
(2005) 03 KAR CK 0030

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5458 of 1998

Smt. M. Chandravathi and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 17 B
Motor Vehicles Act, 1988 — Section 140, 217
Railway Claims Tribunal Act, 1987 — Section 13, 16, 17 (2)
Railways Act, 1890 — Section 82 A
Railways Act, 1989 — Section 123 (c), 124, 124 A, 125

Citation : (2005) 3 ACC 322 : (2005) ACJ 1465 : (2005) ILR (Kar) 3671 :
(2005) 2 KCCR 918

Hon'ble Judges : B.S. Patil, J;A.M. Farooq, J

Bench : Division Bench

Advocate : V. Padmanabha Kedilaya, for the Appellant; Sanjaygowda Advocate,
for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—The appellant Smt. M. Chandravathi, and her minor son M.K. Naveen Kumar have presented this appeal challenging the order passed by the Railway Claims Tribunal rejecting the claim made by them seeking compensation under the provisions of Section 125 of the Railways Act, 1989, read with Section 123(c), 124 and 124(A) and Section 17(2) of the Railway Claims Tribunal Act, 1987.

2. Relevant facts excluding unnecessary details, that are essential for the purpose of disposal of this appeal can be set out as under:

M.G.K. Murthy, husband of the appellant No. 1 and the father of minor appellant No.2 died an unfortunate death in an accident that occurred on 15.11.1983. The deceased was travelling in the train from Madras port to Madras city. He was on duty. There was heavy rush in the train. He was pushed out of the train. He was

thrown away near a water column between Madras port and Madras Park and succumbed to the resultant injuries on the same day.

3. The appellants herein did not initiate any legal action claiming compensation before the appropriate forum soon after or within any reasonable period after the accident. However, an application dt. 27.11.1996 was presented on 4.12.1996 nearly after a lapse of 13 years, before the Railway Accidents Claims Tribunal claiming compensation in a sum of Rs. 2,00,000/- inter alia contending that the husband of the appellant No. 1 died in a "train accident" on 15.11.1983. As the application itself was presented nearly after the expiry of 13 years from the date of the incident, an application supported by the affidavit of the wife Smt. Chandravathi was filed u/s 17(2) of the Railway Claims Tribunal Act, 1987, seeking condonation of delay.

4. The Presenting Officer representing the railways resisted the claim and filed objections to the application filed seeking condonation of delay. It was contended inter alia that the claim itself was not maintainable in law and on the facts of the case. The principal objection taken by the railways was that the alleged accident having admittedly occurred on 15.11.1983 before Section 124(A) came into force, the application was not maintainable. It was next contended by the respondent therein that the application having been filed after the lapse of 13 years from the date of accident was clearly barred by time.

5. Before the Claims Tribunal, the applicant-appellant No. 1 herein got herself examined as AW-1. However, no evidence was led in by the respondent and no documents were marked on behalf of either side. In the affidavit filed in support of the application seeking condonation of delay, the applicant stated that there was sufficient cause for not making the application within the stipulated period as applicant No. 1 was in a state of mental shock ever since her husband died and in addition, she had to look after the minor. Further, it is contended that since the claim was made on behalf of the minor who remained a minor even on the date of presentation of the application, the application was not barred by limitation. The railway Administration which opposed the claim on two grounds contended as under:

i) The accident that occurred on 15.11.1983 was not a "train accident" or an accident to the train but an untoward incident. That u/s 82(A) of the Indian Railways Act, 1890, as the provisions stood at the relevant time, a liability in respect of accident to the train carrying passengers is admissible if the accident in question was to the train. Section 124(A) which is introduced by way of amendment brought about by Act 28 of 1994 with effect from 1.8.1994 as per which an untoward incident is also included for the purpose of enabling the claimants to lodge a claim was inapplicable to the case of the claimants as the provision is prospective in its application.

ii) That Section 5 of the Limitation Act had no application to the case and that there is no power for extension of the period of limitation on equitable ground.

