
(1991) 12 RAJ CK 0002
In the Rajasthan High Court

Rajasthan State R.T.C.

APPELLANT

Vs

Ogam and Others

RESPONDENT

Date of Decision : 16-12-1991

Acts Referred:

General Clauses Act, 1897 — Section 6

Motor Vehicles Act, 1988 — Section 140, 141, 142, 143, 144

Citation : (1992) 1 ACC 736

Hon'ble Judges : Rajesh Balia, J;A.K. Mathur, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—The short question which is raised in this Special Appeal is that while fixing the quantum of compensation on "no fault liability" principle by the Motor Accidents Claims Tribunal in a case of death or permanent disability in a motor Accident, whether the provisions as they existed on the date of death or the law as in force on the date when such quantum of compensation is determined, will be applicable.

1 A. Brief and undisputed facts which led to this Special Appeal are that one Kana Ram son of Shri Achala Ram resident of village Batadu the in a Bus accident near village Kawas District Barmer on 19-5-89. The accident took place with a bus of Rajasthan State Road Transport Corporation. Respondents No. 1 to 5 who include widow, mother, father and minor brother of the deceased Kana Ram filed a claim for compensation before the Motor Accidents Claims Tribunal somewhere in July, 1989 after the Motor Vehicles Act, 1988, hereinafter referred to as "the New Act" had come into force. The claimants had made a claim for immediate award of Rs. 25,000/- as compensation on the ground of "no fault liability" as fixed by Section 140 of the New Act. This claim of the claimants was contested by the Corporation on the ground that since accident has taken place on 19-5-89 before the commencement of the New Act, the limit of "no fault compensation" payable shall be only to the extent provided u/s 92-A of the Motor Vehicles Act, 1939, hereinafter referred to as "the Old Act", which was in force on the date when accident took place. The amount of compensation on the

ground of "no fault liability", under the repealed provisions of the Old Act was Rs. 15,000/- in the case of death.

2. The contention of the Corporation was rejected both by the Motor Accidents Claims Tribunal, Barmer vide its order dated 8th Dec. 89 and then by the learned Single Judge of this Court vide order dated 18th April, 1990 passed in the appeal filed against the order of Motor Accidents Claims Tribunal. The order passed by the learned Single Judge has been challenged in this Special Appeal.

3. We have heard learned Counsel for the parties.

4. The only contention of learned Counsel for the appellant is that by virtue of Section 6 of the General Clauses Act of 1987, the amount of compensation stated in the repealed " Act will govern the award of amount payable as compensation on principle of "no fault liability" in a case where accident has occurred prior to commencement of the New Act not with standing the fact that claim has been made after the commencement of the New Act. Learned Counsel places reliance on a decision of this Court in Yashoda Kumari and Ors. v. Rajasthan State Road Transport Corporation, Jaipur and Ors. 1984 ACJ 716 and a decision of Allahabad High Court in Ram Mani Gupta and Ors. v. Mohammed Ibrahim and Ors. reported in 1985 ACJ 476 in support of his contention that the provisions of Section 140 under the New Act are not retrospective in effect.

5. In our opinion, the contention of the learned Counsel for the appellant cannot be accepted.

6. The relevant provisions of Section 6 of the General Clauses Act reads as under:

6. Effect of repeal.-Where this Act, or any regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears ...

7. A bare reading of Section 6 makes it abundantly clear that it is not an abstract and absolute principle to be applied in the case of every repeal but in all cases, intention of the legislature has to be gathered with reference to dominant intention of the legislation, the object indicating the nature of rights affected and circumstances under which the statute is passed.

8. The general principle governing the award of compensation on account of injury caused in the Motor Accident has its foundation in action for tort and usual common law principle is that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for death or permanent disablement, caused on account of a motor accident.

9. Under the Old Act a modification in the common law rule was first made by inserting Section 90-A to 90-E under Chapter VII-A. It provided for the first time to award compensation even in case no negligence is proved. While new Act was framed, this modification was retained under Chapter X through Sections 140 to 144. The provisions contained in Chapter VII-A under the Old Act (Sections 90-A

to 90-E) corresponding to Chapter X of the New Act (Sections 140 to 144) have been enacted by the legislature as a modification and not as abrogation of the above principle to help all destitute who are affected by motor accidents to speed up the payments of minimum amount as compensation on "no fault liability" principle. The provisions of Section 92-A/140 are beneficial legislation provided for an immediate aid to the claimant on account of death or permanent disablement in an accident.

10. It is no doubt true that the provisions of award of no fault compensation is a departure from the usual common law principle that a claimant should establish negligence on the part of owner or driver of the motor vehicle before claiming any compensation for death or permanent disablement caused on account of a motor accident at the end of proceedings. Nonetheless a close scrutiny of the provisions leaves no room of doubt that it remains part of compensation. As a matter of fact, what was payable to a person at the close of the proceedings by way of compensation has been bifurcated into two parts; one depending upon the establishment of the fault of the owner or driver of the vehicle and another the minimum compensation payable irrespective of the establishment of fault. In totality of the scheme, it remains part of the ultimate compensation, inasmuch as in case of determination of fault of the owner or driver of the vehicle, the compensation payable for "no fault liability" is not in addition to compensation payable on the basis of the fault liability but is adjustable against the final compensation determined subject to one rider that "no fault liability" compensation remains the minimum compensation payable.

