

(1989) 08 AP CK 0010

In the Andhra Pradesh High Court

Case No : A.A.O. No's. 11, 526 and 5642 of 1985

T. Srinivasulu Reddy

APPELLANT

Vs

C. Govardana Naidu and another

RESPONDENT

Date of Decision : 24-08-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A

Citation : (1990) ACJ 66 : AIR 1990 AP 289 : (1990) 1 APLJ 100

Hon'ble Judges : Neeladri Rao, J;Amareswari, J

Bench : Division Bench

Advocate : V. Pattabhi, for the Appellant; I.A. Naidu, for the Respondent

Judgement

Amareswari, J.—These three appeals can be disposed) of together as a common question of law is involved.

2. The proceedings relate to compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles. In all these cases, the accidents took place prior to 1-10-1982. The claims preferred in respect thereof were dismissed on the ground that the negligence of the driver of the vehicle was not established.

3. On merits, we do not find any substance in the contention of the learned counsel for the appellant that the finding regarding negligence is unsustainable. But the appellants contend that irrespective of the fact whether there was any negligence on the part of the driver of the vehicle they are entitled to compensation of Rs. 15,000/- under S.92A of the Motor Vehicles Act. They contend that a no fault liability had been imposed under this provision and they are entitled to compensation, of Rs. 15,000/-.

4. On the other hand, it is contended for the respondents that Section 92A of the Motor Vehicles Act came into force on 1-10-1982 and it has no retrospective operation. It is prospective and governs cases where accidents took place subsequent to 1-10-1982 and not prior thereto.

5. To appreciate the respective contentions of the parties, it is necessary to refer to Section 92A of the Motor Vehicles Act which was introduced by the Amending Act 47/82. Section 92A has come into force with effect from 1-10-1982. In all these cases, the accident took place prior to 1-10-1982 and the claim petitions are pending. The question is whether Section 92A applies to pending proceedings. It is as follows : --

"92A. Liability to pay compensation in certain cases on the principle of no fault : --(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner, of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under subsection (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

6. It is seen from the aforementioned provisions that the statute imposes a liability on the owner of the vehicle to pay compensation in respect of death or disablement resulting from an accident. Sub-section (2) provides the quantum namely, Rs. 15,000/- in respect of death and Rs. 7,500/- in respect of a permanent disablement. Sub-section (3) absolves the claimant from proving that the death was due to any wrongful act or fault on the part of the owner or owners or of any other person. Sub-section (4) directs that no claim shall be defeated by reason of any wrongful act or default on the part of the person in respect of whose death or permanent disablement the claim has been made. Thus the long and short of these provisions is that where a death or disablement had occurred due to the use of the motor vehicle, the owner of the vehicle shall pay the compensation specified therein. Whether fault or no fault on their side a statutory liability is now imposed. Prior to the amendment, it was a tortious liability. The object of this provision seems to be to provide solatium to persons,

who are affected by the untimely death or permanent disablement of the victim. It is a measure of social justice. In the case of accidents, it is common knowledge that it is difficult to secure evidence. In the nature of events, it is bound to happen. The accident takes place somewhere on the road or at far of place and the dependants of the victim would come to know only much later. It is difficult to secure adequate proof regarding the negligence of the owner or the driver. There are many cases of hit and run and the persons affected may not be able to secure adequate proof. Taking all these circumstances into account, the Parliament has enacted Section 92A. A reference to the objects and reasons for this amendment will make the position clear. They are as follows :--

"Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitable to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without, proof of fault or negligence on the part of the owner or/ driver of the vehicle and secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown."

Thus it is seen that the provision was introduced as a welfare measure to benefit the persons who are victims of road accident. There is absolutely no reason why the provision should be given a restricted application by confining it to cases where the accidents take place subsequent to the introduction of the provision. Every beneficial measure must be applied liberally and Section 92 A which is one such must be held to apply to pending proceedings.

7. It is argued by the learned counsel for the respondents that the provision cannot be given any retrospective operation as it takes away vested rights. We are unable to appreciate this contention. There is no question of any vested right here. Prior to the amendment, the action was in tort and therefore, it was necessary to prove negligence on the part of the person, who. was responsible for the accident. Now Section 92A(3) dispenses with proof of negligence on the part of the victim or the claimants. No doubt, a law is ordinarily prospective. But its retrospectivity may be expressly provided or it may flow by necessary implication. The amendment was enacted with the object of giving a quick and effective relief to the victim or the dependants and it would appear from the language of Section 92A that the Legislature intended to extend such benefit to all persons who had been affected by the accident resulting in death or permanent disablement.

8. In *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, , it was held that the Legislature is competent to take away vested rights by means of retrospective legislation and that the legislature is competent

to make laws which materially affect the terms of contracts between the parties. The Supreme Court further observed that retrospective operation of a statutory provision can be inferred even in cases where such retrospective operation appears to be clearly implicit in the provision construed in the context where it occurs.

9. In a later case in Lakshmi Narayan Guin and Others Vs. Niranjan Modak, the Supreme Court observed that a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties.

10. In Ram Sarup Vs. Munshi and Others, the Supreme Court observed as follows :--

"If the new law speaks in language which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal may give effect to such a law even after the judgment of the Court of first instance."

From the language of Section 92A it cannot be said that it restricts its application to future cases and it being a beneficial legislation, it must receive a liberal construction.

