
(1971) 10 AHC CK 0018
In the Allahabad High Court
Case No : Special Appeal No. 114 of 1969

Shanti Misra and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 13-10-1971

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 48
Banking Companies Act, 1949 — Section 45
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Limitation (Amendment) Act, 1963 — Article 82
Limitation Act, 1908 — Article 21, 82(7), 10, 11, 12
Motor Vehicles (Amendment) Act, 1956 — Section 80
Motor Vehicles (Amendment) Act, 1969 — Section 58
Motor Vehicles Act, 1988 — Section 110, 110(1), 110A, 110A(3), 110AA

Citation : (1972) ACJ 279

Hon'ble Judges : Oak, C.J;Trevedi, J;K.B. Srivastava, J

Bench : Full Bench

Advocate : R.N. Trivedi, for the Appellant; P.C. Srival and Jagdish Narain for Respondents Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

K.B. Srivastva, J.—Owing to a difference of opinion between Oak, C. J. and O, P. Trivedi, J. on the question of the competency of Motor Accidents Claims Tribunal (hereinafter referred to as the Claims Tribunal) to entertain claims arising out of motor accidents which had occurred prior to the date of its constitution, the matter has come to me for opinion.

2. The facts, in brief, are as follows:

The truck of one Ram Singh collided with the scooter of one Amar Nath Misra on September 11, 1966 resulting in the latter's death. The Claims Tribunal was constituted u/s 110, Motor Vehicles Act (hereinafter referred to as the Act) on March 18, 1967. The legal representatives of the deceased Amar Nath filed an

application for compensation to the Claims Tribunal on July 8, 1967. A preliminary objection was raised by the insurer, The New India Assurance Company Ltd. that the Claims Tribunal had no jurisdiction in respect of a claim relating to a motor accident which had occurred prior to its constitution. The Claims Tribunal overruled the objection on September 11, 1968. Writ Petition No. 2 of 1969 was then instituted for a writ of certiorari quashing the order of the Claims Tribunal and a Writ of mandamus commanding it not to entertain the application for compensation. A learned Single Judge of this Court allowed the writ petition and issued the two writs. The legal representatives of the deceased Amar Nath then instituted the special appeal. Oak, C.J., took the view that the Claims Tribunal had jurisdiction while O. P. Trivedi, J. agreed with the view of the learned single Judge that it had no jurisdiction over a claim arising out of an accident which had occurred prior to its date of Constitution. This is how the matter has come up to me for opinion.

3. Voluminous case law was cited at the Khatumal Ghanshamdas Vs. Abdul Qadir Jamaluddin and Others, and Manibai and Another Vs. Raj Kumar Harpal Deo and Another, lay down the law that a claims Tribunal will have no jurisdiction over suits for compensation arising out of motor accidents already pending before Civil Courts from before the date of its constitution. These two cases, therefore, are not relevant. The view taken in Kumari Sushma Mehta Vs. Central Provinces Transport Services Ltd. and Others, supports the view of the learned Single Judge and O. P. Trivedi, J. the view taken by the Madras, Delhi, Gujarat, Punjab and Bombay High Court, however, supports the view of the Chief Justice, vide V.C.K. Bus Service (P) Ltd., Coimbatore and Another Vs. H.B. Sethna and Others, ; Joshi Rataasi Gopaji Vs. The Gujarat State Road Transport Corporation and Another ; Thomas toraneey and Others Vs. Htoz Htoels Limited and Others, ; Zarin v. Santubhai 1968 A.C.J. 327; Unique Motor and General Insurance Co. Ltd. Vs. Kartar Singh and Another, ; Abdul Mohamad Agra and Another Vs. Peter Leo D'Mello and Another, and Natwarlal Bhikhalal Shah v. Thakarda Khodalji Kalaji 1969 A.C.J. 397

4. Section 110 to 110-F were substituted for the former Section 110 of the Act by Section 80 of the Motor Vehicles (Amendment) Act (Act 100 of 1956) with effect from February 16, 1967. Under the common law before the date of the amendment, a claim for compensation of the nature in question had to be enforced by a suit in a Civil Court of competent jurisdiction. The period of limitation for the enforcement of such a claim was one year under Article 21, Indian Limitation Act, 1908, and is now two years under Article 82, Limitation Act, 1963 which came into force on January 1, 1964. Court fees payable was ad valorem while now on an application for compensation before a Claims Tribunal the fee payable is only Rs. This then was the state of the common law before the insertion of Section 110 to 110-F. The old remedy by way of suit entailed protracted litigation in the Civil Courts involving one and even two appeals. The legal representatives of a person dying as a result of a motor accident, had a long period of waiting. If a claimant belonged to a poor section of the community,

he could not claim a reasonable amount on account of heavy ad valorem Court fees, unless he chose to enlarge the period of waiting further by resort to a pauper suit. There was obvious frustration to persons who stood in urgent need of financial help. The Parliament stepped in to eliminate or mitigate these evils and provide a more speedy and cheap remedy. The new sections provide for the constitution of a Claims Tribunal by taking away the jurisdiction of the Civil Courts. The Court fees payable is practically nominal. The long period of waiting has been curtailed by a shorter period of limitation with one right of appeal direct to the High Court and with no right of appeal whatsoever if the amount in dispute is less than Rs. 2000 /-. In Heydon's case Co. Rep. 7 a it was resolved by Barons of the Exchequer that:

