

(1993) 10 PAT CK 0010

In the Patna High Court

Case No : Appeal from Original Order Nos. 75, 232, 233, 234, 235 and 252 of 1992 and 17 of 1993

Ramesh Singh and Another

APPELLANT

Vs

Chinta Devi and Others

RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:

Citation : (1993) 10 PAT CK 0010

Judgement

B.C. Basak, C.J.—These series of Miscellaneous Appeals involve a common question of law relating to the interpretation of some of the provisions of Motor Vehicles Act, 1939 (hereinafter referred to as "the 1939 Act"), the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act") and Section 6 of the General Clauses Act, 1897 (hereinafter referred to as "the 1897 Act").

2. The relevant provisions of the 1939 Act relating to appeals are as follows :

Section 110D. "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 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 two thousand rupees."

3. The relevant provisions of the 1988 Act are as follows :

Section 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 the appeal is less than ten thousand rupees."

Section 217. Repeal and savings.-- "(1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments.-

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted, or any confiscation made or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;

(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencements under the same conditions and for the same period as if this Act had not been passed;

(c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provision of this Act;

(d) the assignment of distinguishing marks by the registering authority and the manner of display on motor vehicles in accordance with the provision of the repealed enactments shall, after the commencement of this Act, continue to remain in force until a notification under Sub-section (6) of Section 41 of this Act is issued;

(e) any scheme made u/s 68C of the Motor Vehicles Act, 1939 (4 of 1939) or under the corresponding law, if any, in force in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act;

(f) the permits issued under Sub-section (1-A) of Section 68F of the Motor Vehicles Act, 1939, (4 of 1939), or under the corresponding provision, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter VI of this Act is published.

(3) Any penalty payable under any of the repealed enactment may be recovered in the manner provided by or under this Act, but without prejudice to any action already taken for the recovery of such penalty under the repealed enactments.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of S, 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."

4, The relevant provisions of Section 6 of 1897 Act are as follows :

6. Effect of Repeal.-- "Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

5. In all these cases the claim petitions were filed before the Accident Claims Tribunal (hereinafter referred to as "the Tribunal") before 1988 Act came into force, which was on 1-7-89, but the appeals were filed before the High Court after the 1988 Act, came into force. The common question of law, which has arisen in these cases is, whether in respect of these appeals, the proviso to Section 173 of 1988 Act is applicable and deposit is to be made as required therein or whether no such deposit need be made because the 1939 Act, which was in force when the claim petitions were filed, did not provide for any such deposit to be made. A single Judge of this Court in a decision reported in New India Assurance Co. Ltd. Vs. Bajrang Kumar Gupta and Others , held that in respect of such claim petitions, even if the appeal was filed after the 1988 Act came into force, the proviso did not apply and no such deposit was required to be made. When this decision was placed before another learned single Judge of this Court in M. A. No. 252 of 1992, the learned single Judge observed that the ratio of that decision requires consideration by a Division Bench and accordingly,

it was directed to be placed before the Chief Justice. Similar direction was given in respect of M. A. No. 75 of 1992. Accordingly, all these Miscellaneous Appeals, where similar questions are involved were placed before us.

6. ARGUMENTS

6.1 The Main contention on behalf of the appellants is that the provision for appeal is a vested right of appeal. This is a matter of substantive right and not a matter of procedure. As soon as a claim petition is filed, a right of appeal automatically vests with the parties. If such right of appeal is repealed or sought to be curtailed or any fetter put to it, in that event as it is not a matter of procedure; accordingly it is not to be treated to have any retrospective effect. As there was no requirement of deposit for such appeal under the 1939 Act, which was in force at the time the claim petitions were filed, the provision for such deposit as contained in Section 173 of the 1988 Act would not apply even if the Award was passed and the appeal was preferred after the 1988 Act, containing the provisions regarding such deposit to be made came into force. In this connection reliance is also placed on Section 217(4) of the 1988 Act and Section 6 of the 1897 Act referred to above. In this connection reliance is placed on the following decisions; Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, ; State of Bombay Vs. Supreme General Films Exchange Ltd., ; Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur, ; New India Assurance Co. Ltd. Vs. Bajrang Kumar Gupta and Others ; M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, ; Nani Gopal Mitra Vs. The State of Bihar, , A.A. Calton Vs. Director of Education and Another, ; Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, ; Oriental Insurance Co. Ltd. Vs. Parbati Mohanta and Another, ; Oriental Insurance Company Ltd., Haldwani Vs. Dhanram Singh and others, ; Jaswant Rao Vs. Kamlabai and Another, , Sri Ranganathar Transports (P) Ltd. Vs. The Tanjore Co-oprative Marketing Federation Ltd., .

6.2 As nobody appears at this stage on behalf of the claim petitioners, we requested Mr. Chandramauli Kumar Prasad, Advocate, to assist the Court in this matter. Firstly, it was submitted by Mr. Prasad that right of appeal has not been taken away by the new Act. What is merely provided is that certain deposits have to be made. It is regulatory in nature and such provision is merely a matter of procedure and, accordingly, this would apply in respect of appeals preferred after the 1988 Act came into force even though the claim petitions were filed before the 1988 Act came into force. In any event, he has submitted that there is no absolute proposition that right of appeal cannot at all be taken away or curtailed or certain conditions imposed for exercise of that right. It can be so restricted not only by express words but also by necessary implications. Having regard to the object of the provisions regarding adjudication of claims arising out of a motor accident, this is a beneficial legislation and, accordingly, it must be held that by necessary implication, in respect of the appeals arising out of the claim petition made even before the 1988 Act came into force, such provisions for such deposit

are attracted. So far as Section 6 of the 1897 Act referred to in Section 217(4) is concerned, he has submitted that Section 217 of the 1988 Act is a general provision. So far as Section 6 of the 1897 Act referred to in Section 217(4) is concerned, he has submitted that it is not a case of universal application and if there is any intention to the contrary, as it is in the relevant provisions of the 1988 Act, then Section 6 will be attracted. In support of his contention reliance is placed on the following decisions, Garikapatti Veeraya Vs. N. Subbiah Choudhury, ; Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others, , Mithilesh Kumar and Another Vs. Prem Behari Khare, .

7. Decisions cited :

Before I consider the respective arguments, I shall deal with the decisions mainly relied upon in support of the aforesaid propositions.

7.1 In the case of Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, the appellant before the Supreme Court submitted to the Sales Tax Officer on 28-11-47 a sales tax return. Ultimately after various proceedings the Assistant Commissioner on 8-4-50 made a "best judgment assessment". Being aggrieved by the order on 10-5-50, the appellant preferred an appeal to the Sales Tax Commissioner, Madhya Pradesh, u/s 2(1) of the Central Provinces and Berar Sales Tax Act (hereinafter referred to as the Act). The appeal not having been accompanied by any proof of the payment of the tax, in respect of which the appeal had been referred, the authorities, after giving the assessee several adjournments, declined to admit the appeal. The assessee moved the Board of Revenue, Madhya Pradesh by a revision application against the order of the Sales Tax Commissioner contending that his appeal was not governed by the provision of Section 22(1) of the Act, as amended on 25-11-1949 by the Amended Act of 1949, but was governed by the proviso to Section 22(1) of the Act as it stood when the assessment proceedings were started, which was before the said amendment came into force. The Board of Revenue took the view that as the order of assessment was made after the amendment of the section and the appeal was filed thereafter, such appeal must be governed by the provisions of law as it existed at the time the appeal was actually filed and that the law as it existed before the filing of the appeal could not apply to the case. Thereafter the assessee filed a writ petition before the High Court for a direction to the Sales Tax Commissioner to admit and hear the appeal without demanding payment of the amount of sales tax assessed by the Assistant Commissioner of Sales Tax. The High Court dismissed the said application. The High Court, however, granted special leave to appeal.

The difference between the Act before the amendment and after the amendment of Section 22(1) was that before such amendment the aggrieved assessee had only to pay such amount of tax as he might admit to be due from him, whereas under the amendment, the appeal had to be accompanied by satisfactory proof of payment of the tax in respect of which the appeal had been preferred. The

contention of the assessee was that as the amendment had not been made retrospective, its right of appeal under the original Section 22(1) remained unaffected and that accordingly, as it did not admit anything to be due, it was not liable to deposit any sum along with its appeal and the Commissioner was bound to admit its appeal and he had no jurisdiction or power to reject the same on the ground that it had not been accompanied by any proof of payment of the tax assessed against the appellant as required under the amended proviso and the Board of Revenue and the High Court were in error in not directing the Commissioner to admit the appeal.

