

(1964) 08 MAD CK 0008

In the Madras High Court

Case No : Civil Revision Petition No's. 2108 and 2109 of 1963

Palani Ammal and Others

APPELLANT

Vs

The Safe Service Ltd. and Others

RESPONDENT

Date of Decision : 28-08-1964

Acts Referred:

Constitution of India, 1950 — Article 227

Gaming Act, 1835 — Section 1, 2

Limitation Act, 1908 — Article 21, 7

Motor Vehicles Act, 1939 — Section 110, 110(1), 110A, 110A(1), 110B

Citation : (1965) ILR (Mad) 145

Hon'ble Judges : S. Ramachandra Ayyar, C.J.; Venkatadri, J

Bench : Division Bench

Advocate : A. Ramanathan and R. Vedantham, for the Appellant; N.G.R. Prasad, for Row and Reddi, N.C. Raghavachari and N.S. Varadachari and A. Alagiriswami, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatadri, J.—These two Civil Revision Petitions filed under Article 227 of the Constitution, have been heard together as they raise a

common question as to the jurisdiction of the Tribunal constituted u/s 110(1) of the Motor Vehicles Act, 1939. The facts giving rise to these

petitions are these: Kandasami, the husband of the Petitioner in the first of these petitions, met with an accident which resulted in his death. The

accident took place on 4th May 1961 on the Hasthampatti-Sooramangalam Road Salem when he was run over by a bug belonging to the first

Respondent in that case. The Petitioners in the second petition are the widow, son, daughters and mother at one Varadappa Goundan who on

22nd November 1960, while riding a bicycle on the Salem-Tiruchy Road was knocked down by a lorry owned by the State of Madras ; the

accident resulted in his death. The Petitioners in the two cases, respectively filed on 9th January 1962 and 13th October 1961 applications before

the Motor Accidents Claims Tribunal, Salem, for recovery of compensation from the owner of the motor vehicle concerned in the accidents. In the

first of the cases the insurer was also made a party. The learned District Judge, Salem, who functioned as the Tribunal under the Act has returned

the claims on identical reasoning for presentation to the civil Court holding that inasmuch as the Tribunal was constituted by the Government first

for the time only on 12th July 1961 under a notification issued by it u/s 110(1) of the Act, it would have no jurisdiction to entertain the claims in

respect of accidents which had taken place prior to its constitution. This view of the Tribunal derives support from the unreported judgment of

Jagadisan J., in Civil Revision Petition No. 1520 of 1962. A contrary view has, however, since been expressed by Veeraswami J. in V.C.K. Bus

Service v. Sethna ILR (1965) 1 Mad. 136.

2. The sole point that falls for consideration in the two cases is, whether the Tribunal constituted u/s 110(1) of the Motor Vehicles Act has

jurisdiction to entertain claims in respect of accidents that occurred prior to its constitution.

3. Section 110 in its present form as well as Sections 110-A to 110-F were introduced into the main Act by the Central Act C of 1956, which

received the assent of the President on 30th December 1956. Under the terms of the Amending Act, the provisions contained therein were to

come into force on a day to be appointed by the Central Government by notification in the official gazette. The appointed day was notified as 16th

February 1957. Section 110 of the main Act provides for the constitution by the State Government by notification in the official gazette of Motor

Accidents Claims Tribunals, for such areas as may be specified therein for the purpose of adjudicating claims for compensation in respect of

accidents involving the death or of bodily injury to persons arising out of the use of motor vehicles. By a notification, dated 12th July 1961, the

State Government constituted Claims Tribunals in this State.