For the sure and true interpretation of all statutes in general...four things are to be discerned and considered : (1st) What was the common law before the making of the Act. (2nd) What was the mischief and defect for which the common law did not provide. (3rd) What remedy the Parliament hath resolved and appointed to cure the disease of the common-wealth and, (4th) the true reason of the remedy; and then the office of all the judges is always to make such constructions as shall suppress the mischief, and advance the remedy, and suppress subtle inventions and evasions for continuance of the mischief and pro privato commodo, and to add force and life to the cure and remedy, according to the true interest of the makers of the Act, pro bono publico.

5. It is necessary now to undertake a survey of Sections 110 to 110-F. u/s 110 (1), a State Government may constitute a Claims Tribunal for the purpose of 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. A Claims Tribunal will, therefore, have jurisdiction if (1) the claim is for compensation, (2) that claim is in respect of an accident arising out of the use of motor vehicles, (3) that accident involved the death of, or bodily injury to, any person. The claim in the instant case is undoubtedly a claim of this type. The procedure for the enforcement of such a claim has been provided for in Section 110-A(1) and (2). The Law requires an application to be made before a Claims Tribunal for the enforcement of the claim. The period of limitation for the enforcement of such a claim was 60 days u/s 110-A(3) on September 11, 1966 when the accident occurred. It is now six months, as amended by Section 58 of Act No. 56 of 1969. Under the proviso to this subsection, however, the Claims Tribunal is empowered to entertain the application after the expiry of the said period of 60 days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. If the accident gives rise to a claim for compensation under the Act and also under the Workmen's Compensation Act, the person entitled to compensation may claim such compensation under either of those Acts but not under both, as provided in Section 110-AA of the Act. A claimant can thus bypass the Claims Tribunal only if his claim falls also under the Workmen's Compensation Act and he exercises his option to resort to the procedure provided under that Act. He cannot ignore the Claims Tribunal in any

other contingency. Indeed, in a contingency, not covered by Section 110-AA, jurisdiction of a Civil Court is expressly ousted. u/s 110F, where any Claims Tribunal has been constituted, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal. The plain meaning of the words used by Parliament is that on and after the date of the constitution of a Claims Tribunal, with the one exception mentioned in Section 110-AA, a Claims Tribunal has exclusive jurisdiction and no Civil Court can entertain or adjudicate upon any question relating to any claim for compensation, unless a suit for that claim is already pending before it. This is the interpretation at which I have arrived, and it is the plain duty of the Court to advance the remedy provided by Parliament.

6. There can be no dispute with the proposition that although a claimant may have a vested right to institute a suit or other civil proceedings, he has no such right in the choice of a forum. In *Hazari Tewari Vs. Mt. Maktula Chaubain and Another*, a Division Bench of this Court observed thus:

It seems to us that a right of action is something different from the choice of the forum. There may be a vested right of action when the cause of action has accrued before the old Act has been altered ; but there can be no vested right in the choice of a particular forum, if the legislature has thought fit to deprive the Civil Court of its jurisdiction to entertain suits of a particular nature, a Plaintiff cannot compel the civil court to hear his suit merely because his cause of action had accrued before the new Act depriving the Civil Court of its jurisdiction was passed. The choice of forum is a matter of procedure and not a substantive right, and in most cases a new Act would have a retrospective effect so far as the choice of forum is concerned.

7. In Halsbury's Laws of England, Third Edition, Volume 36, at page 426, it has been observed:

Again, legislation increasing the jurisdiction of particular courts by empowering them to determine matters previously remediable in other courts is *prima facie* applicable to existing, as well as future, causes of action.

8. Likewise, no one has a vested right in any period of limitation. It cannot be said that there is any substantive right in any litigant to wait for a particular period of time before filing his claim. Rules of limitation are rules of procedure, and the rules applicable to a claim would be the rules which are in force at the time when the claim is filed, and unless something special in it justifies a contrary inference, would govern all proceedings from the moment of their enactment even though the cause of action may have accrued before the rules come into existence. See *Bajjnath v. Duiari Hajjam* ILR 50 All 865; *Soni Ram v. Kanhaiya Lal* ILR 35 All 227; *Mt. Begam Sultan Vs. Sarvi Begam and Anant Gopal Sheorey Vs. The State of Bombay*, . The law affecting forum and limitation being a procedural law, the presumption against retrospective construction has no application to such a law which affects only the procedure and practice of the

Courts. Maxwell, in his *Interpretation of Statutes*, Twelfth Edition, at page 222 has observed:

No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure, he can: only proceed according to the altered mode. Alterations in the form of procedure are always retrospective, unless there is some good reason why they should not be.

