

(2013) 03 MP CK 0055

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 755 of 2013

Ramgopal and Another

APPELLANT

Vs

Haneef Khan and Others

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) ILR (MP) 1645 : (2013) 2 MPHT 426 : (2013) 2 MPLJ 220

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Advocate : Kapil Patwardhan, for the Appellant; R.D. Jain, Advocate General, P.K. Kaurav, Additional Advocate General and A. Namdeo, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

M.C. Garg, J.—This order shall govern in M.A. No. 1283/2011, M.A. No. 2545/2011, M.A. No. 2551/2011, M.A. No. 2556/2011, M.A. No. 2562/2011, M.A. No. 2564/2011, M.A. No. 2566/2011, M.A. No. 2573/2011, M.A. No. 3593/2011, M.A. No. 4873/2011, M.A. No. 30/2012, M.A. No. 33/2012, M.A. No. 34/2012, M.A. No. 36/2012, M.A. No. 38/2012, M.A. No. 45/2012, M.A. No. 1492/2012, M.A. No. 2452/2012, M.A. No. 642/2013, M.A. No. 668/2013, M.A. No. 669/2013, M.A. No. 671/2013, M.A. No. 672/2013, M.A. No. 673/2013, M.A. No. 674/2013, M.A. No. 675/2013, M.A. No. 676/2013, M.A. No. 679/2013, M.A. No. 680/2013, M.A. No. 687/2013, M.A. No. 688/2013, M.A. No. 689/2013, M.A. No. 690/2013, M.A. No. 692/2013, M.A. No. 693/2013, M.A. No. 696/2013, M.A. No. 699/2013, M.A. No. 700/2013, M.A. No. 701/2013, M.A. No. 704/2013, M.A. No. 705/2013, M.A. No. 707/2013, M.A. No. 709/2013, M.A. No. 710/2013, M.A. No. 711/2013; M.A. No. 712/2013, M.A. No. 713/2013, M.A. No. 715/2013, M.A. No. 724/2013, M.A. No. 725/2013, M.A. No. 726/2013, M.A. No. 733/2013, M.A. No. 734/2013, M.A. No. 735/2013, M.A. No. 737/2013, M.A. No. 738/2013, M.A. No. 739/2013, M.A. No. 740/2013, M.A. No. 741/2013, M.A. No. 743/2013, M.A.

No. 744/2013, M.A. No. 745/2013, M.A. No. 746/2013, M.A. No. 747/2013, M.A. No. 748/2013, M.A. No. 751/2013, M.A. No. 756/2013, M.A. No. 757/2013, M.A. No. 758/2013, M.A. No. 759/2013, M.A. No. 761/2013, M.A. No. 763/2013, M.A. No., 764/2013, M.A. No. 766/2013, M.A. No. 769/2013, M.A. No. 770/2013, M.A. No. 773/2013, M.A. No. 774/2013, M.A. No. 776/2013, M.A. No. 777/2013, M.A. No. 778/2013, M.A. No. 779/2013, M.A. No. 780/2013, M.A. No. 781/2013, M.A. No. 783/2013, M.A. No. 784/2013, M.A. No. 785/2013, M.A. No. 786/2013, M.A. No. 787/2013, M.A. No. 788/2013, M.A. No. 790/2013, M.A. No. 792/2013, M.A. No. 793/2013, M.A. No. 794/2013, M.A. No. 795/2013, M.A. No. 797/2013, M.A. No. 798/2013, M.A. No. 800/2013, M.A. No. 801/2013, M.A. No. 804/2013, M.A. No. 805/2013, M.A. No. 806/2013, M.A. No. 807/2013, M.A. No. 810/2013, M.A. No. 811/2013, M.A. No. 812/2013, M.A. No. 813/2013, M.A. No. 814/2013, M.A. No. 816/2013, M.A. No. 817/2013, M.A. No. 818/2013, M.A. No. 819/2013, M.A. No. 821/2013, M.A. No. 823/2013, M.A. No. 824/2013, M.A. No. 825/2013, M.A. No. 826/2013, M.A. No. 830/2013, M.A. No. 237/2011, M.A. No. 365/2013, M.A. No. 47/2012, M.A. No. 51/2012, M.A. No. 56/2012, M.A. No. 60/2012, M.A. No. 61/2012, M.A. No. 62/2012, M.A. No. 63/2012, M.A. No. 64/2012, M.A. No. 66/2012, M.A. No. 67/2012, M.A. No. 69/2012, M.A. No. 73/2012, M.A. No. 75/2012, M.A. No. 76/2012, M.A. No. 77/2012, M.A. No. 789/2013, M.A. No. 822/2013, M.A. No. 827/2013, M.A. No. 828/2013, M.A. No. 829/2013, M.A. No. 831/2013, M.A. No. 832/2013, M.A. No. 833/2013, M.A. No. 834/2013, M.A. No. 835/2013, M.A. No. 836/2013, M.A. No. 838/2013; M.A. No. 840/2013, M.A. No. 842/2013, M.A. No. 843/2013, M.A. No. 844/2013, M.A. No. 845/2013, M.A. No. 847/2013, M.A. No. 852/2013, M.A. No. 855/2013, M.A. No. 857/2013, M.A. No. 858/2013, M.A. No. 859/2013, M.A. No. 860/2013 & M.A. No. 78/2012. Arguments heard on the question as to what amount of Court Fee is payable on an appeal filed u/s 173 of the Motor Vehicles Act for enhancement of compensation against the award passed by the Motor Accident Claims Tribunal after the amendment of the II Schedule of the Court Fees Act, 1870 in its application to the State of Madhya Pradesh.