4. We shall now refer to the relevant provisions of the Motor Vehicles Act regarding the jurisdiction of such Tribunals. Section 110-A(1) provides,

that an application for compensation in respect of claims mentioned in Section

110 may be made by the Tribunal constituted under the Act for the area in which the accident occurred, by the person sustaining the injury, or by the legal representatives of the deceased where death has resulted from the accident. Sub-clause (3) to that section says that no application for compensation shall be entertained unless it is made within sixty days of the occurrence of the accident. But there is an important proviso to that provision which enables the Tribunal to entertain the claim after the expiry of the period, if it is satisfied that the Applicant was prevented by sufficient cause from making the application in time. Sections 110-B to 110-E provide for the award of compensation by the Tribunal, its powers and the procedure to be followed and for appeals against such awards and for recovery of money thereunder. Section 110-F, which is important to this case, runs:

Where any claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

5. Prior to the legislative provisions referred to above, the legal representatives of a person who met with his death in an accident could sue the wrong-doer for damages in the ordinary civil Court by virtue of the Indian Fatal Accidents Act, 1855. Article 21 of the Indian Limitation Act, 1908, provided a period of one year from the date of the death of the person killed for filing such an action. The object of Sections 110 to 110-F of the Motor Vehicles Act is to provide a cheaper and speedier remedy to such persons. Section 110-F confers exclusive jurisdiction upon the Tribunal constituted under the Act to dispose of such claims and it takes away the jurisdiction of the civil Court to entertain suits relating to such claims.

6. A plain reading of the sections referred to above, make two things clear : (i) that Section 110-F which takes away the jurisdiction of the civil Court was not intended to be retrospective so as to affect the jurisdiction of the civil Court in respect of suits or actions which it had entertained before the constitution of the Tribunal u/s 110(1) ; and (ii) Sub-clause (3) of

Section 110-A, which provides for a time limit for the filing of application for compensation as well as the condoning of the delay in the presentation of such an application, postulates the previous existence of the Tribunal.

7. Therefore, the intention of the Legislature must have been that the bar of the jurisdiction of the civil Court enacted in Section 110-F must only be

in regard to matters in respect of which claims had not been entertained by the civil Court before the Constitution of the Tribunal. The terms of that

section which provide that no civil Court shall entertain any question relating to a claim for compensation, must, therefore, mean that it cannot, after

the constitution of the Tribunal under the Act take cognizance of a suit or other proceeding in respect of such claims. If before the constitution of

the Tribunal, the civil Court had entertained a suit or proceeding respecting such claim there is nothing in the Motor Vehicles Act to take away its

jurisdiction. As Jagadisan J., has pointed out, there is no provision in the Motor Vehicles Act for transfer of pending actions to the Claims Tribunal.

8. But in the present case, no suit or other proceeding had been filed in any civil Court in respect of the claims for damages for the accidents in

question before the constitution of the Tribunal. These accidents which gave rise to the causes of action in favour of the legal representatives of the

deceased in the two cases, took place before the constitution of the Tribunal. If those persons had so minded they could certainly have instituted

suits for damages in the ordinary Courts of the land before the constitution of the Tribunal.

9. The contention of the Petitioners in the present case is that once the Claims Tribunal came into being, it alone had jurisdiction to entertain the

claims and the jurisdiction of the civil Court must be deemed to be excluded. Jagadisan J., was not prepared to accept this view, as the learned

Judge was of the opinion that a right of suit being a vested right, could not be deemed to be taken away by section 110-F, which was prospective

in its operation. With respect, we think that the proposition has been rather broadly expressed. As we pointed out, Section 110 provides a

speedier remedy, obviously conceived as a better one from the point of view of the injured person or his unfortunate dependants. No new right or

even a new remedy has been created by that provision ; the forum alone is

changed. The right to claim damages by the legal representatives of a deceased in respect of an accident, where the latter met with his death, was actionable under the pre-existing law, in the civil Court. The effect of the new provision is to create a new forum thus taking away the jurisdictions of the ordinary civil Court. The aggrieved person has, as before a remedy for damages in respect of the injury. The forum alone is changed. The period of limitation has also been curtailed but these two are matters of procedure.

10. In other words, while one can readily agree that a right to sue for an injury is a vested right, which in the absence of express words or necessary intendment, a statute subsequently passed cannot be construed as taking it away, the same cannot be said with respect to the forum in which a particular action is to be agitated or the time within which such remedy is to be obtained. The last mentioned matters relate only to procedure. The law prevailing at the time of the institution of the action will alone govern such matters.