Halsbury's *Laws of England*, third Edition Volume 36, page 426 has this to say:

The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence ; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

That being so, it is well settled that enactments affecting choice of forum and the period of limitation are procedural laws and will have a retrospective operation, unless the Statute provides otherwise or unless the the new law of limitation takes away or completely destroys a vested right of action or defence.

9. Maxwell, in the same edition, at page 218 says that the presumption against retrospective operation has been applied chiefly in cases in which the Statute in question, if it operated retrospectively, would prejudicially affect vested rights or the legality of past transactions, or would impair contracts, or would impose new duties or attach new disabilities in respect of past transactions. Halsbury, in the same Edition, at page 427, has remarked that to the extent, however, that the effect of applying of procedural enactment retrospectively would be to deprive a person of a vested right, retrospective effect will not be given to it without plain words. In *Corpus Juris Secundum*, Volume 82, at page 992, it has been observed that:

While the general rule that statutes are construed as prospective only applies to remedial statutes, remedial or procedural statutes which do not create, enlarge, diminish, or destroy vested or contractual rights but relate only to remedies or modes of procedure are generally held to operate retrospectively and to apply to pending actions or proceedings, unless such operation or application would adversely affect substantive rights.

Again, at page 994, the following passage occurs:?

However, a remedial or procedural statute not impairing or affecting contractual obligations or vested rights applies to proceedings begun after its passage, although it relates to acts done previous thereto, and to pending actions, in the absence of language indicating a legislative intent to the contrary.

The gist of the law is that the law of limitation is not always a law of procedure, that is to say, a purely adjective law; for amongst its other consequences it has

the creation of vested rights or rights by prescription; and if those rights have vested in individuals under one law of limitation, they cannot be divested by the introduction of a new law of limitation, or by an amendment in the law. In such a case, however, the vested right or right of prescription must be either destroyed and it is then alone that a procedural law will not be taken to be retrospective but only prospective. If, on the other hand, the right is not destroyed but kept alive, though only a shorter period of limitation is prescribed, or if a breathing space or period is available between the passing of the enactment and its enforcement, during which period, the vested right of action can be exercised, the new period of limitation will have retrospective effect.

10. The learned Counsel for the Respondents placed reliance on certain cases. I think it expedient to deal with these cases first. The first case is *Bansidhar Lal Vs. Asst. Custodian, Evacuee Property and Others*, . In that case, the right to recover arrears of rent was already barred by time under the Indian Limitation Act, 1908. Section 48, Administration of Evacuee Property Act was, however, amended subsequently and the right to realise the barred debt was expressly conferred. It is in these circumstances, that it was held that the tenant had already acquired a vested right on the date of the coming into force of the amending Act, to treat the claim against him by the Custodian as barred. It was a case, therefore, in which an extinguished right was revived and the vested right of the tenant to resist the claim was taken away or destroyed altogether. The next case is *Sarkar Dutt Roy and Co. Vs. Shree Bank Ltd. (In Liquidation)*, . In that case, certain instalments of a decree had become barred under Article 82(7), Indian Limitation Act, 1908. Section 45, Banking Companies Act, enlarged the period of enforcement of such decrees. It was held that the right which the debtor had obtained by the decree being barred was a substantive right and the enlargement of the period would not affect this vested right unless the Statute said so by express words or necessary intendment. The amendment was not held to be retrospective as it has the effect of extending the period of limitation for filing an application for execution and also had the effect of reviving and rendering affective a decree which had been barred under the previous law. The third case is *Rajah Pittapur v. Venkata Subba Row* ILR 39 Mad 645. In that case the Plaintiff attained majority on October 5, 1906 He filed a suit for arrears of rent and claimed exemption from bar of limitation on the ground that he had three years from the date of attainment of majority to file the suit. The Madras Estates Land Act received the Governor General's assent on June 28, 1908 and came into force on July 1, 1908. Section 77 of that Act took away the benefit of Section 7, Limitation Act. The result was that though under the old Act, a Plaintiff attaining majority could enforce his claim within three years of the attainment of majority, that benefit was taken away and the period was left at three years from the date when the rent had become due The cause of action was alive on June 28, 1908 when the Act was enacted. The new Act negated the cause of action by the non-application of Section 7, Limitation Act. It thus completely destroyed the vested right. It is true that there was a period of three days between the

date of assent and the date of enforcement, but three days were held to be wholly insufficient to give notice to the public that they should exercise their vested rights within this short period. This case is easily distinguishable as it either destroyed or practically destroyed the vested right. In the same line is the case of *Chotmal Ganeshram Bharadia Vs. Ramchand Tarachand*, . The law laid down was that if the Statute of limitation, if given a retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party to exercise his vested right of action then the Court would not give retrospective effect to the statute of Limitation. In *Govt. of Rajasthan v. Sangram Singh* AIR 1962 Rajasthan 43 the law laid down was not different. It was held that it is not always true to say that the law of limitation is only a law of procedure and does not bar the remedy altogether so as to destroy the right. It is a well settled proposition of law that the new law of limitation would not revive a barred right. Similarly, it may be taken to be equally well settled that the new law of limitation cannot be construed retrospectively so as to destroy altogether the remedy of a litigant to enforce his right in a court of law. In case the remedy to enforce a vested right is altogether barred on the date when the new law comes into force without providing any breathing time to a litigant that remedy must be continued to be covered by the old law of limitation. The Legislature has full power to make a law retrospective so as to destroy any remedy altogether, but this must be expressly laid down or this result must flow by necessary implication. A Court of law is not justified in drawing such inference merely from the fact that the new enactment deals mainly with procedure.