In this connection the Supreme Court observed as follows :--

"That the amendment has placed a substantial restriction on the assessee's right of appeal cannot be disputed, for the amended section requires the payment of the entire assessed amount as a condition precedent to the admission of its appeal."

The question is whether the imposition of such a restriction by amendment of the section can affect the assessee's right of appeal from a decision in proceeding which commenced prior to such amendment and which right of appeal was free from such restriction under the section as it stood at the time of the commencement of the proceedings.

In this context reference was made to the Privy Council's decision in the Colonial Sugar Refining Co. Ltd. v. Irving (1905) AC 369 and AIR 1927 242 (Privy Council) and two decisions of the Supreme Court in Janardan Reddy and Others Vs. The State, and Ganpat Rai Hiralal and Another Vs. Aggarwal Chamber of Commerce Ltd., . It was observed that the above decisions uphold the principle that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior Court. It was further observed that to disturb an existing right of appeal is not a mere alteration in procedure. Such a vested right cannot be taken away except by express enactment or necessary intendment. In this context it was further observed as follows :--

"In our view the above observation is apposite and applies to the case before us. The true implication of the above observation as of the decisions in the other cases referred to above is that the pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right. The argument that the authority has no option or

jurisdiction to admit the appeal unless it be accompanied by the deposit of the assessed tax as required by the amended proviso to Section 22(1) of the Act overlooks the fact of existence of the old law for the purpose of supporting the pre-existing right and really amounts begging the question. The new proviso is wholly inapplicable in such a situation and the jurisdiction of the authority has to be exercised under the old law which so continues to exist. The argument of Sri Ganapathy Aiyar on this point, therefore, cannot be accepted."

Rejecting the argument made on behalf of the State Government that deposit of the amount of assessed tax does not affect the right of appeal which still remains intact, but only introduces a mere alteration in procedure, it was observed as follows :--

"There can be no doubt that the new requirement "touches" the substantive right of appeal vested in the appellant. Nor can it be overlooked that such a requirement is calculated to interfere with or fetter, if not to impair or imperil, the substantive right. The right that the amended section gives is certainly less than the right which was available before. A provision which is calculated to deprive the appellant of the unfettered right of appeal cannot be regarded as a mere alteration in procedure. Indeed the new requirement cannot be said merely to regulate the exercise of the appellant's pre-existing right but in truth whittles down the right itself and cannot be regarded as a mere rule of procedure."

Accordingly, it was held that the appellant's appeal should not have been rejected on the ground that it was not accompanied by satisfactory proof of payment of sales tax. As the appellant did not admit that any amount was due by it, it was, under the section as it stood previously, entitled to file its appeal without depositing any sum of money. Accordingly the assessee's appeal was allowed.

7.2 In the case of *State of Bombay Vs. Supreme General Films Exchange Ltd.*, , the question of law, which arose for consideration, was whether in the absence of any provision giving retrospective effect to certain amendments made in the Court-fees Act, 1870, as applied to Bombay by the Court-fees (Bombay Amendment) Act, 1954, which amendment came into force on 1-4-1954, the court-fees payable on two memoranda of appeal were payable according to the law in force on the date of filing of the suits, which was prior to the relevant date, or, according to the law in force at the date of the filing of the memoranda of appeal which was after the relevant date. After referring to the decision in *Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others*, , and some other decisions of the various High Courts, including that of Calcutta High Court, it was held as follows :

"It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive

right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."

7.3 In the case of *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, the Supreme Court was dealing with the Assam Non-Agricultural Urban Areas Tenancy Act. In that case by Section 5 of the said Act certain protection was given to the tenants. When the said Act came into force, an appeal was pending against the decree allowing the appellant's claim. The tenant made an application in the High Court on the basis of Section 5 of the Act. The Supreme Court after examination of relevant provisions of the said Act observed that the scheme which is evident in the operative provisions of the said Act was to afford protection to the tenants by regulating in certain aspects the relationship between the tenants and their landlords. It was argued before the Supreme Court on behalf of the landlord -- appellant that at the relevant date, when the suit was filed by the appellant, he had acquired a right to eject the tenant under the terms of the tenancy, and it was contended that where vested rights were affected by any statutory provisions, the said provisions should normally be construed to be prospective in operation and not retrospective, unless the provisions in question related merely to a procedural matter. In this context the Supreme Court observed as follows (at page 1514) :

".....It is not disputed by him that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties; but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf no provision of a statute should be given retrospective operation if by such operation vested right are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them..... In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of the statutory provisions in this connection, we ought to add that retrospective operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur."

After referring to the relevant provisions of the said Act it was observed as follows :

".....This provision clearly indicates that the legislature wanted the beneficial provisions enacted by it to take within their protection not only leases executed after the Act came into force but also leases executed prior to the operation of the Act. In other words, leases which had been created before the Act applied are intended to receive the benefit of the provisions of the Act, and in that sense,

the Act clearly affects vested rights of the landlords who had let out their urban properties to the tenants prior to the date of the Act."

7.4 In the case of *Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur*, a five Judge Bench of the Supreme Court was considering the question of amendment of law relating to appeal after commencement of lis. There was an order of assessment against which an appeal was filed before the Commissioner. By that time the Sales Tax Act was amended making it incumbent upon the appellant to deposit the assessed tax as a condition precedent to the admission of the appeal. The appellant did not comply with this requirement of law and the appeal was dismissed. The appellant moved the High Court at Nagpur under Article 226 of the Constitution for a writ of mandamus compelling the Commissioner to hear and determine the appeal without the deposit of the assessed tax as required by the amendment. The High Court dismissed the same.

The Supreme Court, while considering whether *Hoosein Kasam Dada's* case (*ibid*) should be applied or not observed that the writ petition filed before the High Court did not mention the dates on which the return was filed so that the Supreme Court could apply the dictum of the *Hoosein Kasam Dada's* case. It was pointed out that the decision in *Hoosein Kasam Dada's* case proceeded on the ground that when a list commences all rights get crystallised and no clog upon a likely appeal can be put unless the law was made retrospective expressly or by clear implication. It was held that from the record of this case it cannot be said that when the lis commenced. Unless it cannot be proved conclusively it was before the amendment of the law, the rule of *Hoosein Kasam Dada's* case would not apply. It was pointed out that there was no averment that the right of appeal had vested and has been wrongly taken away.

7.5 In the case of *Nani Gopal Mitra Vs. The State of Bihar*, it was held that even though Section 5(3) of the Prevention of Corruption Act was repealed by Anti-Corruption Laws (Amendment) Act, 40 of 1964, during the pendency of the appeal, it was open to the High Court to invoke the presumption contained in Section 5(3) in considering the case of the appellant since the conviction of the appellant was pronounced by trial Judge long before the amendment. After consideration of various decisions it was observed that it is clear that as a general rule the amended law relating to procedure operated retrospectively. In this context it was observed that where was another equally important principle, viz., that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force. It was pointed out that the same principle was embodied in Section 6 of the General Clauses Act." The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure."

7.6 In the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, it was held that the vacancies, which had occurred prior to the amended rules would be governed by the old rules and not by the amended rules.

7.7 In the case of A.A. Calton Vs. Director of Education and Another, the U.P. Intermediate Education Act was amended, taking away the power of the Director to make an appointment under the Act in the case of minority institutions. The Act was amended but the amending Act did not provide expressly that the amendment in question would apply to pending proceedings under the Act. The Supreme Court in this context observed as follows (at page 1145 of AIR) :

"It is true that the Legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provisions so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect." (Para 5)

7.8 In the case of Mithilesh Kumar and Another Vs. Prem Behari Khare, the facts were as follows. The plaintiff filed a suit for declaration that he be declared as the sole and real owner of the suit house. The suit was decreed. The first appeal was dismissed. The second appeal was also dismissed by the High Court on 27-3-78. Thereafter an appeal was filed before the Supreme Court by Special Leave. It was argued inter alia before the Supreme Court that even if the land was held benami as declared by the Courts below, the subsequent legislation namely the provisions of the Benami Transactions (Prohibition) Ordinance 1985 and the Benami Transactions (Prohibition) Act, 1988 had put a complete bar to the plaintiffs suit. The question arose whether the said provisions are retrospective in operation or not and it was held that it had retrospective effect. In this context it was observed as follows :---

"We read in Maxwell that it is a fundamental rule of English Law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly at the time of the Act, or arises by necessary and distinct implication. A retrospective operation is, therefore, 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 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 the past transactions, or impair contracts or impose new duty or attach new disability in respect of past transactions or consideration 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. We must look at the general scope and purview of the statute and at the remedy sought to be applied, and consider what was the former State of Law and what the legislation contemplated. Every law that takes away or impairs rights vested agreeably 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, as in this case, may relate" to a time antecedent to their commencement. The presumption against retro-spectivity 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. Craies on Statute Law, 7th Ed. writes that the general rule of law that statutes are not operated retrospectively may be departed from (a) by express enactment and (b) by necessary implication from the language employed, and the author goes on to say :

"If it is necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. "Baron Parke", said Lord Hatherley in *Pardo v. Bingham* 1869) LR 4 Ch App 735 did not consider it 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, and said that the question in each case was whether the legislature had sufficiently expressed that intention. In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, what it was that the legislature contemplated. "But a statute is not to be read retrospectively except of necessity.... In *Main v. Stark*, (1890) 15 AC 384 Lord Selborne said: "Their Lordships, of course, do not say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give towards prima facie prospective a larger operation, but they ought not to receive a larger operation unless you find some reason for giving it..... In all cases it is desirable to ascertain the intention of the legislature."

