
(1999) 07 MAD CK 0132
In the Madras High Court
Case No : C.M.A. No. 483 of 1992

Saffia Bee and Others

APPELLANT

Vs

B. Sathar and Others

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140, 168

Citation : (2002) ACJ 449 : AIR 2000 Mad 167 : (2000) 3 LW 863

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : S.J. Jagadev, for the Appellant; K. Ranganathan, (Amicus Curaie),
for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The appellants herein are the claimants. They are the widow and children of the deceased- Mohamed Rasul.

2. The deceased was working as Sub-Inspector of Police in District Crime Branch at Cuddalore. On 19-8-1984, at about 3.30 p.m. he was riding on the motor-cycle bearing registration No. MSQ 8509 and proceeding towards Panruti. All of a sudden, when he was nearing the Naththamedu Main Road, another motor-cycle bearing registration No. MSR 6754, driven by one Thandavamurti, third respondent herein, came in a rash and negligent manner and suddenly, took a right turn for crossing towards Naththamedu Road, even without giving any signal. Due to this both the vehicles got collided with each other. The deceased and the motor-cycle were thrown out. He sustained a serious head injury and died after an hour. The said Thandavamurti, driver of the another motor-cycle also sustained injuries. PW4, Hanifa was the pillion rider in the vehicle driven by the deceased-Mohmad Rasul. The motorcycle which was driven by the deceased belonged to one Sathar, who is the first respondent herein. The motor-cycle which was driven by the said Thandavamurti, the third respondent herein,

belonged to Umapathi, the fourth respondent herein.

3. Thandavamurti, for the injuries sustained by him in the accident, filed a petition in O.P. No. 179 of 1985 claiming compensation of Rs. 80,000/-. The appellants-claimants, legal representatives of the deceased Rasul, filed a petition in O.P. No. 543 of 1985 claiming Rs. 3,00,000/- as compensation for the death of the deceased, due to the accident.

4. The Tribunal, in the common enquiry, examined the witnesses produced by both the parties by making them as PWs 1 to 5 and the documents filed in support of them were marked as Exs. A-1 to A-22.

5. Though each party put the blame against each other, the Tribunal ultimately concluded that the deceased-Rasul was negligent and consequently, held that the legal representatives of the deceased would not be entitled to any compensation, but the Thandavamurti would be entitled to the compensation of Rs. 27,600/- as against the total compensation of Rs. 80,000/- claimed. Even though the Tribunal assessed the amount of compensation of Rs. 70,000/- for the legal representatives of the deceased, the Tribunal rejected the claim of the legal representatives of the deceased on the ground that no negligence could be attributed to Thandavamurti, and the deceased-Rasul alone was negligent. Hence, the legal representatives of the deceased-Rasul, being the claimants, have challenged the judgment impugned, before this Court, by raising various contentions.

6. According to the counsel for the appellants, the evidence of PW 4, the pillion rider, had not been considered by the Tribunal in the proper perspective and his evidence would really show that the accident took place because of the sudden right turn taken by the said Thandavamurti, third respondent herein, who was examined as PW1 or otherwise, the accident would not have occurred and that therefore, the Tribunal should have held that the claimants would be entitled to compensation for the death of the deceased. At the end of the arguments, he would submit that the Tribunal committed a grave error by not awarding any amount of compensation, at least on the ground of "no fault" liability u/s 140 of the Motor Vehicles Act, 1988.

7. Though notice was served on the other side, nobody entered appearance on behalf of respondents.

8. Since the argument advanced by the learned counsel for the appellants that even assuming as per the finding given by the Tribunal that the deceased alone was negligent, the claimants would be entitled for compensation towards "no fault liability", let us now consider the said submission before going into the credibility of the evidence adduced by the claimants in the present case. Mr. Ranganathan, the learned counsel who is present in the Court, has been nominated as an Amicus Curiae to assist this Court in regard to this point, namely, applicability of "no fault liability."