11. In the instant case, the vested right to recover compensation has not been taken away. What has happened is to change the forum. In so far as the period of limitation is concerned, it has certainly been shortened. What then is the effect of curtailing the period of limitation? The shorter period will not affect such causes of action arising out of motor accidents, which accrued within 60 days (now six months, after the amendment) of the date of the constitution of the Claims Tribunal, as such claims could be made before it. It will obviously affect only such causes of action as have relation to accidents which occurred earlier than 60 days before the date of the Constitution of the Claims Tribunal. The contention of the learned Counsel is that in the latter class of causes of action, a vested right becomes barred as it is destroyed completely and on that account, Sees. 110-A and 110-F of the Act cannot be regarded to have retrospective effect. I am unable to subscribe to this contention, my reasons being two-fold.

12. The Statement of Objects and Reasons of the Motor Vehicles (Amendment) Act (Act 100 of 1956), was published in the Gazette of India, Part II, Section 2, dated November 12, 1956 at page 624 and the report of the Joint Committee was published in Gazette of India, Part II, Section 3, dated November 20, 1956, at page 855. This amending Act was passed by Parliament on December 30, 1956 and came into force with effect from February 16, 1957. It is this amending Act which inserted Sees. 110 to 110-F in place of old Section 110 of the Motor Vehicles Act (Act 4 of 1939). However, in spite of its enforcement from 16th

February, 1957, the amended Sees, were still not applicable. u/s 110(1), a State Government was empowered by notification in the Official Gazette to constitute one or more Claims Tribunals. In the state of Uttar Pradesh, the constitution of the Claims Tribunals was notified by Notification No. 188(1) DST/XXX-B-59.DST-66, dated March 7, 1967 published in the U, P. Gazette Part I, dated March 18, 1967, at page 952. That being so, during the entire period December *0, 195H (when the Act was passed) and March 7, 1967 (when the Claims Tribunal were constituted) the public had ample notice and there was a prolonged breathing period during which claimant, as and when his cause of action accrued could resort to the competent Civil Court, within one or two years, as the case might have been. No one prevented such a claimant from utilising the longer period and resorting to the Civil Court. However, he cannot say that he has a right to resort to a parti-1 cular forum and within a particular period of limitation merely because his cause of action had accrued prior to the constitution of a Claims Tribunal, when he had ample notice that such a Claims Tribunal could be constituted any time at the pleasure of the State Government, and when it was constituted, there will be a different forum and a shorter period of limitation. If he chose to wait till the expiry of one or two years, he did so at his own risk and peril.

13. With regard to the principle of law concerning breathing time, the following observations occur in Corpus Juris Secundum, Volume LIII between pages 905-908:

The Legislature may enact statutes of limitation and subject to certain retractions, may extend or shorten the time already fixed.... As to existing cause of action, a statute of limitation must afford a reasonable time for the commencement of an action before the bar takes effect. If the statute operates immediately to cut off the existing remedy or within so short a time as to give the party no reasonable opportunity to exercise this remedy, then the retrospective application of it is unconstitutional as to such party. The time allowed cannot be pronounced unreasonable unless it is so short as under the circumstances to amount to a practical denial of the right itself. In determining the reasonableness of a limitation, comparison may be made with prior or analogous statutes of limitations; and the public policy as declared by the legislature in creating the limitation is a proper consideration. If the time fixed is unreasonable, It has been held that the statute will not be declared unconstitutional or void for that reason, but the court will permit the action to be brought within such time as may be found to be reasonable ...Unless forbidden by constitutional restrictions, the legislature may shorten the period of limitation even as to existing causes of action, provided a reasonable time is given for the commencement of an action before the bar takes effect. In determining the reasonableness of a statute shortening the period of limitation as to existing causes of action, the period of time between the passage of the statute and its effective date may be considered.

In *Re: Athlunmney* (1898) 2 Q.B. 547), 553 Wright, J. says:

One exception to the general rule has sometimes been suggested, namely, that where, as here the commencement of the operation of an Act is suspended for a time, this is an indication that no further restriction upon retrospective operation is intended....

In the case of *Queen v. N. Leeds and Bradford By Co.* (1852) 18 Q.B. 343, Lord Campbell, C.J. made the following observation:

If the Act had come into operation immediately after the time of its being passed the hardship would have been so great that we might have inferred an intention on the part of the legislature not to give it a retrospective operation, but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal....A certain time was allowed before the Act was to come into operation and that removes all difficulty. The case of *Towler v. Chatterton* is strongly in point.