He went on : "Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed", but in *Reynolds v. Att. Genl. for Nova Scotia* 1896 AC 240, it was held that this rule did not extend to protect from the effect of a repeal a privilege which did not amount to an accrued right." (Para 21)

7.9 In the case of *M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others*, , the appellant, holder of a permit applied for renewal of the same about 120 days before the date of its expiry u/s 58(2) of the 1939 Act. Before renewal could be granted the 1988 Act came into force. The question before the Supreme Court was whether the application for renewal for permit filed under 1939 Act became extinct and was rendered non-existent after coming into force of 1988 Act. After referring to the provisions of Section 217 of the 1988 Act read with Section 6 of the 1897 Act it was held that the reasoning given in the decision in *The Brihan Maharashtra Sugar Syndicate Ltd. Vs. Janardan Ramchandra Kulkarni and Others*, squarely applies for construction of Section 217(4) of 1988 Act. It

was held that Sub-section (2) of Section 217 was not exhaustive and Sub-section (4) should not be read by way of abundant caution. In this context it was observed that the objective of the provisions of Section 6(c) of the 1897 Act, was to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it was legislative intention to the contrary. The repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability. Ultimately it was held that by virtue of Section 6(c) of the 1897 Act the right of the appellant to get his application considered and decided in accordance with law was saved by Section 217(4) of 1988 Act.

7.10 In the case of Oriental Insurance Company Ltd., Haldwani Vs. Dhanram Singh and others, it was held that under the old Act there were no requirements of deposit by the person preferring an appeal in the High Court. The requirement of deposit of 50% of the awarded amount or Rs. 25,000/-, whichever was less was certainly a burden on the appellant. It was a bar to his right of appeal. Such a fetter could not be imposed on the appellant in cases arising out of the old Act. This was decided after consideration of the various decisions, including the decision in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, . In this context it was observed as follows :

"We have already observed earlier that the right of appeal under the old Act was a substantive right and have along with it the old law must also govern the exercise and enforcement of that right of appeal. A citizen cannot be deprived of his substantive right guaranteed to him unless it is taken away either expressly or by necessary intendment. Unfortunately we do not find anything in the new Act which takes away the right of appeal of a claimant under the old Act and with it the mode of exercise of that right of appeal. The settled law appears to be that right of appeal also vests in the person who brings a proceeding or against whom the proceeding has been brought a further right to enforce it according to the then existing law which would be deemed to continue to this limited extent."

7.11 In the case of Jaswant Rao Vs. Kamlabai and Another, it was held that u/s 110-D of the 1939 Act a party, unless the case fell under Sub-clause (2) i.e., the amount in dispute was less than Rs. 2000/- had an unfettered right of appeal to High Court without any condition as to pre-deposit of the awarded amount. It was held that this right has not been taken away by Section 217 or 173(1) of the new Act of 1988. It was held that on the other hand, Sub-section (4) of Section 217 shows that application of Section 6 of General Clauses Act, 1897 to the situation is saved. It was further held that the requirement as to payment of Rs. 25,000/- or 50% of the amount awarded whichever is less required under proviso to Section 173 of the 1988 Act cannot be insisted upon when the claim for compensation was presented before coming into force of the 1988 Act and that such appeal, even without compliance of the proviso, was maintainable.

7.12 In New India Assurance Co. Ltd. Vs. Bajrang Kumar Gupta and Others , the question involved before a learned Single Judge of this High Court was as to whether in an appeal filed after the 1988 Act came into force against an award

arising out of a proceeding under the 1939 Act, the appellant was required to comply with first proviso to Sub-section (I) of Section 173 of the new Act? In that case the claimant's case was filed under the old Act but the appeal was filed in the High Court by which time the new Act came into force. There the Stamp Reporter had indicated that the appellant was required to file a receipt showing deposit of the amount as contemplated under the first proviso to Section 173 of the new Act. Learned counsel appearing on behalf of the appellant urged that despite repeal of the old Act the right of the appellant to file appeal u/s 110-D of the old Act survived and the appellant could not be compelled to deposit the amount in terms of the first proviso to Sub-section (1) of Section 173 of the new Act. Further contention was that by repeal of the old Act and its substitution by the new one on the same subject, the substantive right of the parties could not be adversely affected and the right as provided under the old Act was still available. On behalf of the respondent No. 2 on the other hand it was submitted that as because the old Act has been repealed, the right of the appellant to file an appeal u/s 110-D of the old Act did not survive and the appeal had to be filed u/s 173 of the new Act after fulfilling the conditions laid down in first proviso to Sub-section (1) of Section 173. The learned Judge after consideration of the various decisions came to the conclusion that by repealing the old Act the right of appeal with regard to claims filed under the old Act has not in any way impaired or imperilled by giving retrospective effect either expressly or by necessary intendment and that the first proviso to Section 173(1) of the new Act shall have no application to that case.

7.13 As already stated, another learned Judge of this High Court differed from the aforesaid decision and, accordingly, this question was referred to a larger Bench and we have taken up the consideration of this point in all these appeals.

7.14 In the case of Oriental Insurance Co. Ltd. Vs. Parbati Mohanta and Another, , a single Judge was considering the question relating to the provision of Section 110-D of the 1939 Act and Section 173, first proviso, of 1988 Act regarding prerequisite of deposit. The learned Judge laid down guidelines for making deposit as required u/s 173, first proviso, as follows :--

(i) Where the application has been made under 1939 Act and the award is also made thereunder, appeal preferred under the provisions of the said Act would not require the deposit and would continue without calling for the statutory deposit in a pending appeal.

(ii) Where application is under the 1939 Act and the award is under that Act, but appeal is filed when the 1988 Act came into force repealing the earlier enactment, no deposit would be necessary to be made as required u/s 173, first proviso.

(iii) Where application was made under the 1939 Act but the award was made at a time when the 1988 Act came into force, no deposit would be required to be made as required u/s 173, first proviso, although the appeal would be filed u/s

173 of the 1988 Act which reflects the same right as in Section 110-D of the repealed Act.

(iv) Where the application is made under the 1988 Act and award is also made under that Act Section 173, first proviso, is to be complied with and deposit is to be made as required thereunder for valid entertainment of the appeal."

POINTS IN ISSUE

8. The general principles of law regarding the right of appeal is well settled and there is no scope for any two views regarding the same. The right of appeal is a substantive right and not a matter of procedure alone. As soon as a proceeding is instituted, the right of appeal become vested at that point of time. However, the right of appeal being a creature of a statute, can be taken away by statute. Such right of appeal cannot be taken away or curtailed except by express provisions or by necessary implication. An impairment of the right of appeal by putting a new restriction therein or imposing a more onerous condition is not a matter of mere procedure but it impairs or imperils a substantive right and an enactment which does, so is not retrospective unless it says so expressly or by necessary intendment.

9. The only question in the present series of cases is whether in view of this well settled principle of law, it can be said that, the prerequisite of deposit of certain amount, when an appeal is sought to be preferred against an Award of the Claims Tribunal, as required under the 1988 Act, is applicable in the case of a claim petition filed before the 1988 Act came into force i.e. when the 1939 Act was in force which did not require such deposit in the case of an appeal under the 1939 Act. Before considering this aspect of the matter I shall refer to the relevant provisions of the 1939 and 1988 Acts, the purpose and object of the same and certain other decisions.

10. 1939 Act (with amendments) and the 1988 Act.

10.1 At first I shall deal with the different provisions of the 1939 Act and different amendments made therein from time to time so far as relevant in the present case and the Objects and Reasons thereof.