11. In Mithilesh Kumar and Another Vs. Prem Behari Khare, a question arose as to whether the Benami Transactions (Prohibition) Act (45 of 1988) can be applied to pending proceedings. The contention was that it affects the vested rights of parties and therefore the prohibition would apply only in future i.e., for transactions that take place after the Act came into force. While considering that contention, the Supreme Court observed as follows :--

"The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the illegality of past transaction, or impair contracts, or impose new duty or attach new disability in respect of past transactions or considerations already passed. However, a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing. The general scope and purview of the statute and the remedy sought to be applied must be looked into and what was the former state of law and what the legislation contemplated has to be considered. Every law that impairs or takes away rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individuals and the community as a whole may relate to a time antecedent to their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature may be said to have so expressed its intention."

Applying this principle, the Supreme Court held that a suit for declaring that certain property is held benami would not be maintainable by virtue of the Benami Transactions (Prohibition) Act which came into force during the pendency of the appeal. The Supreme Court held that subsequent law can be taken note by the appellate Court.

12. Applying the ratio of the afore- mentioned Supreme Court case, we have no hesitation in coming to the conclusion that Section 92A of the Motor Vehicles Act applies even to pending proceedings. This provision is a social welfare legislation and dispenses with the proof of negligence on the part of the owner or the driver of the vehicle and imposes a no fault liability. We accordingly hold that all actions for compensation pending on the day when the provision came into force are governed by this provision irrespective of the fact whether the accident took place prior or subsequent thereto. Since the law dispenses with the proof of negligence, it can be done in any pending proceeding irrespective of the date of accident. The words "the owner or the owners of the vehicles shall, jointly and severally, be liable to pay compensation" occurring in Section 92A(1) and the words "claimants shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner" are prospective and shall apply to pending and future claims.

13. A single Judge of the Bombay High Court has taken a similar view in *Oriental Fire and General Insurance Co. Ltd. Vs. Shantabai S. Dhume and Others*, . The learned Judge held that Section 92A applies to all pending cases irrespective of the date on which the accident occurred and the fact that the Amendment Act postulates that the amendments will come into force on the dates notified in the Government Gazette would be of no consequence.

14. The learned Counsel for the respondents relied upon the following judgments including two decisions of single Judges of this Court.

15. In *Ratni Devi Shyam Suka v. B. Venkata Rami Reddy* 1988 ACJ 142 (Andh Pra) our learned brother Rama Rao, J., took the view that the provision has no retrospective operation as the liability was not visualised by the owner and the Insurance Company and that the Insurance Policy is a product of a contract between the parties founded on the basis of situations and circumstances existing at the time when the contract was entered into. We are unable to subscribe to this view. If the reasoning given by the learned Judge is accepted, then the provision cannot be applied even to a case where the accident occurred subsequent to the Amended Act, on the ground that the contract of insurance was earlier to the date when the provision came into force.

16. Let us give a practical illustration. The amended provision came into force on 1-10-1982, The Accident took place subsequent to the amendment. But the policy of insurance was taken prior to 1-10-1982. Can it be said that at the time when the policy was taken which is the result of a contract between the parties

this liability was not visualised and, therefore, this provision does not apply to contracts entered into prior to the date when the provision came into force? Surely not. Even according to the learned Judge this provision applies to all cases where accidents occurred subsequent to the date when the provision came into force even though the policy might have been taken earlier. Therefore, it is not a question whether the liability was visualised when the premium was fixed. It is the nature and intendment of the provision that should be looked into.

17. The same reasoning weighed with another learned single Judge of this Court in *Pyla Nestalamma v. Sreeram Setti* 1988 ACJ 430. In reaching the conclusion, the learned Judge relied upon a decision of the Supreme Court in *Padma Srinivasan Vs. Premier Insurance Company Limited*, where the question was whether the provision enhancing the compensation from Rs. 20,000/- to Rs. 50,000/- was applicable to policies taken prior to the said provision. The contention was that it was not applicable. The Supreme Court rejected the contention saying that the law which will apply for determining the quantum of damages is the one which is in force on the date when the breach of contract is committed, that being the date on which the cause of action arises, and not the law which was in force on the date on which the contract has made. The contention that the date of contract is the relevant date and the provision cannot be applied retrospectively has been specifically rejected. But whether a beneficial provision can be made applicable to pending proceedings had not arisen in the Supreme Court case which formed the basis of the decision in *Pyla Nestalamma v. Sreeram Setti* Adibadu 1988 ACJ 430 (Andh Pra).

18. Reliance was also placed on a decision of the Rajasthan High Court in *Yashoda Kumari v. Rajasthan State Road Transport Corpn.* 1984 ACJ 716 and a decision of the Allahabad High Court in *Ram Mani Gupta v. Mohammad Ibrahim* 1985 ACJ 476 which have taken the view that Section 92A has no retrospective operation. With respect we disagree with the aforementioned decisions.

19. In the result, the Civil Miscellaneous Appeals are allowed. The order of the Court below is set aside. The claimants are entitled to a sum of Rs. 15,000/- with interest at 12% per annum from the date of the petition. If any amounts have been paid during the pendency of the proceedings or before, it shall be given credit to. In C.M.A. No. 642 of 1985 the first appellant wife shall be paid Rs. 3,000/- and appellants 2 to 7 shall be paid Rs. 2,000/- each out of the amount of Rs. 15,000/- awarded. No costs.

20. Appeals allowed.