These English cases have been followed in the decisions of some of the High Courts in our country also. See *District School Board of Belgaum v. Mohammad Mulla* AIR Bom 377 where the interval between passing of the Act and its enforcement was 35 days only and yet it was held that the Act must be deemed to be retrospective and applied to all suits filed after it came into force because the period of 35 days, even though it was short, enabled litigants to exercise their right within that period. See also *Khondkar Mahomed Saleh and Others Vs. Chandra Kumar Mukerji and Others*, and *Govt. of Rajasthan v. Sangram Singh*.

14. I shall now refer to my second reasoning. The proviso to Sub-section (3) of Section 110-A says that the Claims Tribunal may entertain an application for compensation after the expiry of the said period of limitation, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. The legislature contemplated cases in which limitation would have expired before the date of the presentation of the claim and, therefore empowered a Claims Tribunal to condone the delay if it was explained to its satisfaction. Two arguments were advanced against this. It was first contended that a Claims Tribunal may refuse to condone the delay. There is really no substance in this. A Claims Tribunal will be called upon to exercise its judicial discretion in the matter. Such a discretion cannot be exercised arbitrarily but in accordance with settled principles of law. If it errs it can be set right by a superior Court. It cannot be disputed that the preference of a claim before a Claims Tribunal after the expiry of 60 days but within two years, of the date of the accrual of the cause of action, will be a sufficient ground because the Claims Tribunal was not constituted when the cause of action arose and when it was constituted 60 days had already elapsed. No Claims Tribunal will brush aside such a claim on account of the bar of limitation. The second argument is that the proviso is wholly ineffective inasmuch

as proviso, or on proviso such a facility is open to a litigant u/s 5, Limitation Act, read with Section 29 of the same Act. In advancing this argument, the learned Counsel has lost sight of the implications of the old and new Section 29. The old Section 29 of the 1908 Limitation Act provided that the provisions contained in Section 4, 9 to 18 and 22 shall apply only in so far as and to the extent to which they are not expressly excluded by a Special or local law, and the remaining provisions of that Act shall not apply. It is obvious, therefore, that Section 5 was not applicable to a Special Act and the Motor Vehicles Act making its own provisions for period of limitation. In 1957 when Sees. 110 to 110-F were inserted, Section 5, Indian Limitation Act, 1908 was not applicable. It became applicable only by the force of Section 29, Limitation Act, 1963 which came into force on January 1, 1964, practically seven years after the proviso had been inserted to Sub-section (3) of Section 110-A. But for that proviso, there could have been no condonation of delay.

15. In view of the discussion above, I am in respectful agreement with the opinion expressed by Oak, C. J. and I regret I am unable to see eye to eye with brother O. P. Trivedi.

16. Let this opinion be laid before Hon"ble the chief Justice,
Srivastava and Trevedi, JJ.

17. In view of the opinion of Hon"ble K.B. Srivastava, J. to whom the matter was referred on a difference of opinion between Hon"ble Oak, the then Chief Justice and Hon"ble O.P. Trevedi, J. the special leave is allowed with costs and the writ petition dismissed with costs.

O.P. Trevedi, J.

This special of a learned single judge of this Court dated appeal arises from the judgment and order 12.5.1969 in the following circumstances:

2. Amar Nath Misra, husband of Appellant No. 1 and father of Appellants L and 3, died of an accident on 11.9.1966 as the result of a collision between his scooter and a truck. This truck was insured by the Kanpur branch of Respondent No. 1, New India Insurance Company Ltd., and was said to be owned by Ram Singh, Respondent No. 2. On 8.7.1967 the Appellants filed a claim for damages amounting to Rs. 80,000/- against the Respondents before the Motor Accident Claims Tribunal (hereinafter to be referred to as the Tribunal) (Annexures 1 and 2 of the writ petition). The insurance company filed a preliminary objection before the Tribunal that it had no jurisdiction to entertain the claims as the accident took place before the constitution of the said Tribunal, viz., 18.3.1967. The Tribunal rejected the objection (vide order Annexure 3 of the writ petition); upon which the insurance company, Respondent No. 1, filed a petition in this Court under Article 226 of the Constitution of India challenging the legality of the order of the Tribunal (Annexure. 3) on the ground that it had no jurisdiction to entertain a claim in respect of an accident which took place before its

constitution. It was prayed that a writ of certiorari quashing the order of the Tribunal and a writ in the nature of mandamus directing the Tribunal not to entertain the Appellants' claim be issued. The writ petition was allowed by a learned Single Judge of this Court and therefore this appeal by the opposite parties.