10.1.1 The 1939 Act was passed in replacement of the Indian Motor Vehicles Act, 1914. An extract of the relevant portions of the Objects and Reasons of the said 1939 Act, as it was originally enacted, are set out hereinbelow. It is well settled that Statement of Objects and Reasons can be considered as an aid to interpretation. *State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others*, .

"It has been recognised now for some years past that the Indian Motor Vehicles Act, 1914, which was framed to suit condition at an early stage of development of motor transport, is no longer adequate to deal with conditions brought about by the rapid growth of motor transport in the past two decades. In the interests alike of the safety and convenience of the public and of the development of a co-

ordinated system of transport, much closer control is required than the present Act permits, and it is necessary to take powers to regulate transport.

xxxxx

The principle of compulsory insurance has been approved by almost all the provincial Governments, though there are differences of opinion as to whether its adoption should be entirely optional or whether, in the interests of uniformity, its adoption within a certain period of time should be obligatory."

As originally enacted this, 1939 Act provided as follows: Chapter I provided for preliminary. Chapter II relates to licensing of drivers of motor vehicles. Chapter III relates to registration of motor vehicles. Chapter IV related to control of transport vehicles. Chap. V related to construction, equipment and maintenance of motor vehicles. Chapter VI related to control of traffic. Chapter VII related to motor vehicles temporarily leaving or visiting India. Chapter VIII related to insurance of motor vehicles against third party risk. Chapter IX related to offences, penalties and procedure, Chapter X dealt with miscellaneous matters. The original Section 110 which dealt with accident claims (which formed a part of Chapter VIII) required a Court decree.

10.1.2 The original provisions had not helped persons of limited means in preferring claims on account of injury or death, because a Court decree had to be obtained before the obligation of an insurance company to meet claims can be enforced. Accordingly, it was proposed to empower State Governments to appoint Motor Accidents Claims Tribunals to determine and award damages. Accordingly, the original Section 110 was substituted by Sections 110 to 110F by Motor Vehicles (Amendment) Act, 1956, with effect from 16th February, 1956. Reference may be made in this connection to the Objects and Reasons as stated in the relevant Bill as it is well settled that Statement of Objects and Reasons can be considered as an aid to interpretation. An extract of the relevant portion of the said Objects and Reasons are given hereinbelow :

"The State Governments are being empowered to set up tribunals to determine and award damages in cases of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles and also to adjudicate on the liability of the insurer in respect of payment of damage awarded. At present a Court decree has to be obtained before the obligation of an insurance company to meet claims can be enforced. The amendment is designed to remove the existing difficulty experienced by persons of limited means in preferring claims on account of injury or death caused by motor vehicles."

After such amendment by 1956 Act, the position was as follows :

Section 110 provided for setting up Motor Accident Claims Tribunals (hereinafter referred to as "the Tribunals") for adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so

arising or both. Section 110A provided for application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110. Section 110B provided for award of the Claims Tribunals. It provided that on receipt of an application for compensation made u/s 110A, the claims Tribunal shall after giving the parties an opportunity of being heard, held an enquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 109B 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. Section 110C provided the procedure and powers of claims Tribunal. Section 110D provided as follows :

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

Provided 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 two thousand rupees."

Section 110E provided for recovery of money from any person as arrear of land revenue. Section 110F provided for bar at jurisdiction of Civil Courts.

10.1.3 Thereafter by Motor Vehicles (Amendment) Act, 1969, Section 110CC was introduced whereby it was provided that where any Court or Claims Tribunal allows a claim for compensation made under this Act, such Court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. Similarly by the same Amending Act of 1969 Section 110CCC was introduced. It was provided that any Court or Claims Tribunal adjudicating upon any claim for compensation under this Act may in any case where it is satisfied for reasons to be recorded by it in writing in the circumstances specified therein, make an order for the payment by the party who is guilty of misrepresentation or by whom such claim or defence has been put forward of special Courts by way of compensation to the insurer or, as the case may be, to the party against whom such claim or defence has been put forward.

10.1.4 Another amendment of farreaching consequences was introduced in the said 1939 Act by way of inserting Chapter VII-A by the Motor Vehicles (Amendment) Act, 1982. Section 92-A provided for liability to pay compensation in certain cases on the principle of no fault. Section 92B provided for provisions as to other right to claim compensation for death or permanent disablement.

Section 92C dealt with the question of permanent disablement. Section 92D provided for applicability of Chapter to certain claims under Act 8 of 1923. Section 92E provided that this Chapter VII-A shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

So far as 1982 Amendment is concerned, the relevant portions of Objects and Reasons state as follows :

"There has been a rapid development of road transport during the past few years and a large increase in the number of motor vehicles on the road. The incidents of road accidents by motor vehicles has reached serious proportions. During the last three years, the number of road accidents per year on the average has been around 1.45 lakhs and of these -the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be proved to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown." In this context it may be pointed out that the above extracts from the Objects and Reasons were quoted by the Supreme Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, while considering the purpose underlying the introduction of Chapter VII-A containing Sections 92A to 92E. As pointed out further in the said Objects and Reasons, the Bill sought to give effect to the following proposals :--

(a) A new Chapter VIIA, providing for payment of compensation in certain cases of accidents without proof of fault or negligence on the part of the owner or the driver of the motor vehicle is being inserted in the Act. Under this Chapter the owner of the vehicle involved in an accident will be liable to pay compensation of a fixed sum of Rs. 15,000 in respect of the death of a person and a fixed sum of Rs. 7,500 in respect of permanent disablement of any person. For securing this compensation, it will not be necessary to prove any wrongful act or negligence on the part of the owner or the driver of the vehicle. Right to claim the compensation aforesaid is without prejudice to any right to claim a higher compensation on the basis of the wrongful act or negligence of the owner or the

driver of the vehicle. However, the compensation payable by an owner on the basis of wrongful act or negligence on his part would be reduced by the compensation already paid by him under this Chapter. It has also been provided that the claim for compensation under the Chapter should be disposed of as expeditiously as possible. The benefit of the provisions of the Chapter would also be available in cases where compensation is claimed in respect of a motor accident under any other law, as for example the Workmen's Compensation Act, 1923. It may also be mentioned that the owner of the vehicle will have to insure himself against liability to third parties under this Chapter to the same extent as he has to insure himself against liability to third parties in cases where he is in default or negligent (vide Clauses 11, 12, 15, 16, 17, 18, and 19.)

(b) a fascicle of sections is being inserted immediately after Section 109 of the Act to provide for compensation in cases of hit-and run motor accidents. These provisions envisage the establishment of a Solatium Fund by the Central Government for the purpose of paying compensation in cases of hit-and-run motor accidents. The Fund will consist of contributions by the General Insurance Corporation and insurance companies carrying on general insurance business in India, contributions by the Central Government. State Governments and other sums which may be received for being credited to it from any source. Provision is being made for payment of compensation only in cases of death or grievous hurt as defined in the Indian Penal Code. The compensation payable in respect of death of a person in a hit-and run motor accident will be a fixed sum of Rs. 5,000 while the compensation payable in cases of grievous hurt to a person is a fixed sum of Rs. 1000. In the event of the identity of the motor vehicle involved in the accident becoming subsequently found out and compensation being recovered through the Claims Tribunal or court or other authority in respect of the death of or for grievous hurt to any person for which compensation has been paid from the Solatium Fund, the compensation paid from the Solatium Fund will have to be refunded to the Fund. The provision is also being made for the making of a scheme to provide for the authority in which the Solatium Fund shall vest for the administration of the Solatium Fund and for all matters connected with payment of compensation from the Solatium Fund (Vide Clauses 14 and 18 (a))."