11. Reference was made to the decision in *Henshall v. Porter* (1923) 2 K.B. 193. 197. The Plaintiff in that case gave cheques for an amount of ₹ 333 to the Defendant in respect of losses incurred in horse racing. On 22nd February 1923 he issued a writ in the action claiming a return of the amount, purporting to do so u/s 2 of the Gaming Act, 1835. But even before the commencement of the action, the Gaming Act of 1922, had come into force, which, if applicable, would render the Plaintiff's claim futile. A question arose whether that Act would be applicable. Section 1 of the Gaming Act stated:

Section 2 of the Gaming Act 1885...is hereby repealed...No action for the recovery of money under the said section shall be entertained in any Court.

12. It was held that the Plaintiff's cause of action which vested in him before the Act of 1922 came into force had not been abrogated by the new Act. Mccardie J., observed:

In my opinion the Act of 1922 must be considered in the light of the settled, recognized and beneficent rule of law that existing rights are not to be deemed to be destroyed by a statute unless there be express words or the plainest implication to that effect.

13. But it must be noticed that under the Gaming Act, 1922, the right to sue for moneys had been completely taken away. It is not as if a different remedy was provided for its recovery and there was no question in that case of one forum being substituted for another, or a shorter period of limitation being prescribed for suits to recover such moneys. What that decision held was that the later Act, which took away such a right of action, which on its terms was to have only prospective operation, was not to affect the action instituted in respect of a right which existed prior to that enactment. The case will be different, where different and exclusive remedy is provided for an existing cause of action. We shall now refer to a case on the latter aspect. In *Lane v. Lane* (1896) P.D. 133, 135a question arose as to the retrospective operation of Section 4 of the Summary Jurisdiction (Married Women) Act, 1895. That provision gave certain summary remedies to a wife against her husband who had been guilty of persistent cruelty to her, thereby causing her to live apart from him. Before that provision was enacted, persistent cruelty on the part of a husband would have entitled the wife to have judicial separation with all its attendant consequences. Although the desertion in that case, which gave rise to a right on the part of the wife to seek judicial separation, occurred prior to the commencement of that Act, it was held that she had the right to approach the Court for summary remedy u/s 4. Sir F.H. Jeune the President of the Probate Division observed:

It is contended that this particular portion of the section creates a new offence and a new remedy, and is therefore prospective only in its operation. That is not, I think a sound contention. It does not appear to me that a new offence is created, and there certainly was a remedy in this Court for the very same thing that the Respondent is accused of.

14. The learned President, therefore, held that the section will have retrospective operation.

15. In *Ram Karan Singh v. Ram Das Singh* (1931) ILR 54 All. 299, 306. (F.B.), Sulaiman A.C.J. observed:

No doubt, a substantial right is not assumed to be taken away by a new Act unless it expressly says so. But a right to sue in one Court rather than another, or a right to wait for a particular period of time before suing, is not a substantial right. The selection of forum and the period of limitation

are ordinarily, matters of procedure only. The selection of a court in no way affects the right of suit itself. The Limitation Act does not necessarily extinguish the right, though it certainly places a bar against the remedy by suit.

16. This view was reiterated later in *Hazari Tewari Vs. Mt. Maktula Chaubain and Another* In that case, the Agra Tenancy Act, 1926, took away

the pre-existing jurisdiction of the civil Court to try certain classes of suits, which, after coming into force of that Act, were to be filed only in the

revenue Courts. The Act also provided for a shorter period of limitation for the application to be filed before the revenue Court. It was argued that

the larger period of limitation available to the Plaintiff under the pre-existing law was a vested right and that, therefore, the provisions of the new

enactment for the filing of applications within a particular time could not be read as retrospective. The learned Judges repelled that contention on

the ground that there could be no vested right in the choice of any particular forum and observed:

If the legislature has thought fit to deprive the civil Court of its jurisdiction to entertain suits of a particular nature, a Plaintiff cannot compel the civil

Court to hear his suit merely because his cause of action had occurred before the new Act depriving the civil Court of its jurisdiction was passed.

The choice of forum is a matter of procedure and not a substantive right, and in most cases a new Act would have a retrospective effect so far as

the choice of forum is concerned. The analogy of a new Act not affecting a pending action does not apply.

