

(2002) 12 AHC CK 0062
In the Allahabad High Court
Case No : F.A.F.O. No. 660 of 2002

Rama Shankar Pandey

APPELLANT

Vs

Ram Raj and Others

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1939 — Section 110A, 110D
Motor Vehicles Act, 1988 — Section 173, 173(1)

Citation : (2003) 1 ACC 513 : (2004) ACJ 696 : (2003) 1 AWC 249

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal and S.D. Singh, for the Appellant;

Judgement

B.K. Rathi, J.—This appeal has been preferred against the award given by the Motor Accident Claims Tribunal, Chitrakoot. The stamp reporter has reported that the amount as required under the proviso of Section 173(3) as condition precedent for admission of the appeal, has not been deposited. The deposit is pre-condition for the admission of the appeal.

2. I have heard Sri Bharat Ji Agarwal, learned senior advocate assisted by Sri S. D. Singh for the appellant.

3. It has been argued that the accident in this case took place on 15.1.1984 when the old Motor Vehicles Act (herein after referred to as the Act) was in force. That the new Act was enforced from 1.7.1989 and thereafter the application for compensation was moved. It has been argued that right to claim compensation accrued under the old Act and the same has been protected u/s 6 of the General Clauses Act. It has, therefore, been argued that the claim petition shall be considered to have been filed u/s 110A of Motor Vehicles Act, 1939. That the proceedings also took place under the said section and, therefore, the appellant has right to appeal u/s 110D of the said Act. That the appeal has not been filed u/s 173 of the new Act of 1988 and, therefore, the proviso to Section 173 of the

new Act does not apply.

4. The learned counsel in support of the argument has referred to Section 6 of the General Clauses Act and has argued that the right has accrued which is protected under Clause 6 (e) after the repeal of 1988 Act. The learned counsel in support of the argument has also referred to the following decisions :

- (1) P.V. Mohammad Barmay Sons v. Director of Enforcement 1983 (2) SCC 724 ;
- (2) Commissioner of Income Tax Vs. Shah Sadiq and Sons,
- (3) State of Punjab v. Mohan Singh Pratap Singh AIR 1955 SC 84 ; and
- (4) Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others,

5. I have considered the decision of all these cases, in which the rights which accrued under the repealed Act have been protected u/s 6(e) of General Clauses Act and were considered by the Apex Court in various cases. However, none of these case is regarding the rights accrued under the old Motor Vehicles Act. 1939, after its repeal. There is direct decision of the Apex Court in the case of Motor Vehicles Act which is otherwise. I may refer to the decision of Apex Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, . It was held in this case as under :

"Where the accident took place when the old Motor Vehicles Act was in force, however, the claim petition was filed after the repeal of the old Act and the new Act came into force, the case would be covered by the new Act and delay for a longer period than six months could not be condoned.

In such a case, Clause (e) of Section 6 of General Clauses Act is not attracted because, by the enactment of the new law the remedy of the claimant has not been affected at all. His right to claim compensation by filing the claim within the same period of limitation has been preserved. And there was no application for condonation of delay in a proceeding pending at the time of repeal so as to allow him to claim any privilege available under the old Act.

Though the claimant earlier could file an application even more than six months after the expiry of the period of limitation, but this cannot be treated to be a right which the appellant had acquired. The claim to compensation which the claimant was entitled to by reason of the accident was certainly enforceable as a right.

It cannot be said in such a case that the present case must be considered as one where an accrued right has been affected, because the option to move an application for condonation of delay belatedly filed should be treated as a right.

There is a vital difference between an application claiming compensation and a prayer to condone the delay in filing such an application. Liberty to apply for a right is not in itself an accrued right or privilege. Moreover, claimant's right to

claim compensation was not affected at all by the substitution of the Act with another. Since the period of limitation remained the same there was no question of the claimant being taken by surprise. So far the question of condonation of six months delay was concerned, there was no change in the position under the new Act."

6. In view of this decision of the Apex Court which is directly on the point, the argument of the learned counsel cannot be accepted and it is also not necessary for me to consider in detail the law laid down in the above referred case.

7. The objections of the appellant are accordingly rejected. The appellant is liable to deposit the amount as required by the proviso of Section 173 of the Act.

8. Accordingly, list this appeal as and when the amount is deposited.