9. The accident took place on 19-8-1984. Sec. 92(A) of the Motor Vehicles (Amendment) Act 47/1982, which is relating to "no fault liability", came into force with effect from 1-10-1982. Therefore, there is no difficulty in holding that the legal representatives of the deceased are entitled to get an amount of compensation under the head "no fault liability". But, even then, under the relevant section, which was in force on the date of the accident the claimants would be entitled to the compensation of Rupees 15,000/- only for the death of the deceased. It is now argued that u/s 140 of the Act, 1988, the amount of compensation has been increased to Rs. 25,000/- by introducing the amendment on 1-7-1989 and thereafter, the said amount has been increased to Rs. 50,000/- on 14-11-1994 and that therefore, the claimants would be entitled to Rs. 50,000/- as compensation by giving retrospective effect.

10. In this context, it is to be noticed that the "no fault liability", for the first time, came to be introduced on 1-10-1982, providing Rs. 15,000/- as compensation. The said amount was enhanced to Rs. 25,000/- on 1-7-1989. The same was again enhanced to Rs. 50,000/- on 14-11-1994.

11. As indicated earlier, the occurrence, in this case, took place on 19-8-1984. The Tribunal rendered the judgment on 7-10-1989. This appeal has been filed on 18-4-1990. This would show that though the enhancement of Rs. 25,000/- as compensation under "no fault liability" came to be introduced on 1-7-1989, pending the claim petition before the Tribunal i.e., prior to the delivery of the judgment on 7-10-1989, the further enhancement to Rs. 50,000/- came into force only on 14-11-1984 during the pendency of the present appeal before this Court.

12. It is argued by the counsel for appellants that the claimants are entitled to the enhanced amount, either Rs. 25,000/- as per the amendment introduced on 1-7-1989 pending proceedings before the Tribunal or Rs. 50,000/- which was introduced as per the Amendment Act on 14-7-1994 during the pendency of this appeal before this Court, in view of the fact that the provision, being beneficial, has to be given retrospective effect and the said benefit has to be extended not only for the pending cases before the Tribunal, but also for the appeals pending before this Court. In support of his plea, he would cite the following authorities :

"1. Amba Lal and Another Vs. Union of India (UOI) and Others, .

2. Rawat Singh and Another Vs. Sube Singh and Others, .

3. Mano Devi and Others Vs. Chander Singh and Others, .

4. Indramal Mukhriya Vs. G.M., Madhya Pradesh State Road Trans. Corpn. and Others, .

5. 1989 ACJ 607 (Gauhati).

6. Shashikalabai (Smt) Vs. State of Maharashtra and Another, .

7. Kanhaiya Lal and Another Vs. Kailashi Devi and Others, .

8. State of Tamil Nadu Vs. The Election Commission of India, (Notes of Recent Cases P. 21).

9. Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, .

10. Smt. Sumitra Devi and Others Vs. Danesh Kumar and Others, .

11. Mithilesh Kumar and Another Vs. Prem Behari Khare, .

12. Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha, .

13. Oriental Insurance Co. Ltd. Vs. Khem Chand and Others, ."

13. Thus, the sole controversy involved in the present case is whether Section 140 of the Motor Vehicles Act, 1988 which came to be introduced on 1-7-1989 and with a further amendment introduced on 14-11-1994, could be applied to the accident which took place on 19-8-1984 i.e. before the Motor Vehicles Act, 1988 came into force.

14. Mr. Ranganathan, as an Amicus Curiae would also, on the strength of the following decisions, submit that retrospectively cannot be given in the case on hand, since the accrual of the cause of action would be the relevant factor for deciding the issue relating to the applicability of the relevant provisions of the Act.

"1. Ramesh Singh and another Vs. Cinta Devi and others, .

2. Neeli and Others Vs. Padmanabha Pillai Narayana Pillai and Others, .

3. 1992 TLNJ 16 (Madras).