10.2 The 1988 Act which replaces the 1939 Act provides in Chapter II "Licensing of Drivers of Motor Vehicles" in Chapter IV "Registration of Motor Vehicles", in Chapter V "Control of Transport Vehicles, in Chapter VII "Construction, Equipment and Maintenance of Motor Vehicles", in Chapter VIII "Control of Traffic", in Chapter IX "Motor Vehicles Temporarily leaving or visiting India", Chapter X in 1988 Act deals with "liability without fault in certain cases" which contains Sections 140 to 144 and which correspond to old Sections 92A, 92B, 92C, 92D and 92E, which were inserted in the 1939 Act by the 1982 Amending Act, Chapter XI deals with "Insurance of Motor Vehicle Against Third Party Risks". This contains Sections 145 to 164. Section 145 deals with "definitions". Section 146 deals with "Necessity for insurance against third party risk". Section 147 deals with "Requirements of policies and limits of liability". Section 148 deals

with "validity of policies of insurance issued in reciprocating countries". Section 149 deals with "Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks". Section 150 deals with "Rights of third parties against insurers on insolvency of the insured". Section 151 provides for "Duty to give information as to insurance". Section 152 provides for "Settlement between insurers and insured persons". Section 153 deals with "Saving in respect of Sections 150, 151 and 152". Section 154 provides that "Insolvency of insured persons not to affect liability of insured or claims by third parties". Section 155 deals with "Effect of death on certain causes of action". Section 156 deals with "Effect of certificate of insurance". Section 157 deals with "Transfer of certificate of insurance". Section 158 provides for "Production of certain certificates, licence and permit in certain cases". Section 159 provides for "Production of certificate of insurance on application for authority to use vehicle". Section 160 deals with "Duty to furnish particulars of vehicle involved in accident". Section 161 makes "Special provisions as to compensation in case of hit and run motor accident". Section 162 provides for "Refund in certain cases of compensation paid u/s 161". Section 163 deals with "Scheme for payment of compensation in case of hit and run motor accidents". Section 164 confers "power of Central Government to make rules". Chapter XIII deals with "Claims Tribunal". It consists of Sections 165 to 176. Section 165 (which corresponds to old Section 110) refers to Claims Tribunal constituted under the Act. Section 166 (which replaces old Section 110-A) deals with "Application for compensation". Section 167 (which deals with "Option regarding claims for compensation in certain cases") corresponds with old Section 110-AA after its amendment by Motor Vehicle (Amendment) Act 47 of 1982. Section 168 (which replaces old Section 110-B) deals with "award of the Claims Tribunal". Section 169 refers to the "procedure and powers of Claims Tribunal". This replaces Sub-sections (1), (2) and (3) of old Section 110-C. Section 170 (which replaces Sub-section (2-A) of old Section 110-C) deals with "Impleading insurer in certain cases". Section 171 provides for "Award of interest where any claim is allowed" and this replaces old Section 110-CC with a slight change. Section 172 provides for "Award of compensatory costs in certain cases" and this replaces old Section 110-CCC. Section 173 provides for "Appeals" which replaces old Section 110-D with certain changes as we have noticed hereinabove. Section 174 deals with the "recovery of money from insurer as arrear of land revenue" and this replaces old Section 110-E with the only change that while in the old Section word "money" was used, whereas in the new provision word "amount" has been used. Section 175 provides for "Bar on jurisdiction of Civil Courts" is identical with the old Section 110-F. Section 176 which provides for "Power of State Government to make rules" corresponds to old Section 111-A.

FINDING

11. The question is whether it can be said that such right of appeal in respect of a claim petition filed under the 1939 Act was modified by the 1988 Act by express provision or necessary implication. In the present-case it is not a case of

a pure and simple "amendment" of the existing provision relating to the right of appeal as it was in the cases of Hoosein Kasan Dada (India) Ltd. (ibid) or State of Bombay (ibid) which are the main cases relied upon on behalf of the appellants. It is also not a question of curtailment of any existing right of appeal by any "Amendment". A new Act has come into force and instead of a right of appeal in the old form a right of appeal in a new form has been created. The old right of appeal has been replaced by a new right of appeal with certain conditions. Even if the right of appeal was vested as soon as the claim petition was filed during the period when the 1939 Act was in force, the old right of appeal is now substituted by a new right of appeal under the 1988 Act. For the purpose of preferring an appeal the claim petition would be treated as a claim petition under the 1988 Act. In my opinion, the unconditional right of appeal has been replaced by a conditional right of appeal. Accordingly, in my view, in view of the express provisions in the 1988 Act, the right of appeal which was unconditional before has been made conditional and the provision for deposit of a part of the Award money is attracted even though the claim petition was filed before the 1988 Act came into operation.

12. In any view of the matter, I am of the opinion that having regard to the scope and object of the relevant provisions of the 1939 and 1988 Acts relating to claim petitions, such right of appeal which accrued when such claim petitions were filed under 1939 Act, was modified by way of introduction of such condition and to that extent such right has been restricted and made conditional i.e. by way of providing for deposits, by necessary implication, even if it amounts to giving retrospective effect.

13. In this context I may refer to some decisions of the Supreme Court which have laid down certain principles regarding interpretation of Statutes particularly those relating to beneficial and welfare legislations.

(i) Welfare statute requires liberal construction. Statutes made for public good should be liberally construed. Beneficial statutes should not be construed too restrictively. Construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the statute in which it is occurring and to the fitness of the matter to the statute. *M/s. Saraswati Sugar Mills Vs. Haryana State Board and others*, *Polliseti Pullamma and others Vs. Kalluri Kameswaramma and others*, .

(ii) In the case of a beneficial legislation when the legislation is extending special protection to the named category, the Court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective. *Pandey Orson Vs. Ram Chander Sahu and others*, .

(iii) A view which advances the cause of justice should be preferred to one which defeats it. *A.A. Haja Muniuddin Vs. Indian Railways*, .

(iv) The mechanical approach to construction is altogether out of step with the

modern positive approach. The modern positive approach is to have a purposeful construction, that is, to effectuate the object and purpose of the Act; Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another, .

(v) The legal interpretation is not an activity sui generis. The purpose of the enactment is the touchstone of interpretation and every effort would be to give effect to it. The Judge acts as a vehicle of communication between the authors and the recipients. The end result is to promote rule of law and to enliven social order and human relations. Therefore, in an attempt to construe the provisions of the statute construction, as a balancing wheel, should be meaningful so as to make the statute workable and not render it futile or sterile. Whenever strict interpretation of the statute gives rise to unjust situation or results, the Judges can ensure their good sense to remedy it by reading words in, if necessary, so as to do what Parliament would have done had they had the situation in mind. The meaning of the same words in a statute may be mended in the labyrinth of interpretation and may be enlarged or restricted in order to harmonise them with the legislative intention of the entire statute. The spirit of the statute would prevail over the literal meaning. The jurisprudence and principle, therefore, in such a situation, would be the contextual interpretation to subserve the constitutional scheme and to alongate the legislative purpose, harmonising the individual interest with the community good so as to effectuate social transformation envisioned in the preamble of the Constitution. C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, .

(vi) In the case of Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead) by Lrs and Others, it was observed as follows :

"The legislature often fails to keep pace with the changing needs and values nor it realistic to expect that it will have provided for all contingences and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed. (Para 17)

(vii) In the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, it was observed as follows :

"Legislation, both statutory and constitutional, is enacted, it is true, from experience of evils. But its general language should not, therefore, necessarily be confined to the form that that evil had taken. Time works changes, brings into existence new conditions and purposes and new awareness of limitations.

Therefore, a principle to be valid must be capable of wider application than the mischief which gave it birth. This is particularly true of the constitutional constructions. Constitutions are not ephemeral enactments designed to meet passing occasions. These are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it...." In the application of a constitutional limitation or inhibition, or interpretation cannot be only of "what has been" but of "what may be". See the observations of this Court in *Sunil Batra v. Delhi Administration*. Where, therefore, in the interpretation of the provisions of an Act, two constructions are possible, one which leads towards constitutionality of the legislation would be preferred to that which has the effect of destroying it. If we do not read the conferment of the power in the manner we have envisaged before, the power is liable to be struck down as bad. This, we say in spite of the argument by many including learned Solicitor General of India and Smt. Shyamala Pappu that in contractual obligations while institutions or organisations or authorities, who come within the ambit of Article 12 of the Constitution are free to contract on the basis of "hire and fire" and the theory of the concept of unequal bargain and the power conferred subject to constitutional limitations would not be applicable. We are not impressed and not agreeable to accept that proposition at this stage of the evolution of the constitutional philosophy of master and servant framework or if you would like to call it employer or employee relationship. Therefore, these conferments of the powers on the employer must be judged on the constitutional peg and so judged without the limitations indicated aforesaid, the power is liable to be considered as arbitrary and struck down." (Para 118)

"Whenever a statute comes up for consideration, it must be remembered that it is not within human power to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language, and for that matter any language in use today, is not an instrument of mathematical precision. It has been said that our literature would have been much the poorer if it were. Leaving, however, the question of richness or poverty of our literature apart, we must proceed on the assumption that human mind cannot foresee everything. It has, therefore, been said that when a question arises whether the power has been properly conferred and even if so, the extent of it, Lord Denning has opined that a judge in such a situation cannot simply fold his hand and blame the draftsmen and look for new enactment. Lord Denning invites us to set to work on the construction task of finding the intention of the Parliament or the law making body and we must, however, do this not only from the language of the statute, because, as we have seen, language is an imperfect medium and very often thoughts are perpetually in search of "broken language". But the judge must also do it from a consideration of the social conditions which give rise to it, and of the mischief which it was intended to remedy and also in the light of the constitutional inhibitions and then supplant the written words and add to it and give "force and life" to the intention and purpose of the legislature or the law making authority.