17. It was also held that there could be no vested right in the period of limitation fixed under the pre-existing law. But this must be read subject to

an important qualification. Where a new forum is pointed out by an Act in respect of a pre-existing right, which, under the law as it existed at the

time when the new enactment came into force, was alive, such rights could be enforced in the forum designated by the new Act, notwithstanding

the fact that the period of limitation prescribed therein (under the new Act) is shorter than that which existed before.

18. We may, in this connection refer to the decision in *Rajah of Pittapur v. Venkata Subba Row* (1915) ILR 39 Mad. 645. In that case the

landholder who attained the age of majority in 1906 was entitled to recover arrears of rent from certain of his ryots. Under the law as it existed

prior to the coming into force of the Madras Estates Land Act (1st July 1908) the landholder was entitled to sue for such arrears in the civil Court, taking advantage of the provisions of Section 7 of the Indian Limitation Act, which gave him a period of three years after attaining the age of majority. Before he filed suits for recovery of such arrears, the Estates Land Act, 1908, came into force, which constituted the revenue Court as the forum and prescribed a summary procedure for recovery of rents by a landholder against his ryots. That Act did not confer on the landholder the benefit of Section 7 of the Limitation Act. Nevertheless, the landholder instituted suits in the revenue Court for recovery of the arrears of rent, and the point that fell for determination in the case was, whether the suits were in time. It was held by the majority who constituted the Bench, that inasmuch as the claim to recover arrears of rent was alive on the date when the Estates Land Act came into force, the landholder should be held entitled to recover the moneys. Kumaraswami Sastriyar J., observed at page 657. The correct rule seems to me to be that though laws affecting limitation might abridge or enlarge periods of limitation in cases of suits or causes of action which were alive at the date when the new enactment came into force and which under the old law would expire afterwards, the change cannot unless there is a clearly expressed intention to the contrary either by apt words in the enactment or otherwise, be retrospective so as to destroy rights of suits which were alive on the date.

19. This principle is but an application of the general rule that a right of action existing on the date when an Act came into force cannot be held to be taken away in the absence of words in the statute to the contrary effect merely for the reason that a shorter period of limitation has been provided under the new Act for such matters. It is also significant that in that case the learned Judges accepted the position that the revenue Court was competent to entertain the suits. Therefore, the rule can be stated thus: Where the Act creates a new remedy and prescribes the same as the exclusive one in respect of a cause of action for which there previously existed a right of action in a civil Court, it is the new remedy and no other that has got to be adopted by the litigant for the vindication of his rights. This is of course subject to there being no provision to the contrary in the statute. The fact that the cause of action arose before the new Act came into

force, cannot therefore affect the question so long as the remedy in respect of that cause of action had not become barred. The party will be entitled to, and indeed compelled to resort to the remedy prescribed under the new Act, unless as we said there be words pointing to a different procedure in the statute itself. To reiterate the position, where in respect of a right for which a remedy existed at the common law, a statute provides a new forum as the exclusive one for the adjudication of such rights, it is the latter remedy that has got to be ordinarily resorted to. In such matters three types of cases can be conceived ; (i) where the cause of action arises after the new Act; (ii) where the cause of action has arisen before the new Act, in respect of which a suit has been filed in the ordinary civil Court before the coming into force of the new Act and (iii) where the cause of action arose before the new Act but a suit in respect of the same had not been filed before the new Act came into force.

20. In a case where the statute prescribes a new forum with exclusive jurisdiction, there can be little doubt that the remedies in respect of the causes of action arising subsequent to its enactment must be in accordance with its provisions it is the new forum that has to be resorted to. The second of the cases mentioned above does not also present any difficulty. Unless there are words in the statute itself to effect or provide for a transfer of the proceedings instituted in the civil Court, it will have jurisdiction to dispose of the suit which had been entertained by it. As regards the third class of cases, the matter will be governed by the terms of the statute. In the present case they exclude the jurisdiction of the civil Court to entertain the claim. Instead, jurisdiction over such claims is given to the new Tribunal.