2. It has been argued on behalf of the learned counsel for the appellants that after coming into force of the Second Amendment in the Court Fees Act by way of Madhya Pradesh Amendment Act therein vide Court Fees (Madhya Pradesh) Amendment Act, 2012, the Court fee on appeal filed in the year 2013 arising out of an accident claim case except for those accidents claim case filed prior to 2nd of April, 2008 is payable only @ 2.5% and not @ 10% as was contemplated in the first State Amendment of the Court Fees Act by the State of Madhya Pradesh vide first amendment, i.e. the Court Fees (M.P.) Amendment Act, 2008.

3. I have also heard the learned Advocate General. According to him, the Court Fee on the appeal for enhanced compensation is payable according to the date of filing of the accident claim that is to say, if the claim has been filed prior to 2nd April, 2008 then the fixed Court Fee of Rs. 30/- is payable, however, if the claim has been filed after 2nd April, 2008 and between 9th January, 2013 then the Court Fee shall be payable @ 10% of the enhanced claim. However, if the claim

has been filed after 9th January, 2013, the Court Fee shall be payable @ 2.5% of the claim amount. He has relied upon the following judgments:--

Garikapatti Veeraya Vs. N. Subbiah Choudhury, , State of Bombay Vs. Supreme General Films Exchange Ltd., Fatehchand Vs. Land Acquisition and Rehabilitation Officer and Others,

4. It is submitted that the first amendment was incorporated on 2nd April, 2008 requiring 10% of the Court Fee on the difference amount awarded by the Claims Tribunal and that claimed in the appeal, from 2013 by virtue of the second amendment, to be of the fee be reduced, but the term substituted in the second amendment will not change the law, which was in force prior to the amendment.

5. I have considered the judgment cited by the learned Advocate General. In the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, the Hon''ble Supreme Court had considered the right of appeal and in this regard it has been submitted that the right of the appeal is vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date of its commencement and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. It has been held, that the vested right of appeal cannot be taken away. In the present case the issue is not about the right to appeal but is about the Court Fee payable on the appeal.

6. In the second judgment in the case of State of Bombay Vs. Supreme General Films Exchange Ltd., the issue involved was claim of enhanced Court Fee on a claim filed prior to coming into force of the Notification enhancing the Court Fee. In that context the Hon''ble Supreme Court made the following observation:--

