao and Another Vs. Cecilia Pereira and Others, , or in Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, and reached the conclusion on the reasoning that the right of appeal under the old Act is an absolute substantial right and that though the Motor Vehicles Act is a beneficial social legislation, the settled principle of interpretation still applies. With due respect, I am not able to agree with these two decisions. Incidentally, the Division Bench of the Allahabad High Court while deciding this case in review petition reversed its opinion expressed in Oriental Insurance Co. Ltd., Haldwani Vs. Dhanram Singh and others, , which in my opinion is the correct position of law.

16. To sum up, the right of filing appeals against awards granting compensation exceeding Rs. 2,000/- and below Rs. 10,000/- cannot be said to be an accrued and absolute right to the owner of the vehicle or the insurance company as on 1.7.1989 and hence Section 6 of the General Clauses Act does not apply. Even assuming that such a right is an accrued substantive right, it has been taken away by the new Act impliedly and is not saved u/s 6 of the General Clauses Act. Thus, I hold that appeals filed after 1.7.1989 in this court questioning the compensation amount which is less than Rs. 10,000/- are not maintainable even though the award arises out of a claim petition filed before 1.7.1989 or the award has been passed before 1.7.1989.

17. In the result, the appeals are not maintainable and are accordingly dismissed. All interlocutory orders passed pending the appeals stand vacated. No costs.