
(1991) 11 AP CK 0004

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 1653 of 1990

The New India Assurance Co. Ltd.

APPELLANT

Vs

Kramtan Perianayagam and Another

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 173, 92, 92A

Citation : (1992) 2 ALT 654

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; Y. Krishna Reddy, for the Respondent

Judgement

Radhakrishna Rao, J.—Pending disposal of the O.P.No. 126 of 1989 on the file of the Additional District Judge, Madanapalle, the claimant filed I.A.No. 274 of 1990 under Order 16, Rule 17 CPC praying to permit the petitioner to enhance the claim of compensation amount from Rs. 15,000/- to Rs. 25,000/-. The learned Judge relying on a decision of a Division Bench of this Court, reported in T. Srinivasulu Reddy v. C. Govardhana Naidu, 1990 (1) APLJ 100 held that Section 92-A of the Motor Vehicles Act applies to a petition for compensation as on 1-10-1982 irrespective of the fact that the accident took place prior to that date and ultimately allowed the application. Against that, the Insurance Company filed this appeal.

2. The accident in this case took place on 12-6-1989. The new Act came into force on 1-7-1989. The learned Standing Counsel for the Insurance Company contended that the decision of the Division bench which has been relied upon by the Court below has been subsequently clarified in Dorakonda Venkatrama Seshachalapathi v. The Vijayawada Co-op. Central Bank, Vijayawada Rep. by its Secretary, 1990(1) ALT 638 and in view of the clarification given by the later Division Bench, if any offence took place prior to the commencement of the new Act, the compensation that is to be awarded must be restricted to the amount

that has been prescribed under the old Act with regard to Section 92-A. That means, prior to the amending Act came into force, it is Rs. 15,000/- and after the amendment, it has been raised to Rs. 25,000/-. It is true that it is a beneficial legislation and the benefit must go to the claimants or the injured, but the very same Division Bench has clarified the position saying that it was not brought to their notice about the amendment of the Motor Vehicles Act, 1988 which came into force on 1-7-1989 at the time of the hearing of the earlier case. Having observed so, the later Division Bench ultimately granted Rs. 7,500/- in the case of injured duly taking into account the amount prescribed under the old Act.

3. It is also to be seen that the Motor Vehicles Act, 1989 was repealed as per Section 217 of the Motor Vehicles Act, 1988. But it may be noted that Section 92-A, of the Motor Vehicles Act, 1939 is in pari materia with Section 140 of the Motor Vehicles Act, 1988. The proviso under Sub-clause (2) of Section 110-A of the 1939 Act is similar to the proviso u/s 166(2) of the 1988 Act. Section 217 of the New Act is the repealing section and under which the "Motor Vehicles Act, 1939 was repealed. Section 6(c) of the General Clauses Act, 1897 provides that unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Section 92-A of 1939 Act applies even in regard to accidents occurred prior to 1-10-1982. Therefore, in spite of the repeal of the 1939 Act, the liability arising u/s 92-A is saved.

4. The Supreme Court in R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, made a passing observation saying that the new Act is prospective. The case in General Manager, Western Railway Bombay v. Lal Nanda, 1985 ACJ 52 is a case where a table that has been given under the Workmen's Compensation Act has been considered, and whether the new table has to be applied or the old table has to be applied and ultimately, the Supreme Court held that the rates of compensation as found in the Schedule at the time when the accidental injury takes place alone has to be applied. The Act is only prospective so far as the claim u/s 92-A is concerned. The crucial date to be taken is the date of the accident. In these circumstances, this Court feels that prior to the commencement of the Act i.e., 1-7-1989, so far as Section 92-A is concerned, if the claim petitions are pending either before the Tribunal or in the High Court, the rate that was prescribed i.e., Rs. 15,000/- alone is applicable.

5. The appeal is allowed accordingly. No costs.