In Anand Ram Pramhans and others Vs. Ramgulam Sahu and others , the question which was mooted and discussed related to the proper presentation of a memorandum of appeal, and incidentally it was observed that the new Bihar and Orissa Court Fees Act which had already come into force applied to the case. There was no discussion of the question as to whether the enactment in question was given retrospective effect or not. As to the decision in Mt. Mohri Kunwar Vs. B. Keshri Chandra, on which so much reliance has been placed by the appellant, it is necessary to point out that the question there was if the right of appeal created by section 6-A of the Court Fees Act, which was added by U.P. Act, XIX of 1938, was available as against an order passed after the coming into force of the latter Act, although that Act was not in existence and consequently there was no right of appeal at the date of filing that plaint. It was held that the enactment, by the amending Act of 1938 of section 6-A which allowed an appeal against an order demanding the payment of a deficiency in court fees did not take away any right which was vested in the plaintiff on the date on which he filed the plaint, it only conferred on him a new right; nor did it take away any right which was vested in the defendant, for though the defendant could object if the plaint was

not properly stamped and might also have a right to have the matter determined by the court he had no vested right in the procedure by which it was to be determined, and this procedure could be changed pending the suit and a change in procedure could not be said to deprive him of any vested right. It would appear from what has been stated above that the decision proceeded on the footing that the amending Act conferred a new right of appeal, and not that it took away a vested right of appeal; and the reason of the decision was based on the principle that there is no vested right in the procedure by which the sufficiency of court fees is determined by a court. That is a principle of a different character from the one we are concerned with in the present case, viz., the retrospective effect of a subsequent enactment which either takes away a right of appeal or impairs it by imposing a more stringent or onerous condition thereon. We do not, therefore, think that the Allahabad decision helps the appellant.

7. Now, coming to the judgment of this Court the Division Bench of this Court in the case of Fatehchand Vs. Land Acquisition and Rehabilitation Officer and Others, where the question of amendment in Court Fees Act has been considered, the Court has opined that with respect to Court Fees Act, the amendment which reduces the Court Fees without there being anything said in the amendment that it will be retrospective will permit the Court Fees payable at an amount provided for by the amendment even with respect to a claim filed earlier. Paragraphs- 8, 9 and 13 are applicable, which are as under:--

8. As per this amendment in a suit or in an appeal, the maximum limit of Rs. 1,50,000/- has been provided, but the entire Amendment Act does not provide that this amendment shall be retrospective in nature, in absence of which it should be treated as prospective in nature.

9. The Apex Court has an occasion to consider this aspect in Supreme General Films Exchange Lid. (supra). The Apex Court considering this aspect held thus:--

Where a suit is filed prior to 1-4-1954, on which the Court Fees (Bombay Amendment) Act, 1954, levying enhanced Court-fees, came into force, in the absence of provisions giving retrospective effect to the amendments, the Court-fees payable on the memorandum of appeal filed after the relevant date (1-4-1954) are payable according to the law in force at the date of filing of the suit (which was prior to the relevant date) and not according to the law in force at the date of the filing of the memorandum of appeal (which was after the relevant date: (S) Sawaldas Madhavdas Vs. Arati Cotton Mills Ltd., , Affirmed.

It is thus clear 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.

We are, therefore, of the view that the High Court was right in the view it took, and the orders of refund of excess Court fees which it passed were correct in law.

8. In the present case, the second amendment reads as under:--

MADHYA PRADESH ACT NO. 3 OF 2013

THE COURT-FEE (MADHYA PRADESH AMENDMENT) ACT, 2012 (Received the assent of the Governor on the 8th January, 2013, assent first, published in the "Madhya Pradesh Gazette (extraordinary)", dated the 9th January, 2013.)

An Act further to amend the Court-fees Act, 1870 in its application to the State of Madhya Pradesh,

Be it enacted by the Madhya Pradesh Legislature in the Sixty-third year of the Republic of India as follows:--