Since the appellant No. 1 was working as a teacher in a school in a village, the grounds of mental agony and shock stated as grounds for not filing the application in time could not be accepted as sufficient cause for condoning the delay.

6. The Claims Tribunal having examined the matter has held that the claim made was barred by time and there was no sufficient cause shown for condoning the delay of 13 years in filing the appeal. The 2nd and the important ground on which the claim made by the appellants has been rejected is on the question of maintainability of the application itself. The Tribunal has held that the Railway Act, 1989, came into force with effect from 1.7.1990. Section 124(A) providing compensation to claims arising out of untoward incidents itself came into effect with effect from 1.8.1994 vide Railway (Amendment) Act, 28/1994 and the incident in the instant case having occurred during the year 1983, the claim cannot be entertained under the provisions of Section 124(A) which has been introduced at a later point of time. Therefore, it is held that the application filed seeking compensation for death under the provisions which were not in existence in 1983 was liable to be rejected as not maintainable. It is this order passed by the Railway Claims Tribunal that is challenged before us in this appeal.

7. The two fold contentions urged by Sri. Kedilaya, Learned Counsel appearing for the claimants-appellants are:

(1) That, Section 124(A) which is introduced with effect from 1.8.1994 vide Railway (Amendment) Act, 28/1994 providing for payment of compensation on account of injuries or death occurring due to untoward incident is retrospective in operation and covers the case of the deceased and therefore the appellants-claimants were entitled to maintain the application;

(2) Secondly, that the claimant No.2 being a minor was entitled to make the application even after he attained majority and the instant application having been filed when the boy was still a minor could not have been rejected on the ground of bar of limitation.

8. Elaborating the first contention Sri. Kedilaya rests his argument on Section 13 of the Railway Claims Tribunal Act, 1987, to seek support for the contention that the provisions contained in Section 124(A) have got retrospective effect.

9. The Railway Claims Tribunal Act, 1987, (Act 54/87) has been enacted to provide for establishment of a Railway Claims Tribunal for inquiring into and determining claims against Railway Administration for loss, damage, deterioration etc., to the property and for compensation for death or injury to passengers occurring as a result of railway accidents (or untoward incidents) (inserted by Act 28/1994). Section 13 which appears in Chapter III of the Act deals with jurisdiction, powers and authority of the Claims Tribunal. It provides that the Claims Tribunal shall exercise, jurisdiction, powers and authority, over all matters as were exercisable immediately before the appointed day by any Civil Court or a Claims Commissioner appointed under the provisions of the Railways

Act relating to compensation payable u/s 82-A of the Railways Act or the rules made thereunder and on and from the commencement of the provisions of Section 124-A of the Railways Act, 1989 (24 of 1989) the jurisdiction, powers and authority which were exercised immediately before that date by any Civil Court in respect of claims for compensation which were now made payable by the railway administration u/s 124-A of the Act and the Rules made thereunder.

10. Thus, it is seen that prior to the enactment of Section 13 of the Railway Claims Tribunal Act, 1987, the jurisdiction and power for entertaining the claims which fell u/s 82-A of the Railways Act, as it stood unamended was with the Claims Commissioner appointed under the provisions of the Railways Act. As regards other matters, not falling u/s 82-A, in other words, those which did not arise out of an accident involving a train, the Civil Courts had the jurisdiction to entertain the claims against the railways. Now, by virtue of Section 13 of The Railway Claims Tribunal Act, 1987, jurisdiction is conferred in respect of both these areas covered u/s 82-A of the Railways Act and the common law rights under which liability can be claimed against the railways on account of the negligence on the part of the railways and as also claims for untoward incident as provided for u/s 124-A of the Railways Act, 1989, in the Claims Tribunal.

11. Learned Counsel Sri. Kedilaya, contends that in view of constitution of the Special Tribunal clothing it with the powers and jurisdiction to entertain the matters arising under the old Act and as also the new Act and further in view of the fact that even the pending matters which were pending before the Civil Court are required to be dealt with only by the Tribunal, it is implicit in this provision that the amendment made to Section 124-A is retrospective in operation and enables the aggrieved to move an application seeking compensation irrespective of the fact that the accident itself had taken place earlier to the enactment. He further contends that Section 124(A) being a remedial/beneficial legislation it is intended to be retrospectively made applicable.