4. 1982 ACJ 235 : 1982 All LJ 1 .

5. 1997 ACJ 587 (Madras).

6 K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., .

7. Charan Lal Sahu Vs. Union of India, ."

15. In order to find out whether the submission made by the counsel for the appellants is sustainable or not, in the light of the submission by Amicus Curiae, we have to bear in mind that Section 92(A) of the Motor Vehicles Act, 1939 and Section 140 of the Motor Vehicles Act, 1988 are benevolent provisions and by the rule of construction applicable to such provisions, we have to place a liberal interpretation, so that the final conclusion reached is a "just" one.

16. Section 92(A) of Motor Vehicles Act, 1939 came to be introduced by the Act 47 of 1982. Previously, the provisions of the Act, as to compensation in respect of accidents, can be availed of only in case of accident which can be proved to have taken place, as a result of a wrongful act or negligence on the part of the owner or driver of the vehicle concerned. Having regard to nature and

circumstances in which the road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures 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. This is the object of introduction of Section 92(A) of the Act.

17. Under Sub-section (2) of Section 92-A, the amount first fixed under compensation for "no fault liability" was Rs. 15,000/-. Thus, 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 to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability". 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. This principle has been laid down by the Apex Court in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, ; Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, and 1987 ACJ 411 : AIR 1987 SC 1184 (*Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan*).

18. In this context, it is to be noticed that the language of Section 92-A does not expressly or by necessary Implication say that the provision is retrospective. Similarly, it does not equally say, it is only prospective and not retrospective. It is the well established rule that the provision must be interpreted, taking note of spirit of social welfare legislation and should be interpreted beneficially in favour of the poor, and in such a matter, as held by this Court as well as the Apex Court, the technicalities of law should not be allowed to have any upper hand and to obliterate the beneficial and social justice orientations of the enactment.

19. With the similar purpose Section 140 has been introduced by the new Act 1988 enhancing the amount of Rupees 15,000/- into Rs. 25,000/-. Similarly, by introducing a new amendment, Section 140(2) has been introduced by enhancing the amount of Rs. 25,000/- into Rs. 50,000/- by the Amendment Act of 1994. The applicability of these provisions, as pointed out earlier, is the bone of contention in the present case. It cannot be debated that the argument in relation to the retrospectivity of Section 92-A would apply to Section 140(1) under the Amendment Act, 1989 and Section 140(2) under the Amendment Act, 1994 as well.

20. In the following decisions. It is held that Section 92-A under Amendment Act, 1982, Section 140(1) under the Amendment Act, 1989 and Section 140(2) under the Amendment Act, 1994 would give retrospective effect :--

"1 Oriental Insurance Co. Ltd. Vs. Khem Chand and Others, .

2. 1989 ACJ 607 (*New India Assurance Co. Ltd. v. Ramesh Kalita*).