1. This Act may be called the Court-fee (Madhya Pradesh Amendment) Act, 2012.
2. The Court-fees Act, 1870 (No. VII of 1870) (hereinafter referred to as the principal Act), in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.
3. In Schedule II to the Principal Act, in Article 11, in clause (a), in sub-clause (i), in the column pertaining to proper fee, for the words Ten percent of the enhanced amount claimed in appeal", the words Two and one half percent of the enhanced amount claimed in appeal subject to a maximum of one lakh rupees" shall be substituted.
9. In this peculiar situation where the second amendment has substituted the word 10% to 2.5%, the question arise as to what shall be the Court Fee payable on appeal, irrespective of the fact that the accident claim was filed after 2nd April, 2008 or after 9th January, 2013.
10. As per the Division Bench Judgment of this Court delivered in the case of Smt. Supriya Kathane and others vs. Shri Lal Singh and others, M.A. No. 2110/2008, despite the amendment brought in by the State of Madhya Pradesh in the Court Fee Act applicable to the State of Madhya Pradesh, with respect to any appeal which arose out of the accident claim filed prior to 2nd April, 2008, the Court Fee @ Rs. 30/-, which was payable is as per the original schedule irrespective of the fact that the appeal was filed after 2nd April, 2008 and prior to 9th January, 2013.
11. However, after coming into force of the amendment by the State of Madhya Pradesh, the Court Fee @ 10% becomes payable on an appeal filed for enhancement of the amount of award passed by the Motor Accident Claims Tribunal in a case which was instituted after coming into force of the Madhya Pradesh Amendment enhancing the Court Fee payable on the enhanced amount claimed in the appeal @ 10% w.e.f. i.e. the date, the amended provision came into being i.e. w.e.f. 2-4-2008 would be payable.

12. It is the matter of record that the aforesaid judgment is now subject-matter of a review before the Division Bench of this Court in terms of the directions given by the Hon''ble Supreme Court.

13. It may be observed here, that in the second amendment there is no provision for enhancing the Court Fee on the accident claim case. In fact, the Court fee payable on appeal is substituted @ 2.5% instead of 10%. Thus, it is the contention of the appellants that if appeal arises even with respect to accident claim filed either after 2nd April, 2008 or after 9th January, 2013 while, the Court Fee on the original claim amount is fixed but the Court Fee payable on an appeal on account of the amendment of the Act, becomes payable only @ 2.5%. Moreover, the Motor Vehicles Act is a welfare legislation, any benefit granted by the statute must be reached in such a manner that it confers benefit to the poor litigant, who are coming to the Court for redressal of the grievance for obtaining accident claim. It was in the light of that schedule, Court Fee on appeal was only payable @ Rs. 30/-. Using the word, "substituted" from 10% to 2.5% also reflects to the intention of the Legislature. In this regard my attention was brought to the judgment of the Hon''ble Supreme Court in the case of Dahiben widow of Ranchhodji Jivanji and others vs. Vasanji Kevallhahi (dead), AIR 1995 SC 1215 wherein in respect of pending suit despite the amendment brought in Bombay Tenancy Agricultural Lands Act, 1948, which made the Act applicable even to those areas where it was not applicable earlier, it was held that the amendment was not applicable to those areas for which a suit for eviction has been filed.

14. In this regard it would be appropriate to take note of judgment of Hon''ble the Supreme Court delivered in the case Zile Singh Vs. State of Haryana and Others, wherein it has been held:--

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, *ibid*, p. 565). If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn. and Ors. vs. State of U.P., State of Rajasthan vs. Mangilal Pindwal, Koteswar Vittal Kamath vs. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chettiar vs. S. Michael & Ors.* In *West U.P. Sugar Mills Assn.* case a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In *Mangilal Pindwal's* case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In *Koteswar's* case a three Judge Bench of this Court emphasized the distinction between "supersession" of a rule and "substitution" of a rule and held that, the process of substitution consists of two

steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.

15. Thus, on account of substitution of the Court Fee payable from 10% to 2.5% only by way of amendment brought in force on 9th January, 2013, the Court Fee on motor accident appeal which arise out of motor accident claim filed after 2nd of April, 2008, shall now be payable only @ 2.5% on the enhanced amount. Accordingly, it is held that Court Fee on the appeal which is filed after coming into force of the second amendment which become effective from 9th January, 2013, shall be payable only @ 2.5%.

16. The appellants are allowed 2 weeks" time to deposit the Court Fee. The Registry after ensuring that the Court fee is filed as paid in terms of the direction and also after ensuring that other defects are removed would place the matter before the Court for the purpose of admission. The order passed in this appeal shall apply ipso facto in respect of all the appeals whereby the enhancement of compensation sought for where accident claim was filed after 2-4-2008.

A copy of which order be placed in all connected files.