12. In support of this contention, the learned counsel has relied on the following judgments:

- i) Shri Chaman Singh and Another Vs. Srimathi Jaikaur,
- ii) Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others,
- iii) Basanti Rani Ghosh Vs. Manicklal Gupta and Another,
- iv) New India Assurance Co. Ltd. Vs. P. Thankam (alias) Unnimayamma and Others, .
- v) P.A. Narayanan Vs. Union of India (UOI) and Others, .
- vi) Rathi Menon v. Union Of India AIR 2000 SC 1333.
- vii) MFA NO. 1001/991 Disposed Off On 18.8.1995 (Kerala High Court)

13. As against this, learned counsel appearing for the respondent-Railway Administration, Mr. Sanjay Gowda, has very vehemently contended that the provisions contained u/s 124(A) cannot be given retrospective operation. It is his submission that for an enactment to be made retrospectively operational, either there should be an express intention made manifest in the law or by necessary implication, such an intention could be gathered. In support of his contention, he has relied on the following decisions :

- i) Guruanna Vadi and another Vs. The General Manager, Karnataka State Road Transport Corporation, Bangalore and another,
- ii) Padma Srinivasan Vs. Premier Insurance Company Limited,
- iii) State of U.P. and Another Vs. Jogendra Singh and Another,
- iv) Shyam Sunder and Another Vs. Ram Kumar and Another,

14. Apart from the above, the learned counsel for the respondent has relied on the statement of objects and reasons as stated for the purpose of amendment that is carried out as per 1989 Act whereunder the provision in question is found inserted.

15. The ratio of the decisions cited by the learned counsel for the appellants would clearly disclose the following:

In Chanan Singh and Anr. v. Smt. Jai Kaur (supra) the Apex Court held that the amendment in the given case could be given retrospective effect if it is a curative statute which merely declared the previous law. In the reported decision in Bharat Singh v. Management Of New Delhi Tuberculosis Centre, New Delhi and Ors. (Supra) the Apex Court has stated the law that in respect of welfare legislation, purposive interpretation safeguarding the rights of have-nots is preferred to a literal construction, in case there is any doubt. In this case, the application of Section 17-B of the Industrial Disputes Act, 1947, for awards passed, before the introduction of the section fell for consideration. The Apex Court, holding that the labour court had the power to grant such a relief even earlier to the enactment of Section 17-B ruled that the provision was applicable even to cases where awards were passed prior to the amendment. Thus, it is clearly seen from this decision also that the Labour Court and the Tribunal had the power vested in them even earlier to the enactment of Section 17(B) to grant such a relief and the intention of the legislation and the nature of the relief to be granted was kept in mind while giving retrospective operation to the labour legislation involved in that case.

16. In Basanti Rani Ghosh v. Manicklal Gupta and Anr. (Supra) the Calcutta High Court had an occasion to deal with the retrospective operation of Section 140 of the Motor Vehicles Act, as introduced by 1998 amendment. It is held that the said provision which introduced "no fault liability" was applicable to pending cases though the accident occurred prior to its introduction. The reasons assigned being that the amendment was more in the nature of bringing about a

procedural change which could be made retrospectively applicable. In *New India Assurance Co., Ltd., v. Thankam* (Supra) the Kerala High Court which was again dealing with the provisions contained u/s 140 and 217 of the Motor Vehicles Act, 1988, pertaining to the no fault liability and its retrospective operation held that on the date of the accident, the provision which was in force was Section 92-A of the Motor Vehicles Act, 1939, as per which compensation for no fault liability was fixed at Rs. 15,000/-. The new Section only updated the amount payable under no fault liability and it did not create a new right or new obligation while increasing the amount to Rs 25,000/-. The Kerala High Court in this case dissented, from the view taken by the Bombay High Court in *Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another*, thus the reasons assigned for holding that the provision was retrospective was totally different. In *P.A. Narayana v. Union Of India* (Supra) though the accident occurred in this case on 3.1.1981, the question involved was not with regard to retrospective operation of the amendment contained in Section 124(A) of the Act. In fact, that question was left expressly open without being considered. The matter in that case arose under the writ jurisdiction. The writ petition and the writ appeals were both dismissed by the High Court and the victim approached the Supreme Court.