3. 1989 ACJ 1124 (Madhya Pradesh State Road Transport Corporation v. Sukhiya Bai).
4. Oriental Fire and General Insurance Co. Ltd. Vs. Shantabai S. Dhume and Others, .
5. K.P. Ali and Another Vs. V. M. Madhavan and Others, .
6. A. Vilasini and Others Vs. K.S.R.T.C. and Another, .
7. Smt. Sumitra Devi and Others Vs. Danesh Kumar and Others, .
- 8 National Insurance Co. Ltd. Vs. Anjali Mallick and Others, .
9. Mosmi and Another Vs. Ram Kumar and Others, .
10. United India Insurance Co. Ltd. Vs. Padmavathy and Others, .
11. Rawat Singh and Another Vs. Sube Singh and Others, .
12. Kanhaiya Lal and Another Vs. Kailashi Devi and Others, .
13. Fathima and Others Vs. Sathish Kumar Jolly and Another, .
14. Mohammad Arshad Vs. Naimuddin Nasimuddin and Another, .
15. T. Srinivasulu Reddy Vs. C. Govardana Naidu and another, .
16. Dorakonda Venkatrama Seshachalapathi Vs. Vijayawada Co-operative Central Bank, Vijayawada and Another, .
17. 1989 ACJ 607 (Gau) (New India Assurance Co. Ltd. v. Ramesh Kalita)."
21. Following are the contra judgments, in which it is held that no retrospective effect would be given under the above-mentioned sections :--
- "1. Govind Das and Another Vs. Yaqub Khan and Others, .
2. Surinder Kaur Vs. Lakhbir Singh and Others, .
3. Oriental Insurance Co. Ltd. Vs. Murugan, .
4. Andhra Pradesh State Road Trans. Corpn. Vs. Azizunnisa Begum and Others, .
5. 1984 ACJ 716 (Raj) (Yashoda Kumari v. Rajasthan State Road Trans. Corpn.).
6. 1985 ACJ 476 (All) (Ram Mani Gupta v. Mohammad Ibrahim).
7. Neeli and Others Vs. Padmanabha Pillai Narayana Pillai and Others,
8. R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, .
9. New India Assurance Co. Ltd., Gwalior Vs. Nafis Begam and Others, .
10. 1985 ACJ 476 (All) (Ram Mani Gupta v. Mohammad Ibrahim);
11. Karuram and Others Vs. Omprakash and Others, .

12. Bhagwan Das and Another Vs. National Insurance Company Ltd. and Another, .

13. 1992TLNJ 16 (Cholan Roadways Corpn. Ltd. v. Udayan).

14. 1997 ACJ 587 (M. D. Dheeran Chinnamalai Transport Corporation v. Puratchi Veeran)."

22. In this context, it is relevant to note that the Apex Court in the decision reported in R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, , held that Section 92-A of the Motor Vehicles Act, 1939 is prospective. Following the above judgment, this Court in the decision reported in 1992 TLNJ 16 (cited supra), held that both Section 92-A of the Motor Vehicles Act, 1939 as well as Section 140(1) of the Motor Vehicles Act (Amendment) Act, 1989 and Section 140(2) of the Motor Vehicles (Amendment) Act, 1994 are prospective. This Court, while considering the said aspect in detail and while dissenting the view of Kerala High Court in the decision reported in A. Vilasini and Others Vs. K.S.R.T.C. and Another, , held that the same is not good law, in view of the Apex Court's judgment.

23. Furthermore, it is now pointed out by Mr. Ranganathan, Amicus Curiae that the judgment of Division Bench of Kerala High Court, reported in A. Vilasini and Others Vs. K.S.R.T.C. and Another, has been overruled by the decision of Full Bench of Kerala High Court, reported in Neeli and Others Vs. Padmanabha Pillai Narayana Pillai and Others, . The Full Bench of Kerala High Court, while reversing the judgment of Division Bench in Vilasini's case (cited supra) A. Vilasini and Others Vs. K.S.R.T.C. and Another, , followed the Apex Court's judgment in R.L. Gupta's case (cited supra) and held that it has no retrospective effect.

24. It is pointed out by the counsel for the appellants that when a similar question arose, the Division Bench of Madhya Pradesh High Court, in the decision, reported in Indramal Mukhriya Vs. G.M., Madhya Pradesh State Road Trans. Corpn. and Others, would hold that even though the occurrence had taken place in the year 1977, the benefit u/s 92-A which came to be introduced on 1-10-1982, would be given effect to retrospectively, both when the proceedings are pending before the Tribunal and also the appeals are pending before the High Court, as the appeal is the continuation of trial. This judgment was rendered following the Judgment of Bombay High Court, reported in Oriental Fire and General Insurance Co. Ltd. Vs. Shantabai S. Dhume and Others, . In that case, the accident occurred on 9-8-1982. Section 92-A came to be introduced on 1-10-1982. The claim application was made on 21-7-1983. It was held in that case that Section 92-A is to be applied to all pending cases irrespective of the date on which the accident occurred, the fact that the Amendment Act postulates that the Amendment Act would come into force on the dates notified in the gazette being of no consequence."