A judge must not alter the material of which a law or an instrument is woven, but he can and should iron out the creases and if one may venture to say, make articulate the inarticulate premises but make articulate only that which follow from necessary compulsion of the situations and the constitutional position." (Para 119)

"It is true that judicial jealousy of legislature in law making has long been outdrawn, but the strict constitution remains still an established rule. It is generally accepted principle that judges in interpreting statutes, should give effect to the legislators' intent. By doing, so, the courts do recognise their subordinate position and their obligation to help the legislature to achieve its purpose. But in that effort creativity is essential. There have been differences of opinion on the practices that the courts may employ in attempting to discover the legislative intent. In the beginning, conventional practice was only to look to the words of the statutes. Now the entire spectrum has to be examined. It has been said that judges are not unfettered glossators." (Para 120)

"It is true that there is no actual expression used enabling the legislation or the statute in question indicating the limitations or conditions as aforesaid. But it must proceed on the premise that the law making authority intended to make a valid law to confer power validly or which will be valid. The freedom, therefore, to search for the spirit of the enactment or what is intended to obtain or to find the intention of the Parliament gives the court the power to supplant and supplement the expressions used to say what was left unsaid. This is a power which is an important branch of judicial power, the concession of which if taken to the extreme is dangerous, but denial of that power would be ruinous and this is not contrary to the expressed intention of the legislature or the implied purpose of the legislation. It was not as Shri Ramamurthi tried to argue that legislature wanted to give an uncontrolled and absolute power to discharge employees on the part of the employers without any enquiry in all circumstances. That cannot be and that was not intended to be as can be implied from all the circumstances." (Para 121)

"In the aforesaid view of the matter, I would sustain the constitutionality of this conferment of power by reading that the power must be exercised on reasons relevant for the efficient running of the services or performing of the job by the societies or the bodies. It should be done objectively, the reasons should be recorded, it should record this and the basis that it is not feasible or possible reasonably to hold any enquiry without disclosing the evidence which in the circumstances of the case would be hampering the running of the institution. The reasons should be recorded, it need not be communicated and only for the purpose of the running of the institution, there should be factors which hamper the running of the institution without the termination of the employment of the employee concerned at that particular time either because he is surplus, inefficient, disobedient and dangerous." (Para 122)

"Construction or interpretation of legislative or rule provisions proceeds on the

assumption that courts must seek to discover and translate the intention of the legislature or the rule making body. This is one of the legal fictions upon the hypothesis of which the framework of adjudication of the intention of a piece of legislation or rule proceeds. But these are fictional myths to a large extent as experience should tell us. In most of the cases legislature, that is to say, vast majority of the people who are supposed to represent the views and opinions of the people, do not have any intention even if they have, they cannot and do not articulate those intentions. On most of these issues there is no comprehension or understanding. Reality would reveal that it is only those who are able to exert their view points, in common parliamentary jargon, the power lobby, gets what it wants, and the machinery is of a bureaucratic set up who draft the legislation or rule or law. So, therefore, what is passed on very often as the will of the people in a particular enactment is the handiwork of a bureaucratic machine produced at the behest of a power lobby controlling the corridors of power in a particular situation. This takes the mythical shape of the "intention of the people" in the form of legislation. Again, very often, the bureaucratic machine is not able to correctly and properly transmute what was intended to be conveyed. In such a situation, is it or is it not better, one would ponder to ask, whether the courts should attribute to the law making body the knowledge of the values and limitations of the Constitution, and knowledge of the evils that should be remedied at a particular time and in a situation that should be met by a particular piece of legislation, and the court with the experience and knowledge of law, with the assistance of lawyers trained in this behalf should endeavour to find out what will be the correct and appropriate solution, and construe the rule of the legislation within the ambit of constitutional limitations and upon reasonable judgment of what should have been expressed. In reality, that happens in most of the cases. Can it be condemned as judicial usurpation of law making functions of the legislature thereby depriving the people of their right to express their will ? This is a practical dilemma which judges must always, in cases of interpretation and construction, face, and a question which they must answer." (Para 123)

"I am conscious that clear intention is indicated in a legislation cannot be permitted to be defeated by means of construction. It has been said that if the legislature has manifested a clear intention to exercise an unlimited power, it is impermissible to read down the amplitude of that power so as to make it limited. I do not agree. Our legislatures are limited by the constitutional inhibitions and it is time, in my opinion, that we should read their Acts and enactments with the attribute that they know their limits and could not have intended to violate the Constitution. It is true that where there are clear, unambiguous and positive terms of a legislation, the court should be loath to read down. It should process with a straightforward method of striking down such legislations. But where the statute is silent or not expressive or inarticulate, the court must read down in the silence of the statute and in the inarticulation of its provisions, the constitutional inhibitions and transmute the major inarticulate premise into a reality and read

down the statute accordingly. It is true perhaps, as has been said, that in the history of constitutional law, statutes are seldom read down to mean what they say and intend. It is begging the question. If the statute does not specifically say, in such circumstances, as to how do we find the intention to transgress the constitutional limitations. At least, the relevant provisions of the relevant statutes and the rules, mentioned hereinbefore, are in my opinion on these points, not expressive enough to betray an intention to transgress constitutional limitations. I am afraid that reference to *Elliott Ashton Welsh, II v. United States* is inept in the background of the principles we are confronted with. The plain thrust of legislative enactment has to be found out in the inarticulate expressions and in the silence of the legislation. In doing so, to say what the legislature did not specifically say is not distortion to avert any constitutional collision. In the language of the relevant provisions with which we are confronted, I do not find that intention of the legislature to flout the constitutional limitations". (Para 125)

(viii) In the case of *Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and Others*, it was observed : --

"In order to find out the purpose in creating the tribunals under the statutes and the meaning of particular provisions in social legislation, the court would adopt the purposive approach to ascertain the social ends envisaged in the Act, to consider scheme of the Act as an integrated whole and practical means by which it was sought to be effectuated to achieve them. Meticulous lexicographic analysis of words and phrases and sentences should be subordinate to this purposive approach. The dynamics of the interpretative functioning of the court is to reflect the contemporary needs and the prevailing values consistent with the constitutional and legislative declaration of the policy envisaged in the statute under consideration." (Para 19)

14. That the relevant provisions in the 1939 and 1988 Act are in the nature of beneficial legislation cannot be doubted particularly having regard to various observations made by the Supreme Court in various decisions involving provisions relating to claim petitions under the 1939 and 1988 Act including the following :--

(i) In the case of *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, which dealt with the case of a claim petition under the 1939 Act the Supreme Court observed as follows :

"With the emergence of an ultra-modern age which has led to strides of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though sometimes in the case of some it has also proved to be a misfortune. Such are the cases of the victims of motor accidents resulting from rash and negligent driving which takes away quite a number of precious lives of the people of our country. At a time when we are on the way to progress and prosperity, our country can ill-afford to lose so many precious lives every year, for though the percentage of deaths caused by motor accidents in

other countries is high, in our own country the same is not by any means negligible, but is a factor to be reckoned with. Our law-makers being fully conscious of the expanding needs of our nation have passed laws and statutes to minimise motor accidents and to provide for adequate compensation to the families who face serious socio-economic problems if the main bread-earner loses his life in the motor accident. The time is ripe for serious consideration of creating no-fault liability. Having regard to the Directive Principles of State Policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalisation of general insurance companies and the expanding trend towards nationalisation of bus transport, the law of torts based on no-fault needs reform." (Para 1)

"While our Legislature has made laws to cover every possible situation, yet it is well nigh impossible to make provisions for all kinds of situations. Nevertheless where the social need of the hour requires that precious human lives lost in motor accidents leaving a trail of economic disaster in the shape of their unprovided for their families call for special attention of the law makers to meet this social need by providing for heavy and adequate compensation particularly through insurance companies. It is true that while our law makers are the best judges of the requirements of the society, yet it is indeed surprising that such an important aspect of the matter has missed their attention. Our country can ill-afford the loss of a precious life when we are building a progressive society and if any person engaged in industry, office, business or any other occupation dies, a void is created which is bound to result in a serious set back to the industry or occupation concerned. Apart from that the death of a worker creates a serious economic problem for the family which he leaves behind. In these circumstances it is only just and fair that the legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula." (Para 10)

(ii) The observations made in Manjusri Raha's case were quoted with approval by the Supreme Court in its subsequent judgments Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, and M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, . In M. K. Kunhimohammad's case the Supreme Court also made various suggestions to the Central Government in respect of certain provisions of Bill No. 56 of 1987 pending before the Parliament which relate to the liability without fault in certain cases, insurance of motor vehicles against third party risks and Claims Tribunals. These were taken into consideration enacting 1988 Act.