17. Thus none of these decisions cited by the learned counsel for the appellant deal with the fact situations similar to the one which we are concerned with.

18. In the instant case, it is undisputed that the legislature has not given retrospective operation to Section 124(A) by making its intention manifest in the provisions of the Act. The implication of the other provisions, the company of which Section 124(A) keeps also does not lend any support to an inference that an intention is implicit in the legislation to give retrospective operation to Section 124(A). On the other hand, a reference to the statement of objects and reasons in incorporating Section 124(A) in the enactment would show that "as there was no provision for compensating the passengers who were either injured or who died on account of incidents in connection with the working of the train namely those such as terrorist activities, robberies, dacoities, violent attack, rioting, shoot outs in train or in the waiting rooms or cloak rooms etc., and that as there was pressing demand in both the houses of parliament and from the public that the bonafide railway passengers who become victims of the aforesaid incidents should also be compensated for the injury or loss of life, the amendment in question was proposed."

19. The provision as it stood earlier in Section 82(A) provided for payment of compensation to the passengers who suffer injuries or who died in accidents "to the train" and not in any other mishaps dehors the involvement of an accident "to a train". Section 82(A) can be usefully extracted here:

"82-A. Liability of railway administration in respect of accidents to trains carrying passengers-

(1) When in the course of working in a railway an accident occurs, being either a

collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then, whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in Sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompany the passenger in his compartment or on the train, sustained as a result of such accident.

(2) The liability of a railway administration under this section shall in no case exceed (rupees one lakh) in respect of any one person."

20. Section 82-C of the said Act provided that application for compensation u/s 82-A shall be made within three months from the date of occurrence of the accident but the Claims Commissioner had the power to condone the delay on good cause being shown and entertain the petition if the same was made within one year from the date of such occurrence.

21. A perusal of Section 82-A makes it clear that the liability of the Railway Administration arises in respect of an accident that occurs which is the result of either a collision between trains of which one is a train carrying passenger or the derailment of or other accident to a train or any part of a train carrying passengers.

22. The construction of the provision contained u/s 82(A) and its applicability came up for consideration in Union of India (UOI) and Others Vs. Sunil Kumar Ghosh, . In that case the Apex Court has held that the accident referred to in the provision is not a mere accident to a passenger. When a passenger falls down from the train while the bogie in which he is travelling is being shunted, it cannot be said that an accident has occurred to the train or part of the train so as to attract the liability u/s 82(A) though undoubtedly it was accident to the passenger. Since, the accident was not an accident "to the train", the railways were held not liable for payment of compensation. The Apex Court went on to add that all mishaps involving accidents to the passengers without having any nexus with the accident to the train where both the mishaps, one to the passenger and another to the train do not take place, the liability u/s 82(A) of the Act will not be attracted. The Apex Court has clearly held that Section 82(A) of the Indian Railways Act, 1890, was not capable of a strained interpretation as was placed by the High Court in that case.

23. Obviously because of this, the appellants herein did not appear to have lodged any claim before the competent authority realising that the same was not maintainable as per Section 82(A) of the Act. It is only after the enactment of

the new provision as per Section 124(A) that the appellants filed the claim invoking Section 124(A).

24. Section 124(A) in the 1989 Act introduced by Act 28 of 94 states thus :

"124-(A). Compensation on account of untoward incidents:

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

- a) suicide or attempted suicide by him;
- b) self-inflicted injury;
- c) his own criminal act;
- d) any act committed by him in a state of intoxication or insanity;
- e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purposes of this Section, "passenger" includes-

- i) a railway servant on duty; and
- iii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

25. The term untoward incident is defined u/s 123(c). It reads as under:

"(c) "untoward incident" means-

- (1)(i) the commission of a terrorist act within the meaning of Sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
- ii) the making of a violent attack or the commission of robbery or dacoity; or
- iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloakroom or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers."