21. Learned Counsel appearing for the Respondents invited our attention to two decisions of the High Court of Madhya Pradesh. The first of them is *Khatumal Ghanshamdas Vs. Abdul Qadir Jamaluddin and Others*, . That was a case where a suit was instituted in the civil Court before the Claims Tribunal was appointed under the provisions of Motor Vehicles Act. It was held that it would be the civil Court and not the Tribunal that would be entitled to dispose of the claim. We find nothing in the judgment in that case against the view we are inclined to take. The other case is *Kumari Sushma Mehta Vs. Central Provinces Transport Services Ltd. and*

Others, . There the suit was filed in a civil Court in respect of a cause of action which arose subsequent to the constitution of the Tribunal. It was held that Section 110-F of the Motor Vehicles Act could not affect the right of suit in respect of a cause of action which had accrued before the constitution of the Accidents Claims Tribunal and the civil Court alone would have jurisdiction to entertain the claim for compensation. The learned Judges based their conclusion on the reason that inasmuch as a vested right to sue the wrong-doer existed at the time when the amending Act came into force and there was nothing in the amending Act, to deprive that right to the litigant, the civil Court's Jurisdiction to entertain the claim notwithstanding the existence of the Tribunal must be upheld. With great respect to the learned Judge, we may point out that this view does not give full effect to the clear terms of Section 110-F, which preclude the civil Court from entertaining any claim which could be filed before the Tribunal. On its terms no distinction can be made between a case of a claim arising before and one after the Tribunal is set-up. From what we have stated above, it will be clear that the Claims Tribunal will have jurisdiction to entertain the claims in respect of accidents that occurred before its constitution, provided the remedy of the aggrieved person was not barred before it was constituted. We are, therefore, unable to share the view expressed by the learned Judges of the Madhya Pradesh High Court in the case referred to above.

22. In a case similar to one before us *V.C.K. Bus Service v. Sethna* ILR (1965) 39 Mad. 645 *Veeraswami J.*, held that the Tribunal would have jurisdiction to entertain and decide the claim. We agree with that decision. In our opinion, Clause (3) of Section 110-A, which prescribes a period of sixty days from the date of the accident for the institution of a claim before the Tribunal, cannot be regarded as suggesting a different interpretation. On the principle of the decision in *Rajah of Pittapur v. Venkata Subba Row* (1915) ILR 39 Mad. 645, the applications filed within the period limited by Article 21 of the Indian Limitation Act, 1908, must be regarded as being in time. Even otherwise, the case will be one for excusing the delay in the presentation of the claims, if the Tribunal found sufficient cause for such delay.

23. We would however, like to point out that one of the observations made by

Veeraswami J., requires clarification. The learned Judge took it as a well settled principle of construction that

Exclusion of civil Court's jurisdiction will however be assumed where the statute prescribes a special forum for agitating a particular class of causes of action.

24. This, is not correct. The mere fact a special remedy is provided for certain rights cannot by itself take away the jurisdiction of the civil Court.

The true rule has been stated in the classic passage in the judgment of Willes J., in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859)

6 C.B.N.S. 336, 356, thus:

There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at

common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at

common law ; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party

suing has his election to pursue either that or the statutory remedy. The second class of case is, where the statute gives the right to sue merely, but

provides no particular form of remedy ; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability

not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it...The remedy

provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

25. Now, the instant case will come under the first of the three classes of cases referred to above inasmuch as prior to the statute in question there

existed a liability at common law and remedy in the shape of action in the ordinary Courts. The foregoing passage also shows that the mere fact

that the statute has provided a special and peculiar form of remedy will not have the effect of taking away the right to resort to the civil Court. The

aggrieved person will have a choice between the two remedies. But, as stated above, this is subject to the qualification that the statute does not

otherwise provide against the existence of both the remedies.

26. The terms of Section 110-F of the Motor Vehicles Act while conferring exclusive jurisdiction on the Claims Tribunal however prohibit the civil

Court from entertaining such claims. These terms must be regarded as containing words excluding the common law remedy.

27. It follows, that the view taken by the Tribunal below cannot be sustained. The civil revision petitions will be allowed and the cases remanded to

the Tribunal for adjudication on their merits. The Respondents will pay the Petitioner's costs.