(iii) In the case of Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, in respect of the arguments advanced by the learned counsel for the appellants regarding interpretation of Section 95(2), as amended by 1969 Act, the Supreme Court observed as follows :

"Having given our anxious consideration to these contentions of Shri Sorabjee,

which are not without plausibility, we have come to the conclusion that the construction canvassed by the learned counsel will lead to great injustice and absurdity and must, therefore, be eschewed since, especially, the words of Section 95(2) cannot, in the context in which they occur, be regarded as plain and unambiguous. We will first demonstrate the harsh and strange consequences which will flow out of the construction pressed upon us and we will then show why we consider that the material words of the section are of doubtful import. If, for example, two or three persons die in a collusion between a car and a goods vehicle and two or three others are injured as a result of the negligence of the driver of the goods vehicle, the heirs of the deceased and the injured persons will together be entitled to twenty thousand rupees in all, no matter how serious the injuries and how grave hardship to the heirs ensuing upon the loss of lives of those who perished in the collusion. But there is a more flagrant injustice which one shall have to countenance if one were to accept the argument advanced on behalf of the appellant and it is this; if two persons of unequal economic status die in the kind of collusion mentioned above, the heirs of the affluent victim will virtually monopolise the compensation by getting a lion's share in it, thereby adding insult to the injury caused to the heirs of the indigent victim. The purpose of law is to alleviate, not augment, the sufferings of the people. It is well known that the award of compensation depends upon a variety of factors, including the extent of monetary deprivation to which the heirs of the deceased are subjected. Applying that criterion as one of the many variable criteria which are applied for fixing compensation in more accident cases, the heirs of the affluent victim may have been awarded, say, a compensation of Rs. 90,000. The heirs of the other victim may have been just managing to keep his body and soul together will probably have received by that standard a compensation of, say ten thousand rupees. The compensation awarded to these two groups of heirs shall have to be reduced rateably in the proportion of 9 : 1, in order to ensure that it does not exceed rupees twenty thousand "in all". The result of this will be that the Insurance Company will be liable to pay a sum of Rs. 18,000 to the heirs of the affluent person and Rs. 2000 to the heirs of the other person. The icy hands of death may have fallen in one stroke on two victims of disparate economic status but then, the arithmetic of the appellant's argument will perpetuate the gross inequality between the two even after their death. We must avoid a construction which will produce such an unfair result, if we can do so without doing violence to the language of the section. The owner of the truck will undoubtedly be liable to pay the balance but common experience shows that the woes of injured and of the heirs of those who perish in automobile accidents begin after they embark upon the adventure of execution proceedings. There are proverbial difficulties in proving ownership of goods vehicles, particularly if they are subject to a hire-purchase agreement and truck owners are quite known for the ease with which they proclaim their insolvency. It is therefore no consolation that the left-over liability will fall on the insured." (Para 14)

"Both by common practice and the application of recognised rules of statutory

construction, harsh consequences following upon an interpretation are not considered as the governing factor in the construction of a statute, unless its language is unequivocal or ambiguous. If the language is plain and capable of one interpretation only, we will not be justified in reading into the words of the Act a meaning which does not follow naturally from the language used by the legislature. It therefore becomes necessary to consider whether the language used by the legislature in Section 95(2) of the Act admits of any doubt or difficulty or is capable of one interpretation only." (Para 15)

"We are, therefore, of the opinion that the ambiguity in the language used by the legislature in the opening part of Section 95(2) and the doubt arising out of the correlation of that language with the words "in all" which occur in Clause (a), must be resolved by having regard to the underlying legislative purpose of the provisions contained in Chapter VIII of the Act which deals with third party risks. That is a sensitive process which has to accommodate the claims of the society as reflected in that purpose, indeed, it is in this area of legislative ambiguities, unfortunately not receding, that courts have to fill gaps, clear doubts and mitigate hardships. In the words of Judge Learned Hand;

"It is one of surest indexes of a mature and developed jurisprudence to remember that statutes always some purpose of object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. There is no table to logarithms to guide or govern statutory construction in this area, which leaves a sufficient and desirable discretion for the Judges to interpret laws in the light of their purpose, where the language used by the law-makers does not yield to one and one meaning only. Considering the matter that way, we are of the opinion that it is appropriate to hold that word "accident" is used in the expression "any one accident" from the point of view of the various claimants, each of whom is entitled to make a separate claim for the accident suffered by him and not from the point of view of the insurer." (Para 18)

"We cannot part with this case without impression upon the government, once again, the urgent need to provide by law for the payment of reasonable amounts of compensation, without contest, to victims of road accidents, We find that road accidents involving passengers travelling by rail or public buses are usually followed by an official announcement of payment of ex gratia sums to victims, varying between five hundred and two thousand rupees or so. That is a niggardly recognition of the State's obligation to its people, particularly so when the frequency of accidents involving the public transport system has increased beyond believable limits. The newspaper reports of August and September 1981 regarding deaths and injuries caused in such accidents have a sorry story to tell. But we need not reproduce figures depending upon newspaper assessment because, the newspapers of September 18, 1981 carry the report of a statement made by the Union Minister of State for Shipping and Transport before the North Zone goods transport operators that 20,000 persons were killed and 1.5 lakh were injured in highway accidents during 1980. We wonder whether adequate

compensation was paid to this large mass of suffering humanity. In any event, the need to provide by law for the payment of adequate compensation without contest to such victims can no longer be denied or disputed. It was four years ago that this Court sounded a warning and a reminder. (SCC pp. 175 & 180, paras 1& 10).

With the emergence of an ultra-modern age which has led to strides of progress in all shperes of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though sometimes in the case of some it has also proved to be a misfortune The time is ripe for serious consideration of creating no-fault liability. Having regard to the directive principles of State policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalisation of general insurance companies and the expanding trend towards nationalisation of bus transport, the law of torts based on no-fault needs reform.

..... it is only just and fair that the legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000 or like large sums, and yet when death comes to him not through a plane but through a motor vehicle he is entitled only to Rs. 2000. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle, such an invidious distinction is absolutely shocking to any judicial or social conscience and yet Section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in Section 95(2)(d) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the Insurance Companies to a specified sum of money as representing the value of human life, the amount should be left to be deter- mined by a Court in the special circumstances of each case. We further hope our suggestions will be duly implemented and the observations of the highest Court of the country do not become a mere pious wish.

These observations are still languishing in the cold storage of pious wishes. With the emergence of the General Insurance Corporation which has taken over general insurance business of all kinds, including motor vehicles insurance, it should be easy to give statutory recognition to the State's obligation to compensate victims of road accidents promptly, adequately and without contest." (Para 28)

(iv) This observation in *Motor Owners' Insurance Company Ltd. v. Jadavji Keshavji Modi* (ibid) was referred to by the Supreme Court in the case of *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation* and another, where it

was pointed out that the delay in the final disposal of motor accident compensation cases, as in all other classes of litigation, takes a sting out of the laws of compensation and added to that the monstrous inflation and the consequent fall in the value of rupee makes the compensation demanded years ago, less than quarter of its value when it is received after such a long time. In Hardeo Kaur's case the Supreme Court also approved the observation made in Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, to the effect that due to high rate of inflation, there is no justification for making deduction due to lump sum payment in the claim.

(v) In the case of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, the Supreme Court held that the determination of the quantum must be liberal, not niggardly since the law values life and limb in free country in generous scales.

(vi) In the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, while considering the object of Section 92A of the 1939 Act, the Supreme Court observed that it was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. It was pointed out that in the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose. It was pointed out that the same approach had been adopted by the Supreme Court while construing the provisions of the Act in Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, and Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, .