11. This is the effect of combined reading of Sections 140 and 141 of the entire scheme envisaged under Chapter X of the New Act. Section 141 of the New Act gives an over riding effect to the provisions of this Chapter in the matter.

The amendment in minimum amount so fixed-up is intended to make the right realistic. The quantum fixed for award of compensation on "no fault liability" principle was an amount of Rs. 15000/- in the case of death, and 7500/- in the case of permanent disablement. That was in the year 1982. However, looking to the inflationary pressure and consequent loss of power of the purchase of rupee, the quantum fixed under the provisions of Section 92 A became unrealistic and required a step towards enhancement. This fact is apparent from the observations of their lordships of the Supreme Court in M.K. Kunhimohammed v. P.A. Ahmedkutty and Ors. reported in 1987 A.C.J. 872 which reads as under:

Having regard to the inflationary pressures and the consequent loss of purchasing power of the rupee, we feel that the amount of Rs. 15,000/- and the amount of Rs. 7500/- in the above provisions appear to have become unrealistic. We, therefore, suggest that the limits of compensation in respect of death and in respect of permanent disablement, payable in the event of there being no proof of fault, should be raised adequately to meet the current situation.

12. The said suggestion of the Hon''ble Supreme Court was given due respect by

the Legislature and while framing the New Act, Parliament while retaining the right of compensation of "no fault principle" conferred through Chapter 7-A of the Old Act had enhanced the quantum of amount to be awarded as compensation on that ground. The difference in the quantum of amount of compensation is only to make such right realistic and at par with the earlier fixed amount looking to the inflationary pressures and fall in the purchasing power of the rupee with the passage of time. Therefore, viewed from this angle, no new right or liability u/s 140 has been created and merely the quantum of compensation to be awarded by the Court on "no fault principal" has been enhanced.

13. By enacting Section 144, the legislature further made its clear intention that after the commencement of the Act, provisions of Chapter X will hold the field for governing the award of compensation by the Courts on the basis of "no fault liability" principle. Section 144 of the New Act reads as under:

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

14. Thus, a contrary intention is clearly spelt-out. Viewed from this angle, provisions of Section 6 of the General Clauses Act does not impede grant of the enhanced compensation under the provisions of Section 140 even in case where accident has occurred prior to the commencement of the New Act

15. This conclusion finds support from a recent decision of Kerala High Court in United India Insurance Co. Ltd. Vs. Padmavathy and Others, wherein it has been observed as under:

11. The said suggestion of the Supreme Court was given due respect by the law making machinery when the Bill was finally introduced in Parliament. This fact can be discerned from the statement of objects and Reasons prefaced in the New Act. Therefore, in effect the Parliament has only retained the same right, which was conferred on the victims through Chapter VII-A of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and at par with the earlier fixed amount. Hence Section 6 of the General Clauses Act would not impede the enforcement of Section 140 of the New Act in relation to an accident which occurred prior to the coming into force of the New Act.

12. For yet another reason, we can support the said conclusion. Section 6 of the General Clauses Act permits switching over to the repealed Act only if a different intention does not appear in the new statute. Such a different intention can be discerned from the New Act. It is in Chapter X of the New Act that provisions regarding "no fault liability" have been included. The Chapter starts with Section 140 and ends with Section 144. The last Section reads as follows: "The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force".

The different intention manifested in the New Act is that provisions in Chapter X should get predominance over all other laws. The provisions contained in that Chapter must be given effect to notwithstanding any contrary provision in any other law including Section 6 of the General Clauses Act. All other provisions, therefore, must yield to the provisions contained in Chapter X of the New Act. This is the legislative intention manifested through Section 144 of the New Act.

16. Somewhat similar view has been expressed by this Court also in *Kanhaiya Lal and Anr. v. Kailash Devi and Ors.* reported in 1991 (1) T.A.C. 673 wherein the learned Chief Justice observed as under:

This Court has to bear in mind that Section 92-A, so also Section 140, are benevolent provisions and by the rule of construction applicable to such provisions the Tribunal had to place a liberal interpretation on them so as to the decision reached is a just one. The Legislature provided for payment of no fault compensation by Section 92-A as it was realised that a litigation for compensation may take unduly long time and the dependants of the deceased do not have the capacity to suffer the consequences of death, with which they unfortunately are faced with for long. Same is the basis of providing no fault compensation to a person who suffered permanent disablement. u/s 92-A, the provision was for payment of Rs. 15000/-. It is this amount which has been enhanced by the Motor Vehicles Act, 1988, obviously because of the fact that value of money has considerably fallen since the enactment of Section 92-A. The intention behind Section 92-A is the same as u/s 140. The payment of no fault compensation is regarding procedure, which an accident claims tribunal has to follow. Enhancement of normal compensation from Rs. 15000/- to Rs. 25000/- is only a procedural matter. This provision is a departure from the usual case in which a claimant should establish his negligence on the part of the owner or driver before claiming any compensation that the death of permanent disablement caused on account of the motor vehicle accident. As the parliament felt that the amount of Rs. 15000/- previously provided by Section 92-A of the 1939 Act, had lost its efficacy due to inflation it raised the amount to Rs. 25000/-. The Tribunal was right in holding that Rs. 25000/- was awardable.