25. In the instant case, the occurrence had taken place on 19-8-1984, when the provision relating to "no fault liability", namely, Section 92-A was in force.

Therefore, according to counsel for appellants, the retrospective effect to the strict sense with reference to the "no fault liability" may not arise in this case, but the variations of the amount in the enhancement alone have to be taken into account for deciding the issue raised in the present case.

26. The amount of compensation for "no fault liability" has been enhanced on 1-7-1989 from Rs. 15,000/- to Rs. 25,000/- and on 14-11-1994 to Rs. 50,000/-, obviously, because of the fact that the value of the money had considerably fallen in the course of time. Hence, it is stated that the application for no fault liability is to be decided in accordance with law, as it stands on the day of its moving as it is a matter pertaining to procedure.

27. However, in the book *The interpretation of Statutes* by Maxwell, it is stated as follows :--

"Pending actions In general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary such rights."

28. By virtue of the introduction of Section 92-A, a right has been created for the claimant to seek the relief of "no fault liability" of Rs. 15,000/-. It also creates liability on the owners or the drivers of the vehicle even though there is no fault on their part in regard to the accident. If retrospective operation is given to Section 140, that it would definitely put the liability to the owner or the driver or the Insurance Company to shoulder additional burden by making the payment of enhanced amount which would impair an existing right or obligation on their part.

29. The relevant provision deals with the new liability created by the law. As indicated earlier, the Apex Court in *R.L. Gupta's case* (cited supra) would hold that Section 92-A is only prospective as the said provision is substantive in nature. Similarly, the provision of Section 140, replacing Section 92-A by only adding some more amount as a "no fault liability" shall also be considered to be substantive in nature. The statement of objects and reasons and reading of the relevant section cannot lead to the inference of retrospective merely because Section 92-A is introduced for social welfare measures. It cannot be said that all the social welfare measures intended for public good, shall be considered to be retrospective. As a matter of fact, it is settled law as laid down in *P. Mahendran and others Vs. State of Karnataka and others*, , that if two interpretations are possible with respect to the question of retrospectivity, the interpretation that the provision of prospectivity will be preferred .

30. The Apex Court, in the decision reported in *Mithilesh Kumar and Another Vs. Prem Behari Khare*, , would hold that a retrospective operation is 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 impair contracts, or impose new duty or attach new disability in respect of past transactions or considerations already passed. Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed.

31. In the light of the above observations. If the retrospective operation had been given either to Section 92-A or Section 140 of the Act, it would definitely affect the existing right or obligation of the owner of the vehicle or the Insurance Company, as they would be compelled to pay the enhanced amount of compensation under "no fault liability" for no fault of theirs.

32. Under these circumstances, I am in entire agreement with the decision rendered by this Court, reported in 1992 TLNJ 16 (cited supra), following the Apex Court's judgment in R. L. Gupta's case (cited supra) also and the Full Bench's judgment of Kerala High Court, reported in Neeli and Others Vs. Padmanabha Pillai Narayana Pillai and Others, . Therefore, my view is that the "no fault compensation" awardable to the claimants in this case, should be on the basis of liability for payment of such compensation, as per the provisions of Section 92-A(2) of the Motor Vehicles Act, 1939, as amended by Act 47 of 1982, as it stood on the date of the accident and not as per Section 140 of the Motor Vehicles Act . 1988. Thus, the claimants would be entitled to Rs. 15,000/-.

