

(1999) 07 AP CK 0023

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 788 of 1994

S. Palakondarayudu

APPELLANT

Vs

Vice-Chairman-cum-Managing Director, APSRTC

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles (Amendment) Act, 1994 — Section 163(3)
Motor Vehicles Act, 1988 — Section 158(6), 166, 173

Citation : (1999) 5 ALT 230

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : M. Venkataramana Reddy, for the Appellant; A.V. Sivaiah, S.C., for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—This Civil Miscellaneous Appeal is preferred by the appellant-petitioner being aggrieved by the order passed by the Motor Accidents Claims Tribunal, Chittoor at Tirupathi, made in I.A. No. 1094 of 1993 in O.P. No. Nil of 1993, dated 6-4-1994, in which the Tribunal below has dismissed the petition filed u/s 166(3) of the Motor Vehicles Act for condoning the delay of five months twenty-one days in presenting the claim petition.

2. The petitioner in the Tribunal below filed the original petition, claiming compensation for the damages caused to the vehicle in the accident on 2-6-1992. As the petition was not filed within the period prescribed u/s 166 of the M.V. Act, he filed LA. No. 1094/93 for condoning the delay and the same was dismissed by the Tribunal below.

3. The grounds mentioned for condoning the delay was that as the petitioner was busy with his business work, by oversight, he could not present the said O.P. in time and the Tribunal held that the said reason cannot be accepted as a sufficient ground and dismissed the petition. Assailing the same, the petitioner has filed

the present appeal.

4. The learned Counsel for the appellant contends that though, in the affidavit, it is mentioned that he was busy with his business work and by oversight, and the same could not be submitted in time, that cause is sufficient for non-preferring the appeal and even otherwise, during the pendency of the appeal by Act No. 54 of 1994, Sub-section (3) of Section 166 of M.V. Act is omitted. In view of such omission, the appeal has to be allowed and the matter has to be remitted back to the lower Court by taking note of subsequent events, and as the appeal is only a continuation of a suit, the Court has to take note of the amendment and the matter may be remitted back to the lower Court for making an enquiry into the claim.

5. On the other hand Sri Shivaiah, the learned Standing Counsel for the respondent contended that the appeal is not maintainable against an order passed u/s 5 of the Limitation Act and the same is not an award within the meaning of Section 173 of the M.V. Act, 1988.

6. In view of the rival contentions, the points which arise for consideration in this appeal are:

(1) Whether the order passed in I.A. 1094/93 refusing to condone the delay is an Award or not;

(2) Whether the said amendment repealing Section 166(3) is retrospective in operation and govern the pending proceedings.

7. The learned Counsel for the appellant submitted that u/s 166(3) of the M.V. Act, in fact the petitioner need not file any application to condone the delay for filing the appeal, and the same can be mentioned in the petition itself, and if the appellant shows sufficient cause, the Tribunal can condone the delay. If the Tribunal rejects the application filed u/s 166 of the M.V. Act, it amounts to an Award.

8. In support of his contention, he relied upon a decision reported in Krishen Lal Trikha v. Jupiter General Insurance Co. and Ors. 1977 ACJ 339 and Balkar Singh v. Chajju Ram and Anr., 1986 ACJ 542 .

9. In Krishen Lal Trikha's case referred to supra, his lordship Justice Dr. A.S. Anand, as he then has held that "rejecting the claim petition on the ground that the same is barred by limitation, would be an award and appealable u/s 110-D of the M.V. Act".

10. Following the same, the High Court of Jammu and Kashmir in Balkar Singh's case referred to supra, which was referred to the Third Judge on the difference of opinion, agreed with the order passed by the acting Chief Justice and held that "an order passed for condonation of delay in filing the petition is an award and appealable under the M.V. Act.

11. However, the law laid down by the Jammu and Kashmir High Court referred 2

supra, is not applicable to the facts and circumstances of this case. A Division Bench of this High Court in a decision reported in S. Johny Saheb and Others Vs. Ademma and Others, however, held that an order condoning the delay in filing the claim petition is not appealable. Speaking for the Bench, his lordship, Jeevan Reddy, as he then was in paragraph 2 of the judgment held as follows:-

"As we have stated above, only those orders which have the effect of putting an end to the claim petition or which amount to finally disposing of the original petition can be treated as an award and are appealable and not other Interlocutory orders."

Admittedly in the present case, the claim petition is preferred after the prescribed period of limitation, accompanied by an application for condoning the delay and the said petition is dismissed, with the result that the main O.P. also stands dismissed and therefore, it can be treated as an award and it is appealable u/s 173 of the M.V. Act.

13. The next question that arises for consideration is, whether the amendment to Section 163 is retrospective in operation and governs the pending proceedings.

14. The learned Counsel for the appellant argued that once Sub-section (3) of Section 166 of the M.V. Act is deleted, it will be retrospective in operation and the trial Court can take note of the same and in support of his contention, he relied upon a decision reported in Wilfred v. N.A. Maniyar and Anr., 1995 ACJ 673 (Karnataka). of the Karnataka High Court.