17. *Yashoda Kumari's* case (Supra) has no application to the controversy raised in the present case. That was a case in which not only the accident had occurred prior to the commencement of the Chapter VII A under the Old Act but the claim petition itself was decided on 9-2-72 much before the Section 92-A was inserted. In that view of the matter, the decision rendered in the aforesaid case is of no assistance to the petitioner. *Ram Manx Gupta's* case (supra) relied-on by the counsel for the petitioner is also distinguishable on the facts. That was also a case where accident had taken place on 2.2.1977 and the claim of the claimants was also rejected prior to coming into force of Section 92-A of the repealed Act. Moreover, both the cases were dealing with a situation where the amendment in law has created altogether a new right whereas the case in hand is not a case of creation of new right for awarding compensation on "no fault principle". It is

merely a case of determining quantum to be awarded as compensation when a claim for such award has been filed. Therefore, the question as to what should be the quantum to be awarded for "no fault liability" was not at all in issue in the two cases relied-on by the counsel for the petitioner.

18. In *R. v. St. Mary White chapel (Inhabitants)* (1848) 12 Q.B. 120, the question related to the provisions made under the Removal Act, 1846 protection the removal of poor widows from the parish within twelve months of the death of her husband. In a case where husband had the before the commencement of the Act, the removal of the widow from the parish was sought to be protected on the ground that the Act is not retrospective and was not applicable to the widows whose husbands had the before the commencement of the Act. Lord Denman, C.J. observed as under:

It was said that the operation of the statute is confined to persons who have become widows after the Act passed and that the presumption against a retrospective statute being intended supported this construction. But we have before shown that the statute is in its direct operation prospective as it relates to future removals only and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing.

19. This principle was quoted with approval by their lordships of the Supreme Court in *The Union of India Vs. Madan Gopal Kabra*, while examining the issue of applicability of Finance Act to the income earned before the commencement of the Finance Act. Their lordships of the Supreme Court again observed in *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, as under:

It could be said that even then the first Sub-section would not have a retrospective operation but would only apply prospectively to a banking company being wound up on a petition presented before the Act. This may be illustrated by two cases. In *Rule v. St. Mary White chapel (Inhabitants)* (1848) 12 Q.B. 120 at p. 127, Lord Denman C.J. said that a statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing" Again in *Master Lathes Tailors Organisation v. Minister of Labour and National Service* 1950-2 All ER 525 at p. 57, it was observed, "The fact that a prospective benefit is in certain cases to be measured by or depends on antecedent facts does not necessarily...make the provision retrospective.

20. It was further reiterated in *D.S. Nakara v. Union of India* AIR 1983 S.C. 10 while construing the liberalised pension scheme that any liberalisation would pro tan to be retroactive in the narrow sense of the term. Otherwise it was always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing.

21. It is well known principle of constructing statute that rule again stretrospective construction is not applicable to Statute merely because part of

the requisites for its action is drawn from a time antecedent to its passing.

22. Relevant provisions of Sections 140, 141 and 168 of the New Act for the present purposes reads as under:

Section 140. Liability to pay compensation in certain cases on the principle of no fault.--

(1)

(2)

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

Section 141. Provisions as to other right to claim compensation for death or permanent disablement--

(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 (hereafter 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.

(2) A claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and--

(a) If the amount of the first-mentioned compensation is the less than the amount of the second mentioned compensation, he shall be liable to pay (in addition to the first mentioned compensation) only so much of the second-

mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) If the amount of the first mentioned compensation is equal to more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

Section 168. Award of the Claims Tribunal-(1) On receipt of an application made u/s " 166, the claims Tribunal shall, after giving notice of the application." to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

23. Viewed from the principle stated above, the provisions in question, if read together lead to an irresistible conclusion that the award of compensation for "no fault liability" in order to be enforceable depends upon making an independent claim on that ground and the Tribunal is required to dispose of that claim by passing a separate award even before the normal compensation is determined. Therefore, the crucial date of determining the quantum of compensation to be awarded as "no fault liability" is the date on which the Tribunal or the Court is required to award compensation for "no fault liability", though the event for which compensation is to be measured has taken place on an antecedent date. Provisions relating to quantum of that day will only govern the amount of quantum to be awarded on "no fault liability" principle.

24. In the present case, the application for grant of compensation on "no fault liability " principle was made after the commencement of the New Act and the Tribunal was required to pass an award of compensation on "no fault liability" principle only after the commencement of the New Act and, therefore, the Tribunal was under an obligation to award that amount as compensation which stood prescribed on that date. The provisions under consideration confer prospective measure of benefit, which is dependent on antecedent event of accident having taken place resulting in death or permanent disability. No question of retrospective operation of the provisions of New Act really arises in the present case.

25. Thus, viewed from any angle, we find no force in this special appeal and the

same is hereby dismissed with no order as to costs.