33. However, let us now consider whether the finding given by the Tribunal in regard to the negligence on the part of the deceased is correct or not. As stated earlier, the witnesses produced by both parties were examined as Petitioners' witnesses. PW 4, the pillion rider of the vehicle which was driven by the deceased-Sub-Inspector, would state that Thandavamurti who was examined as PW 2, came in the left side by overtaking the other vehicle and suddenly took a right turn without giving signal and thereby the impact took place. PW 4 is the first Informant to the Police. F.I.R., Ex. A1 and Sketch, Ex. A21 have been marked, though not to the full extent, some portions would corroborate the statements of PW 4. But, it is contended on behalf of respondents before the Tribunal that those documents were created by the Police in order to help the claimants, appellants herein, to get the compensation, since deceased happened to be the Sub-Inspector of Police. In the light of these factors, the Tribunal considered the evidence of PW 5, another eye-witness whose house is situated nearby. According to him, PW 1 Thandavamurti who was proceeding in the road gave signal and then took a right turn to go towards the Nathamedu road and at that time, the Sub Inspector of Police, who came behind, did not notice the signal as he was talking with the pillion rider at that time and that therefore, the accident took place. The Tribunal placed reliance on the evidence of PW 5 and rejected the evidence of PW4 on the ground that there is some variation between the contents of the FIR and the deposition. This reasoning, in any view is not correct.

34. No doubt, it is true the aspect of overtaking on the left side is not mentioned by PW 4 in the FIR. But, it is not the main issue here. According to PW 4, both in FIR and in the deposition, PW 1 Thandavamurti, who went ahead of the motorcycle driven by the deceased, took a sudden turn to the right side and crossed the road to go to Naththamedu Road. As far as this aspect is concerned, PW 4 is consistent. Even according to PW 5, the PW 1 took a turn to the right side after giving signal and the same was not noticed by the deceased. Even assuming that the evidence of PW 5 is taken to be correct, it cannot be said that the entire negligence could be fastened on the Sub Inspector of Police, for the accident. When the motor cyclist, who was proceeding in the front, especially, wants to take a turn to the right side and to cross the road, he must drive the vehicle slowly and give the signal and then to see in the road before proceeding towards right side whether any vehicle is coming in the road. Due to the impact, it is seen that both the vehicles were thrown off and dragged to extreme right side. Had the motor-cyclist, Thandavamurti PW 1, after giving signal, verified and noticed before turning to the right side whether any vehicle comes in the said road, the accident certainly could have been averted.

35. Under these circumstances, I am of the view that both the motor-cyclists were negligent and as such, they shall be held responsible for the joint and composite negligence. As referred to earlier, the deceased Sub Inspector also could have avoided the accident, had he not indulged in the conversation with the pillion rider, PW 4. Hence, there was negligence on the part of both motor cyclists equally and it would be proper to hold that the claimants in the present case are entitled to 50% of the total compensation.

36. The Tribunal held that the claimants, legal representatives of the deceased, would be entitled to Rs., 70,000/- by adopting the longevity theory. The above calculation, in my view, needs some modification. The age of the deceased on the date of the accident was 48. His salary was Rs. 1,186/- per month. If it is taken that Rule 750/- as monthly dependency and multiplier of 10 is adopted, the total amount comes to Rs. 90,000/-. So, towards the loss of consortium, the amount can be fixed as Rs. 20,000/- and towards the loss of love and affection for the children an amount of another Rs. 20,000/- can be added and therefore, the claimants are entitled to Rs. 1,30,000/- as total compensation. As it is held that the negligence is 50% of the part of the deceased, the claimants would be entitled to 50% of the total compensation, namely, Rs. 65,000/-.

37. Under these circumstances, the second respondent-Insurance company is directed to pay Rs. 65,000/- towards 50% of the total compensation, on behalf of the owner of the vehicle, to the claimants, appellants herein, along with 12% interest per annum from the date of the petition till the date of realisation. In view of the above finding, there is no necessity to award any amount on the ground of "no fault liability".

38. With the above modifications, the appeal is allowed. No costs.

39. The service rendered by Mr. Ranganathan, the learned counsel as Amicus Curiae, is placed on record.