3. It may be stated here that the Tribunal was constituted by the State Government by notification published in the U.P. Gazette dated 18.3.1967 under Sub-section (1) of Section 110 of the Motor Vehicles Act. The claim for damages which was filed by the Appellants before the Tribunal on 8.7.1967 admittedly related to an accident which took place before the constitution of the Tribunal, that is, on 11.9.1966. Before the learned Single Judge also, as here, the argument was that the Tribunal had jurisdiction over such claims only the cause of action in respect of which had taken place after constitution of the Tribunal and had no jurisdiction to decide claims in respect of accidents which had taken place earlier. This argument was accepted by the learned Single Judge holding that Sections 110 to 110-F of the Motor Vehicles Act (hereinafter to be referred to as the Act) were not retrospective in effect because there was nothing in the Act to indicate a clear intention of the Legislature that they would operate retrospectively and therefore they could not be given retrospective effect as the vested right of action in cases of accidents occurring at any time within two years of constitution of the Tribunal but more than 60 days prior to its constitution would be destroyed and persons possessing the vested right of action for damages under the ordinary law of limitation would be deprived of their remedy on account of the provision in Sub-section (3) of Section 110-A of the Act which reduced the limitation from two years under the Limitation Act to a period of 60 days. On this view it was held that the Tribunal constituted u/s 110(1) of the Act has no jurisdiction to entertain a claim arising out of an accident which occurred prior to its constitution. The petition was accordingly allowed and the impugned order of the Tribunal was quashed and the Tribunal was directed not to proceed with the claim of the Appellants.

4. The Appellants questioned correctness of the view taken by the learned Single Judge and it was urged that the Act should be given retrospective effect, it being procedural law and that the Tribunal constituted u/s 110(1) of the Act has jurisdiction not only over the claims in which accidents took place after constitution of the Tribunal but also those in which the accidents or cause of action took place earlier. Learned Counsel referred to the proviso to Sub-section (3) of Section 110-A of the Act which is in these words:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

Sub-section (3) of Section 110-A of the Act lays down that no application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident. The submission is that a claim in

respect of an accident which took place before the" constitution of the Tribunal can be filed before the Tribunal and it had jurisdiction to entertain it because the proviso empowered the Tribunal to entertain a claim application even if filed after the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. The argument is untenable. The proviso to Sub-section (3) of section 110-A is identical in terms with the provision contained in Section 5 of the Limitation Act. A time barred claim can be entertained by a Court or Tribunal u/s 5 of the Limitation Act only in those cases over which the court or the tribunal has jurisdiction and not those beyond its jurisdiction. It follows therefore that delay in filing the claim can be condoned by the Tribunal under the proviso to Sub-section (3) of Section 110-A of the Act in respect of those claims only over which the Tribunal has jurisdiction. The fallacy in the argument is that it assumes that the Tribunal has jurisdiction over all claims whether the accident occurred before or after its constitution and then in a circle the argument proceeds that because delay can be condoned under the proviso to Sub-section (3) of Section 110-A the Act operates retrospectively. The key to the question as to what is the scope of jurisdiction of the Tribunal is to my mind not provided by the proviso. Indeed, the question would arise whether under this proviso the Tribunal has any jurisdiction at all to condone delay in the filing of a time-barred claim the cause of action for which arose before its constitution. Section 110F of the Act reads:

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the Claim for compensation shall be granted by the Civil Court.

Under Section 110-F the jurisdiction of the Civil Court is barred only in respect of questions relating to a claim which may be adjudicated upon by the Claims Tribunal. The force of "may" in Section 110-F is clearly "can". In other words, the jurisdiction of Civil Court u/s 110-F is barred only in respect of such claims as can be adjudicated upon by the Claims Tribunal. It follows therefore that the Claims Tribunal will have power to condone delay under the proviso to Sub-section (3) of Section 110-A in respect of such applications for compensation only as can be adjudicated upon by it. The scope of jurisdiction of the Tribunal therefore will have to be determined on the basis of first principles, there being no express words in the Act to indicate that the jurisdiction of the Tribunal will extend to all claims irrespective of whether the accidents arose before or after its constitution. The period of limitation provided under the Limitation Act, 1963 for a suit for compensation arising out of an accident is two years. The limitation provided for such claims under Sub-section (3) of Section 110-A of the Act has been reduced to sixty days. It is clear that the Appellants could not file a claim for compensation in respect of the accident which took place on 11.9.1966 within the period of sixty days in accordance with Sub-section (3) of Section 110-A

because the Tribunal itself was constituted on 18.3.1967 and the period of sixty days had expired long before the constitution of the Tribunal itself and a claim for compensation filed in support of this accident before the Tribunal would be barred by time Limitation is procedural law and the general principle JS that procedural laws have retrospective effect as no person has a vested right in procedure (vide Anant Gopal Sheorey Vs. The State of Bombay, . It is equally well settled that a vested right cannot be destroyed or taken away by a statute except by express words. Right of action is a substantive right as held by Pandrang Row J. in the case of S. Girdharilal Son and Co. Vs. B. Kappini Gowder and Others, . A Full Bench of the Calcutta High Court in the case of Gopeshwar Pal Vs. Jiban Chandra Chandra, also expressed the same view. This view was followed by the Madhya Pradesh High Court in the case of Kumari Sushma Mehta Vs. Central Provinces Transport Services Ltd. and Others, . In the same case it was held that any enactment which has the effect of destroying an existing right cannot be given retrospective effect without express words. Under the Limitation Act the Appellants had a right to file a suit for compensation arising from the accident within a period of two years of the accident. There was a vested right of action in favour of the Appellants and if the Act is given retrospective effect then it would have the effect of destroying this vested right of the Appellants. In the case of Kumari Sushma Mehta their Lordships of the Madhya Pradesh High Court cited with approval the following observations of Sulaiman, J. in the case of Federal Court in AIR 1941 16 (Federal Court) .

Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so. It is a well recognised rule that statutes should, as far as possible be so interpreted, as not to affect vested rights adversely, particularly when they are being litigated. When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed.

In the same connection they cited observations made by the Patna High Court in the case Chaudhry Gursaran Das and Others Vs. Akhouri Parmeshwari Charan and Others., to the effect that any enactment which has the effect of destroying an existing right cannot be given retrospective effect without express words and this rule also extends to the remedy which a litigant has for obtaining relief by means of a suit. No doubt the statute of limitation may shorten or lengthen the period of limitation but the statute cannot be retrospectively construed in the absence of clear indication to the contrary so as to destroy a vested right (see Bansidhar Lal Vs. Asst. Custodian, Evacuee Property and Others, . In the present case there is no indication in the Act that the limitation was cut down also in respect of causes of actions which accrued before constitution of the Tribunal and in respect of which a vested right to sue in the Civil Court had accrued. On first principles therefore the provisions of the Act cannot be held to be retrospective

in effect as to do so will result in the destruction of vested rights in respect of accidents or causes of actions which took place before constitution of the Tribunal. To cover vested rights the statute must be retrospective by express enactment or necessary intendment which is not the case here. Another argument of learned Counsel was that the judgment of the learned Single Judge to the effect that the Claims Tribunal has no jurisdiction to entertain the Appellants' claim and the same can be entertained by the Civil Court overlooked the provisions contained in Section 110-F of the Act which barred the jurisdiction of the Civil Court. This argument is also fallacious for the jurisdiction of Civil Court u/s 110-F is barred only in respect of claims which the Tribunal can entertain or on proper interpretation of the Act is empowered to entertain and not in respect of claims which must be held to be outside the Tribunal's jurisdiction. In my judgment therefore the learned Single Judge was right in the view that the jurisdiction of the Claims Tribunal was confined only to applications for compensation based on accidents arising after the constitution of the Tribunal, and had no jurisdiction over claims respecting accidents which arose before constitution of the Tribunal. I am in respectful agreement with the conclusion reached by the learned Single Judge and therefore find no force in this appeal which I would dismiss with costs and do so.

Oak, C.J.

5. I have read the judgment prepared by my learned brother, O.P. Trivedi. I regret that I am unable to agree with him.

6. The accident took place on 11.9.1966. The Claims Tribunal was constituted on 18.3.1967. The claim was lodged before the Tribunal on 8.7.1967. It will be noticed that the claim relates to an accident, which took place at a time when the Tribunal was not in existence. The question for consideration is whether the Tribunal can entertain the claim.

7. The Claims Tribunal has been constituted under the Motor Vehicles Act 1939 (hereafter referred to as the Act). Section 110 of the Act provides for constitution of Motor Accidents Claims Tribunals. Section 110-A provides for an application for compensation. An application for compensation may be made under Sub-section (1) of Section 110-A. Sub-section (2) of Section 110-A lays down that every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Sub-section (3) of Section 110-A states:

No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident.

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

In the present case the claim was made more than sixty days after the

occurrence of the accident, and also more than sixty days; after the constitution of the Tribunal. The claimants, therefore, applied for condoning the delay as laid down in the proviso to Sub-section (3) of Section 110-A. Delay was condoned by the Tribunal.

8. Section 110-F of the Act provides for bar of jurisdiction of civil courts. Section 110-F states:

Where any claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and....

9. It will be noticed that the period of limitation under the Act is different from the period of limitation under the Indian Limitation Act, 1963. Under the Indian Limitation Act, 1963, the period of limitation for a suit for compensation arising out of an accident is two years. Under the Act, the period of limitation is only sixty days. However, in proper cases delay in lodging a claim may be condoned by the Claims Tribunal.

10. In *Sarkar Dutt Roy and Co. Vs. Shree Bank Ltd. (In Liquidation)*, it was held that claim already barred by limitation at the commencement of a new statute is not revived.

11. Similarly, it was held in *Bansidhar Lal Vs. Asst. Custodian, Evacuee Property and Others*, that a statute cannot be retrospectively construed so as to deprive a Plaintiff of a vested right of action or deprive a Defendant of the right to treat a claim against him as already barred.