26. The provision which enables presentation of an application to the Claims Tribunal is incorporated u/s 125. It provides that an application for compensation u/s 124 or Section 124(A) may be made to the Claims Tribunal by any dependant of the deceased or when such a dependant is a minor, by his guardian. (See s. 125(d).

27. Sub-clause (2) of 125 provides that every application by a dependant for compensation under this section shall be for the benefit of every other dependant.

28. The effect of Section 124(A) as extracted above, doubtless is that a claim can be now maintained against the Railway Administration even in respect of mishaps and untoward incidents as detailed therein. Whether or not it involves an accident to the train.

29. Contention of the learned counsel for the Appellant is that in view of Section 13 of the Railway Claims Tribunal Act, Section 124(A) has to be held to have retrospective operation. In this regard, he placed reliance on the decision rendered by Kerala High Court in M.F.A. No. 1001/1991 disposed of on 18.8.1995. The facts involved in the said decision disclose that an accident took place on 26.7.1988. The appellant injured in the said case fell down as he was alighting from the train due to a jolt or jerk. He fell into the space beneath the platform and got jammed. He filed an application u/s 16 of the Railway Claims Tribunal Act, 1987 (as the Act had the effect of ousting the jurisdiction of the Civil Court and that of the Claims Commissioner and vesting the same in the Claims Tribunal). The Tribunal held that the jerk which the appellant in that case attributed as the cause was not an accident to the train and his application was therefore not maintainable as per Section 124 of the Railways Act, 1989. The High Court of Kerala was of the view that though the Claims Tribunal did not have the jurisdiction to entertain the claim and the appellant could possibly have filed a Regular Civil Suit for compensation in a Civil Court as his remedy at the time of the accident was to resort to such a civil suit, but having regard to the amendment brought about by the Railway (Amendment) Act 28 of 1994 introducing Section 124(A) of the Act, the claim was maintainable as the provisions contained u/s 124(A) were given retrospective operation. To reach this conclusion, the High Court placed reliance on the provisions contained u/s 13 read with Section 24 of the Railway Claims Tribunal Act, 1987. The Court took the view that when Section 13(1A) is read along with Section 24 it was clear that Parliament transplanted the Civil Court jurisdiction regarding all claims for compensation relating to trains with the Claims Tribunal with effect from 1.8.1994 onwards. Even cases which could be filed in civil courts before that date could be entertained only by the Claims Tribunal. The Court further observed that those cases which were in fact filed before the civil courts prior to that date could only be dealt with by the Claims Tribunal after the amendment. Thus, it concluded that the Claims Tribunal cannot be held to lack jurisdiction to entertain the claim of the appellant in that case.

30. The facts in this case are strikingly different from the facts as obtained in the case which we have just now referred. The accident in this case has happened way back in the year 1983 when even the Railway Claims Tribunal Act, 1987 was not in force. After the lapse of nearly 13 years, the application is presented by the appellant before the Claims Tribunal invoking the amended provisions of the Act which have come into force with effect from 1.8.1994. What emerges from Section 13 of the Railways Claims Tribunal Act is that having regard to the establishment of the claims tribunal and the ouster of the jurisdiction of the Civil Court, it was the claims tribunal alone before which the application could have been filed and the appellant has rightly presented that application after the amended provision of Section 13 of the Railways Claims Tribunal Act, 1987, came into force. The fact that a special mechanism is provided by constituting a specialised Tribunal to deal with all disputes pertaining to the claims made involving the railway accidents and further that even pending cases before the Civil Courts were to be transferred and decided only by the Tribunal would not, in our opinion, make the substantive provisions contained u/s 124(A) of the amending Act 28 of 1994 retroactive in operation. What is done by way of Section 13(1A) and Section 24 of the Railway Claims Tribunal Act, 1987, is to clothe the Claims tribunal with the power to decide all claims pertaining to accidents concerning the working of a railway. This in itself cannot be taken to mean that the Parliament has intended to apply the provisions of Section 124(A) to accidents which did not otherwise fall within its ambit and which had taken place prior to or years or decades prior to the insertion of the said amendment. Such an interpretation, in our opinion, is impermissible even by a liberal and beneficial construction of Section 13(1A) read along with Section 24 of the Railway Claims Tribunal Act, 1987.