15. In the above case referred 4 supra, the Tribunal after assessing the compensation held that the claim petition is barred by limitation, and the petition was dismissed. But in appeal, the High Court of Karnataka held that an appeal is a continuation of the original proceedings. It is pending the appeal, the repeal of Section 166(3) has been given effect to. The effect of a repeal is that the statute is completely obliterated, as if it had never existed, and while discussing the case law in para 10 it was held as follows:-

"With the amendments effected to Section 158(6) and Section 166(4) of the Motor Vehicles Act, 1988, the Legislature has clearly indicated that a proceeding for claim of compensation is no more an adversary lis as it used to be. When due to an unfortunate mishap the bread-winner of the family quits the scene and leave hapless widow and other dependents to fend for themselves, the State cannot merely look on as a casual spectator and act merely as an umpire while these helpless dependents fight for the compensation. It is clear from Article 38 and Article 39 (a) of the Directive Principles of State policy that the State has a duty to achieve those objects while legislating. It has a more active (part) to see that there are less number of destitutes in the society. When it moves in this direction and incorporates the provisions like Section 158(6) and Section 166(4) in the statute whereby it becomes the statutory duty of the officials to report regarding the accident to the Tribunal which in turn is treated as a claim petition a provision like Section 166(3) is redundant and cannot co-exist. I therefore,

hold that the amendment to Section 166(3) of the Motor Vehicles Act is retrospective in operation and governs the pending proceedings as well. The claim petition is hence not barred by limitation."

16. The Supreme Court in *Nani Gopal Mitra Vs. The State of Bihar*, considered the effect of repeal pending the appeal. While discussing the same, in paragraph 6 it was held as follows:-

"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-

After enunciating the principle of law, the Supreme Court, upheld the conviction of the appellant therein stating that the same was pronounced on 31st March, 1962 long before the amending Act was promulgated by invoking Section 6(c) of the General Clauses Act. In view of the same it has to be seen whether the proceedings initiated by the appellant are concluded and the appeal is a continuation of proceedings.

18. In *Graxfords (Ramgate) Ltd. v. Williams and Steer Manufacturing Company Ltd.*, 1954-III, All England Law Reporter-17 the question relating to the effect of Section 4 of the Law Reform (Enforcement of Contracts) Act, 1954 on pending proceedings was considered. Section 2 of the Act, 1954, repealed Section 4 of the Sale of Goods Act, 1893 in relation to any contract whether made before or after the commencement of this Act, is discussed.

19. The repealed Section 4 of the Act of 1893 was to the effect that-

"A contract for the sale of any goods of the value of ₹ 10 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf."

20. In an action filed on contract, the defence u/s 4 of the Sale of Goods Act, 1893 is during trial, but before judgment. The Act 1954 came into operation giving rise to the question as to whether the defence repealed u/s 4 of 1893 can remain validly. It was held that Section 4 was only procedural section and constitutes only a fetter on the power of the Court to grant a remedy. Unless the contract was established in a particular manner; and no one had any vested right under it and "the fetter intention removed by repeal of the provision in respect of contracts, the Court can grant a remedy even in an action which was instituted earlier"

21. In the present case, the application was dismissed by order dated 6-4-1994 and the present appeal was preferred on 29-6-1994.

22. The Supreme Court in Smt. Dayawati and Another Vs. Inderjit and Others, considered the effect of applicability of amended Section 3 of Usurious Loans Act, 1918. The section itself makes it obligatory for a Court to reopen a transaction, if there is a reason to believe that the interest is excessive. Considering the same, the Supreme Court in para 10 held as follows:-

"Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there? is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of Appeal must have regard to an intention so expressed, and the Court of Appeal may give effect to such a law even after the judgment of the Court of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the Court is invited by law to take away from a successful plaintiff, what he has obtained under a judgment."

23. In view of the above, it can safely be concluded that the Section 166 of the M.V. Act is only a procedure for filing an application for compensation arising out of an accident and Sub-section (3), as it stood prior to repeal, fetters the powers of the Court to grant a remedy, unless it is made within six months of the occurrence of the accident.

24. Now the said fetter in procedure is removed by repeal of Section 166(3) by the Amendment Act 54 of 1994. In view of the deletion of Sub-section (3) of Section 166 of M.V. Act, it will have never existed from the inception of M.V. Act, 1988 and the cause is already constituted, and hence the claim petition is not barred by limitation, as the accident in this case occurred on 2-6-1992 and even the appeal which is filed against the dismissal of the I.A. is on 29-6-1994, within a period of three years from the date of accident.

25. The Supreme Court in the case of Dayawati referred 7 supra, in para 11 of its judgment, held as follows:-

"The only difference between a suit and an appeal is this that an appeal "only reviews and corrects the proceedings in a cause already, constituted, but does not create the cause". As it is intended to interfere in the cause by its means. It is a part of it, and in connection some matters and some statutes, it is said that an appeal is a continuation of a suit."

26. As the appeal is a continuation of a part of cause and the intention of the Legislature in deleting Section 166(3) is to obliterate the fetter imposed u/s 166(3), and apart from that the Sub-section (6) of Section 158 is amended stating that the Officer In-charge of the Police station after completion of investigation shall forward a copy of the same within (30) days from the date of recording of the information or, as the case may be, on completion of such report to the Claims Tribunal, and a copy thereof to the concerned insurer and when a copy is made available to the Claims Tribunal, under Sub-section (4) of Section

166, the Claims Tribunal shall treat the report of accident forwarded to it under Sub-section (6) of Section 158 of M.V. Act, as an application for compensation under this Act.

27. In view of the same, I hold that the amendment of Section 166 of M.V. Act is retrospective in operation and govern the proceedings including the appeal and the petitioner is entitled for the benefit of the amendment.

28. In the result, this appeal is allowed and the matter is remitted back to the trial Court to number the original petition and dispose of it according to law. There shall be no order as to costs.