12. The principle laid down by these decisions has no application to the present case. The accident occurred in September, 1966. A claim for compensation could be lodged in the normal course before a civil court upto September, 1968. The present claim was lodged before the Tribunal in July, 1967, long before the expiry of the period of two years fixed under the Indian Limitation Act. The claim for compensation (as governed by the Indian Limitation Act) was not barred either when the Tribunal was constituted in March, 1967 or when the claim was actually lodged in July, 1967. According to the Insurance Company, the Tribunal has no jurisdiction, and the proper remedy for the claimants was to file a suit before the Civil Court. If a Civil Suit could be filed up to September, 1968. the claimants did not derive any benefit in the matter of limitation by lodging a claim before the Tribunal in July, 1967. There is no question of any stale claim being revived by a new statute or a newly constituted Tribunal.

13. The broad question raised in the writ petition is whether the claim had to be made before the civil Court or before the Claims Tribunal. Tribunals have been constituted under the Act for investigating claims arising out of motor accidents. No party can insist that a certain claim must be investigated by a particular agency. The mode of investigation will be determined by the procedure prescribed by law.

14. In *Anant Gopal Sheorey Vs. The State of Bombay*, it was held that no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending. If by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. In other words, a change in the law of procedure operates retrospectively.

15. Similarly, in *V.C.K. Bus Service v. H.B. Sethna* AIR 1965 Mad 149 it was held that no litigant has a vested right in a particular forum. He cannot say as a matter of right that his suit or application should be tried by this or that forum which existed on the date his cause of action arose. Forum belongs to the realm of procedure, and does not constitute substantive right of a party or a litigant.

16. Sub-section (3) of Section 110 of the Act lays down qualifications for appointment as a member of a Claims Tribunal.

A person shall not be qualified for appointment as a member of a Claims Tribunal unless he:

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a Judge of the High Court.

17. It will be seen that the Act guarantees that a member of a Claims Tribunal shall be a person of the status of a District Judge. In the present case the claim was being investigated by the District Judge of Unnao. In the ordinary course, a suit for compensation would be tried by a Civil Judge. Section 110-C of the Act lays down the procedure and powers of Claims Tribunal. The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects. Thus, for all practical purposes, the claim will be tried by the Tribunal as if it were a civil suit for compensation. Section 110-D provides for appeals to the High Court against awards given by Claims Tribunals. In view of the status and procedure of the Tribunal, the Insurance Company can have no genuine grievance on the ground that the claim is going to be investigated by the Claims Tribunal instead of a Civil Judge.

18. In *Manibai and Another Vs. Raj Kumar Harpal Deo and Another*, the facts were these. The accident occurred in May, 1957. The aggrieved party filed an application to sue in forma pauperis in the Civil Court in the early part of 1958. The State Government constituted a Claims Tribunal in October, 1959. It was held that the Legislature did not intend to exclude the jurisdiction of the Civil Court in pending matters.

19. It will be seen that in the case before Bombay High Court a Civil suit had been filed before the Constitution of the Claims Tribunal. That is not the situation

in the present case. No civil suit had been filed before March, 1967. The claim was lodged after the constitution of the Tribunal.

20. In *Kumari Sushma Mehta Vs. Central Provinces Transport Services Ltd. and Others*, it was held that a Civil Court has exclusive jurisdiction to decide a claim in respect of an accident occurring before the constitution of the Claims Tribunal.

21. In the present case also the learned single Judge observed on page 12 of his judgment:

“the Tribunal...can have no jurisdiction to entertain claims arising out of accidents occurring prior to its constitution.

The learned Counsel for Respondents conceded that the Proposition was too widely stated by the learned Judge. It was conceded by the learned Counsel that if an accident took place within sixty days before the constitution of the claims Tribunal, the Tribunal would have jurisdiction to entertain a claim for compensation.

22. On the other hand, in *Unique Motor and General Insurance Co. Ltd. Vs. Kartar Singh and Another*, it was held that even if a motor accident resulting in injuries occurs before the constitution of Claims Tribunal, the Tribunal alone has jurisdiction to entertain a claim for compensation.

23. Similarly, in *V.C.K Bus Service v. H.B Sethna* AIR 1965 Mad 149 it was held that a Tribunal can entertain claims arising prior to its constitution.

I respectfully agree with these decisions of Punjab High Court and Madras High Court.

24. u/s 9 of the Code of Civil Procedure, a Civil Court has jurisdiction to try all suits of civil nature, unless jurisdiction of the Civil Court is barred expressly or by necessary implication. Section 110-F of the Act is an express provision barring jurisdiction of Civil Courts. The language of Section 110-F is free from ambiguity:

“...no civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area....

25. In the present case the Tribunal was constituted in March, 1967. The claim was lodged before the Tribunal in July, 1967. It is the case of the Petitioners that a civil suit for compensation could be lodged even after July, 1967. The Act contains clear indications that for investigating claims arising out of motor accidents, Claims Tribunals should have exclusive jurisdiction. A claim was lodged before the Tribunal in due course. There was some delay in making the claim. But the delay has been condoned under the proviso to Sub-section (3) of Section 110-A of the Act. The Tribunal rightly held that it has jurisdiction to entertain and try the claim.

26. In my opinion, the special appeal should be allowed with costs, and the writ

petition should be dismissed with costs.