31. It is relevant to note here that what Section 13 of the Railway Claims Tribunal Act, 1987, does is only to create a new forum for the purpose of disposing of the claims arising u/s 82 of the Railways Act or u/s 124(A) of the amending Act 24/1989. The jurisdiction vested earlier with the Claims Commissioner and the jurisdiction of the Civil Court were taken away and have been vested in a specialised authority constituted in the Claims Tribunal. This cannot in any manner aid in discerning the intention of the legislature to provide retrospective operation to the amendment made as per Section 124(A) by Act 24/1989. Whether Section 124(A) of the Railways Act, as inserted by Amending Act 28 of 1994 is retrospective in operation so as to apply to the accidents that arose prior to the enactment of the provision has to be examined with reference to the intention that is expressed in the very legislation.

32. The appellants appear to have made this application taking benefit conferred u/s 124(A) of the Act which for the first time included any untoward incident that occurs while working a railway enabling the victims to lodge a claim for compensation before the Claims Tribunal. It is for this reason and in order to sustain this application under the provisions of the new enactment, the learned counsel appearing for the appellant has vehemently contended that the

provisions have to be given retrospective effect. His argument is that the enactment is a beneficial legislation intended to remedy the woes of the victims who suffer from accidents involving the railway travel. He further contends that what has been done by the new enactment u/s 124(A) is to add some areas which were left out so as to remedy the omissions by including the new areas enabling the victims to get compensation of which they were otherwise deprived of earlier. He therefore contends that the amendment is declaratory and curative in nature and hence the same is applicable retrospectively.

33. The provisions contained in Section 124(A) cover accidents and the resulting injuries or death that occur independent of any accident to the train. Accidents that occur to the passengers without involving any accident to the train as such are sought to be covered for the first time by incorporating certain provisions in this section. The rights that are envisioned as per this provision and the obligations that are fastened on the Railway Administration under the provisions are the new introductions and creations. It cannot be said that the amendment is only to declare and explain certain omissions in the previous law nor can it be said that already existing rights and obligations were explained and clarified by way of the subsequent amendment introduced. They are independent provisions made for the first time to cover a different area than what was dealt with by the previous provisions contained u/s 82(A).

34. It is well established principal of statutory interpretation that a statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Every enactment and every provision in an enactment which takes away the vested rights under the existing law or creates a new obligation or imposes a new duty must be presumed to be intended not to have retrospective effect. However, there is an exception to this general principle, in that, as regards matters of procedure it would apply to all actions both pending and future. It is also further well established that in determining the liability of a person under a statute, one must have due regard to the state of the law obtaining at the time of the accident for determining the liability. The governing factor therefore is necessarily the law that exists on the date when the cause arises. In *Shyam Sunder and Ors. v. Ram Kumar and Anr.* (Supra) a constitution bench of the Apex Court dealing with Punjab Pre-emption Act, (1 of 1913), while interpreting Section 15, as substituted by Haryana Amendment Act, 1995 which vests right of pre-emption in tenant has held that the rule of benevolent construction cannot be applied to give retrospective operation to a provision. The Apex Court has clearly held as under:

"Even assuming, for the sake of argument that right of pre-emption being a feudal or archaic law and therefore, the amending Act is a beneficial legislation meant for general benefit of citizens but there is no such rule of construction that a beneficial legislation is always retrospective in operation even though such legislation either expressly or by necessary intendment is not made retrospective. The right of pre-emption may be a weak right but nonetheless the

right is recognised by law and can be allowed to be defeated within the parameters of law. A statute which affect the substantive right has to be held prospective unless made retrospective either expressly or by necessary intendment."