15. The harassment caused to the victim or his close relatives by compelling them to approach the ordinary courts of law was sought to be remedied by setting up Tribunals so that an expeditious remedy may be available to them. In most of the cases the affected persons are widows and/or dependants. The right of appeal is provided to all the parties. The right of appeal provided to those against whom awards have been passed is not entirely taken away by the 1988 Act. To meet the situation, when an appeal is filed against an Award made in favour of the claimants, which would inevitably delay the enforcement of the Award and cause hardship to the claimants and in order to discourage frivolous appeals which would frustrate the object of the Act and to give speedy relief to the affected persons, that such condition for deposit has been imposed. The "luxury" and the "privilege" of contesting such Award passed in favour of a claimant, by way of preferring an appeal, has been kept alive by the 1988 Act but such "luxury" and "privilege" -- call it a "right" if you like -- has merely been made conditional by providing for deposit of a proportion of the Award money with a maximum limit, in order to protect the right of the claimant in whose favour an Award has been passed. The right of appeal is not taken away but in

order to 1 prevent harassing tactics against the enforcement of Awards in favour of the claimants such a condition regarding deposit of certain amount has been provided. On the one hand, we have the unfortunate victims and their heirs, who are mostly widows and dependants of the deceased victims; on the other hand, we have the owners of the vehicles involved in such "mayhem" and giants like the nationalised and Government-run Insurance Companies. If the claimants are made to wait till the High Court decides the appeals, then they in their turn may not remain alive to reap the benefit of the Award, as we have seen to happen quite often. Before such Awards, they were merely victims of road accidents. After the Award they remain "victims" with certain rights conferred on them. If the person against whom Awards can be enforced is allowed to exercise their "right" of appeal against the Award without any prerequisite of such deposit, then the "right" of the claimant under the Award would be postponed indefinitely and sometimes unnecessarily. It may also be lost in some cases. This time the claimants would again become "victims" -- this time victims of the so-called unconditional right of those against whom Awards are to be enforced. Judicial notice may be taken of the huge pendency of cases in several High Courts throughout the country. The appeals against such Awards are lumped up along with other appeals and proceedings pending in the High Court. It is no use saying that High Court can easily expedite the hearing of these kinds of appeals and therefore, unnecessary delay can be avoided. There is bound to be some delay in view of procedural requirements even if the court is diligent. Sometimes, the appellants against such Awards, make intentional delay in making such appeals ready for hearing, which involves, inter alia, service of notice of appeal on the claimant -- respondents. Further, the High Courts are in no position to cope with the large number of cases pending before them. At least this High Court is not in a position to do so, as there are only 29 Judges in existence out of the sanctioned strength of 39 Judges. Similar is the position of many other High Courts. Unless such provision for deposit is implied in the right of appeal to be exercised by all those who want to prefer appeal after 1988 Act came into force, irrespective of the question whether such claim-petitions were filed before or after the 1988 Act, the claimants, who have obtained Awards in their favour, will be left under the clutches of those against whom such Awards have been passed and the whole purpose and object of setting up such Tribunals, replacing the Civil Courts, would be frustrated if the old system of unconditional right of appeal is allowed to be continued, so far as the pre-1988 I Act claim petitions are concerned.

16. Moreover, unless such provision for deposit is made applicable in respect of all appeals filed after the 1988 Act came into force, without making any distinction between the claim petitions filed before or after the 1988 Act. it would amount to unreasonable classification without any reasonable nexus to the purpose and object of the Act. A discrimination would be created in respect of a beneficial legislation. Reasonable classification is permissible but not discriminatory legislation. So far as the provision for such deposit is concerned,

which has been introduced for the benefit of the claimants in order to reduce their hardships and with the object of discouraging frivolous appeals, no distinction can or should be made between the persons, who have filed claim petitions before the 1988 Act came into force, and those who have filed such claim petitions after the 1988 Act came into force when both the group file appeals after the 1988 Act comes into force. Certainly that could not have been the intention of the legislature in enacting such beneficial and welfare legislation.

17. There is another aspect of the matter. As already stated, by 1982 Amendment. Chapter V1I-A was introduced in the 1939 Act whereby u/s 92-A a new provision was made making the owners of the vehicle and the insurance companies liable to pay compensation in certain cases on the principle of "no fault liability". This provision was introduced as a result of several observations made by several decisions of the Supreme Court, including those in the case of Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, , referred to above. In the case of Shivaji Dayane Patel v. Vatschala Uttam More (ibid) the Supreme Court specifically held that Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation of victims of an accident arising out of the use of Motor Vehicle on the basis of "no fault liability". The provision for "no fault liability" has been enacted in the 1988 Act also by Section 140. Section 110-D of the 1939 Act and Section 173 of the 1988 Act, which provide that any person aggrieved by an Award passed by the Tribunal may prefer an appeal to the High Court, enable such appeals to be filed not only in respect of the final Awards made by the Tribunal u/s 110-B of 1939 Act (corresponding to Section 168 of 1988 Act) but also in respect of the Awards made u/s 92-A of the 1939 Act (corresponding to Section 140 of the 1988 Act.) If the argument of the appellant is accepted, then even in respect of the Awards made on the basis of "no fault liability", such appeals can be preferred without making any deposit merely because the claim petitions were filed under the 1939 Act. The intention of the legislature to confer the benefit of expeditious payment of a limited amount on the basis of "no fault liability" would be frustrated by allowing frivolous appeals to be filed even in respect of such Awards if the requirement of such deposit is held to be not applicable in respect of pre-1988 claim petitions. This was certainly not the intention of the legislature in introducing Section 92-A of the 1939 Act. On the contrary, this will be against the intention of the legislature and the true scope and object of the said section. I regret that I am unable to accept such a situation by accepting such argument.

18. So far as the argument based on Section 217 of the 1988 Act and Section 6 of the 1897 Act are concerned, in my opinion, the same does not make any difference to the conclusion I have arrived at. If my interpretation of the scope and object of both the Acts are correct, then the general provisions of the said section cannot still be treated as a bar. It is to be remembered that Section 217 is general in nature. It is applicable to the M. V. Acts generally. Section 173 of the 1988 Act, that is, the provision for appeal is a special provision. In this

context it may be pointed out that in view of Section 217(2)(a) of the 1988 Act, notwithstanding the repeal of the 1939 Act "any other thing done or any other action taken under the repealed enactment" be deemed to have been taken under the corresponding provisions of the 1988 Act. Accordingly, any claim petition made, when the 1939 Act was in force, shall be deemed to have been taken under the 1988 Act, after the 1988 Act came into force, at least for the purpose of preferring an appeal. From that point of view also, in respect of such pre 1988 Act claim petitions, the requirements of such deposit will be attracted when the appeal is sought to be filed after the 1988 Act came into force. So far as Section 217(4) of the Act is concerned, the applicability of Section 6 of 1897 Act must be viewed in this context. Moreover, Section 6 of 1897 Act itself makes it clear that the provisions made therein would be applicable "unless a different intention appears". In my opinion, there is such different intention in the 1988 Act for the reasons stated herein-above.

19. Accordingly, I am of the opinion that in any view of the matter, if not by express provisions, at least by necessary implication, the right of appeal conferred in respect of the claim petitions filed before the 1988 Act came into force, has been modified by the 1988 Act by making such provisions for deposit. Accordingly, in respect of any appeal filed after the 1988 Act came into force against any Award, the requirement of such deposit, as provided in the proviso to Section 173 is mandatory and it is to be treated as a condition precedent to the exercise of such right of appeal preferred after the 1988 Act came into force, irrespective of the question as to whether the accident took place or the claim petition was filed or the Award was made before the said Act came into force or not.

20. Having regard to the aforesaid conclusion, it is not necessary to deal with specifically and individually the decisions cited (including the decision of a learned single Judge of this Court which was differed from by another learned single Judge of this Court) giving a different interpretation to the relevant sections of the 1939 and 1988 Acts. These decisions have only considered the question of vested right of appeal without going into the question of "necessary implication" in respect of a beneficial and welfare legislation like the one with which we are concerned in the present case. With due respect, I am not in a position to agree with the reasonings of the said decisions.

21. Having regard to above, I decide the preliminary point against the appellants. However, having regard to the different views expressed by various decisions on this point, including the decisions of this High Court, instead of dismissing these appeals in limine on that ground alone, I would like to give an opportunity to the appellants in all these cases to comply with such requirements of law regarding deposit as provided in Section 173 of the 1988 Act within the time specified herein. Accordingly, I direct that in all these appeals the deposit, as required under the proviso to Section 173 of the 1988 Act, be made by the appellants positively by 8th November, 1993. In default, such appeals shall stand

dismissed without further reference to the Bench.

22. The Registry, including the Stamp Reporter, are directed to report, in respect of each of these cases, whether the directions given by this order have been complied with and deposits made.

23. Put up for orders on 15-11-1993.

Ch. S.N. MISHRA, J.

24. I agree. I also agree with the order passed and directions given.