35. Dealing with the declaratory enactments the Apex Court has further stated as under:

"The function of a declaratory statute is to supply an omission or explain the previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory act is passed invariably it has been held to be retrospective."

36. Dealing with the facts of the case in that case, the Apex Court has further held that the meaning of the words used in Section 15 of the parent Act was never in doubt and there was no omission in its phraseology which was required to be supplied by the amending Act. Moreover, the amending Act either expressly or by implication was not intended to be retroactive and for that reason the amending Act 10 of 1995 was not a declaratory Act and therefore, it had no retrospective operation.

37. In the facts of the present case, having regard to the provisions contained in the old Section 82(A)-and the new provisions contained u/s 124(A), Juxtaposed to each other, it cannot be said that the new enactment was for the purpose of clearing any ambiguity by way of declaring the position as it stood in the earlier enactment or to supply certain omission so that the ambiguity could be cleared. On the other hand, there was absolutely no ambiguity in the area of operation of the provisions contained u/s 82(A). The new provisions which introduced a new area of liability arising under new set of circumstances cannot be said to be declaratory so as to warrant retrospective operation.

38. Therefore, in view of the judgments and pronouncements made by the Apex Court in the decisions cited above, and having regard to the provisions contained in the old enactment and the new enactment, it cannot at all be said that the provisions u/s 124(A) are required to be given retrospective operation. The provisions contained u/s 124(A) have the effect of conferring a substantive right for the first time in favour of certain class of victims of the accident. The Railway Administration is saddled with certain obligations for the first time under these provisions which were not in existence in the previous law. Therefore, such provisions cannot be given retrospective operation unless the legislature makes its intention manifest or by implication such an intention can be discerned. In the absence of both, it is not permissible to make an interpretation to come to the conclusion that the provision is retrospective in nature.

39. In this view of the matter, apart from the fact that the facts involved in the decision rendered by their Lordships of the Kerala High Court were substantially different from the one that we are now concerned with, we may very respectfully

add that we are not in agreement with the observations contained in the said judgment in so far as they pertain to the retrospective operation of the amended provisions of Section 124(A), 123(c) and as also the effect of conferment of jurisdiction on the Claims Tribunal by virtue of enacting Section 13 and Section 24 by Railway Claims Tribunal Act, 1987.

40. The Railway Claims Tribunal Act, 1987, is enacted by Act 54 of 1987 with effect from 23.12.1987. The statement of objects and reasons that are stated for the purpose of enacting the law clearly disclose that the litigation in the courts of law and before the Claims Commissioner which were earlier clothed with powers to decide the matters arising out of the railway accidents were in their nature very protracted and therefore it was decided to set up Specialised Tribunals for speedy adjudication of such claims. The setting up of such Claims Tribunal with benches in different parts of the country and with judicial and technical members, it was thought, would provide much relief to the rail users by way of speedy payment of compensation to the victims of railway accidents and to those whose goods were lost or damaged in railway transit. The Claims Tribunal would also expedite settlement of disputes regarding refund of fare and freight charges which, it was felt, would reduce the burden on the various Civil Courts in the country thereby giving them more time to decide other cases speedily. It is specifically mentioned in the statement of objects and reasons that the bill was intended to give effect to the objective as mentioned above and was designed to provide inter alia for:

- a) the jurisdiction, powers and authority which may be exercised by the Claims Tribunal;
- b) the procedure (including provision as to limitation) to be followed by the Claims Tribunal;
- c) the exclusion of jurisdiction of all courts exercising ordinary original civil jurisdiction relating to specified claims for compensation and refund against the railway administration;
- d) the transfer to the Claims Tribunal of any suit or any other proceeding, other than an appeal pending before any court or other authority immediately before the establishment of such Claims Tribunal as would have been within the jurisdiction of such Claims Tribunal if the cause of action on which such suits or proceedings are based had arisen after such establishment.

41. A reading of Section 13(1)(ii) of the Railway Claims Tribunal Act, 1987, makes it clear that on and from the appointed day, the jurisdiction, powers and authority which were exercisable immediately before the day by any Civil Court or Claims Commissioner relating to compensation payable u/s 82-A of the Railways Act or the rules made thereunder shall be exercised by the Claims Tribunal. Therefore, it is clear the Section 13(1)(ii) confers jurisdiction on the Claims Tribunal to examine claims made u/s 82-A of the Railways Act or the rules made thereunder as they stood at that time. By way of amendment, by Act 28 of

1994, Section 13(1-A) is inserted with effect from 1.8.1994 which is obviously the result of the incorporation of Section 124(A) in the Railways Act, 1989 as per which the Claims Tribunal shall also exercise on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989, the jurisdiction, powers and authority which were exercised by the civil Court prior thereto in respect of claims for compensation which are now made payable by the railway administration u/s 124-A of the Act.

42. A perusal of these provisions namely 13(1)(ii) and 13(1-A) together would, give a clear indication that Claims Tribunal has got jurisdiction to try claims made u/s 82-A of the Railways Act and also claims made, after the Amendment u/s 124-A of the Railways Act. Had it been that all claims for compensation were to be determined only under the provisions of Section 124-A and the previous claims made u/s 82-A were not independently recognised and that Section 124-A was given retrospective operation so as to replace the provisions contained u/s 82-A, no such distinction was necessary to be made in Section 13 of the Railway Claims Tribunal Act, 1987. Therefore, it cannot be said by referring to Section 13 that provisions of Section 124-A have been given retrospective effect. Further, as regards Section 24 which has the effect of transferring all the pending cases to be tried by the Claims Tribunal, the only effect of this provision is that instead of the Claims Commissioner and the Civil Courts which were earlier clothed with the powers to decide the cases special Tribunal are constituted clothing exclusive jurisdiction with them. Beyond that, Section 24 has no other implication muchless any indication of retrospective operation of the provisions contained u/s 124-A of the Railways Act, 1989. Such an intention is not discernible in this provision which is contained in a different enactment altogether and therefore there is no warrant to infer retrospectively or attribute such an intention to the legislature even by implication.

43. As regards the next contention urged by the counsel for the appellants staling that the provisions u/s 17(2) of the Railway Claims Tribunal Act are applicable and the application made for condonation of delay ought to have been entertained by the Claims Tribunal, it is to be stated that in the light of our finding recorded on the question of maintainability of the application and having regard to the conclusion that we have arrived holding that the provisions contained u/s 124(A) are not retrospective and are only prospective, the question of applying the provisions u/s 17(2) of the Act do not arise.

44. As per the provisions as they stood at the time when the cause of action arose Section 82(C) provided for preferring a claim before the Claims Commissioner within a period of one year from the date of the accident. The Commissioner was not clothed with any power or authority to condone the delay after the lapse of period of one year. Having regard to this position, the application even if it were to be made before the amendment came into force could only have been examined under the provisions of Section 82(A) and 82(C) of the Indian Railways Act, 1890. At any rate, if it were the case of the appellant

that the accident arose on account of and negligence on the part of the Railway Administration, then the remedy open to them was to file a suit before the Civil Court to maintain an action for tortious liability. The argument of the learned counsel for the appellant Sri. Kedilaya stating that having regard to the fact that now the Claims Tribunal are given the power and jurisdiction which was otherwise vested in the Civil Court, the claim now made should be treated as a claim made on the strength of the common law right and the tortious liability that the Railway Administration is required to answer is concerned, it is to be stated that neither the pleadings nor the context in which the claim has been made support such a contention. This contention has no basis either in the pleadings or in the evidence. Therefore, the same cannot be entertained. The various decisions which the learned counsel for the appellant has cited with regard to the limitation do not require to be referred to or noticed, having regard to the fact that we have already held that the claim itself is not maintainable. In the result, we pass the following.

ORDER

The appeal is dismissed. In the circumstances of the case, there shall be no order as to costs.