

(1995) 01 KL CK 0043

In the High Court Of Kerala

Case No : M.F.A. No"s. 607, 610, 611 and 612 of 1994

The New India Assurance Co. Ltd.

APPELLANT

Vs

P. Thankam and Others

RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1939 — Section 92A, 98A
Motor Vehicles Act, 1988 — Section 140, 149, 217, 217(1), 217(4)

Citation : (1995) 2 ACC 32 : (1995) ACJ 440 : (1996) 85 CompCas 24

Hon'ble Judges : N. Dhinakar, J;K.T. Thomas, J

Bench : Division Bench

Advocate : George Cheriyan and Jacob Mathew, for the Appellant; C. Chandrasekharan, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—The only question raised in these appeals is, whether the amount of Rs. 25,000 fixed u/s 140 of the Motor Vehicles Act, 1988 (for short "the new Act") as "no fault liability" (in case of death resulting in a motor accident) should be paid in respect of a motor accident which took place before the enforcement of the new Act? A Division Bench of this Court has answered that question in the affirmative in United India Insurance Co. Ltd. v. Padmavathy 1990 (1) KLT 750 it will be referred to hereinafter as Padmavathy's case 1990 (1) KLT 750. But learned Counsel for the Appellant- insurance company-made an endeavour to have the said answer reconsidered. Learned Counsel invited our attention to the decision of a Division Bench of the Bombay High Court in Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another, in which the decision in Padmavathy's case 1990 (1) KLT 750 was considered and dissented from.

2. In this batch of cases the accident occurred on 4th May 1988. The new Act came into force only on 1st July 1989. Compensation under "no fault liability"

was directed to be paid after the new Act came into force at the rate mentioned in Section 140 of the new Act. On the date of accident the provision which was in force was Section 92-A of the Motor Vehicles Act, 1939 (for short "the old Act") as per which compensation in death cases under "no fault liability" was fixed at Rs. 15,000. These appeals are in challenge of the award passed by the Motor Accidents Claims Tribunal directing the insurer to pay the compensation under "no fault liability".

3. In Padmavathy's case 1990 (1) KLT 750 the Division Bench approached the question from two different angles. First was by considering the effect of repeal of the old Act as provided in Section 217 of the new Act. Sub-section (1) of the said section says that the old Act and any law corresponding to that Act in force in any state immediately before the commencement of the new Act in that state would stand repealed. Sub-section (4) provided that the mention of particular matters in Section 217 "shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals". The Division Bench in Padmavathy's case 1990 (1) KLT 750 proceeded to consider the effect of Section 6 of the General Clauses Act on such repeal of the old Act, particularly with reference to the following words of (SIC) the section "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". The Bench discussed whether Section 140 of the new Act has created a new right by increasing the amount of compensation under no fault liability or whether the new Act has only updated a right created u/s 92-A of the old Act.

4. The Division Bench in Padmavathy's case 1990 (1) KLT 750 made a survey through the development of the claims of compensation in respect of fatal accidents under common law and how it was followed in India and it gained statutory recognition with the enactment of Fatal Accidents Act, 1855, and the effect of the Rule in *Rylands v. Fletcher* 1861 73 All E.R. 1 on the law and also how the position continued till the introduction of Chapter VII-A in the old Act. The Division Bench then held that "the right created in Chapter VII-A of the repealed Act is to have compensation irrespective of whether the opposite party is guilty of any fault. The amount of compensation was fixed in the statute itself in respect of such right."

5. The Division Bench then proceeded to consider whether enhancement of the compensation amount from Rs. 15,000 (mentioned in Section 98-A of the old Act) would create a different right. For answering the question, the Division Bench glimpsed at the reasons for enhancing the amount, such as the erosion of money value of the currency and how the English courts, after second world war period, moulded reliefs in consonance with the rate of inflation and how that principle was followed in India. In that context, reference was made to the observations made by Venkataramiah, J. (as he then was) in *M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others*, suggesting to the Parliament

the need to update the purchasing power of the rupee with regard to the compensation payable under no fault liability. It was the said suggestion which Parliament reciprocated by raising the amount to Rs. 25,000 in Section 140 of the new Act. So the Division Bench concluded thus:

Therefore, in effect the Parliament has only retained the same right which was conferred on the victims through Chapter VII-A of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on a par with the earlier fixed amount. Hence Section 6 of the General Clauses Act would not impede the enforcement of the Section 149 of the new Act in relation to an accident which occurred prior to the coming into force of the New Act.

6. The second angle adopted by the Division Bench was whether a different intention appeared in the new Act and held that aspect in the affirmative. But we don't think it necessary to consider at present regarding the correctness of the decision from aforesaid second angle.

7. Shri George Cherian, learned Counsel for the Appellant-insurance company referred us to a number of decisions which took the view that amount of compensation payable in respect of an accident which happened before the new Act, is the amount mentioned in the old Act irrespective of the time of payment. But, except the Division Bench of the Bombay High Court in *Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another*, (cited supra) the effect of repeal and the implications of Section 217 of the new Act were not considered in any other decisions (cited before us). So we do not think it necessary to refer to all those decisions except the decision of the Bombay High Court.

8. In *Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another*, (cited supra) Pendse, J. speaking for the Bench considered the view expressed in *Padmavathy's case* 1990 (1) KLT 750 in extenso. We quote the relevant passage from the said reported decision of the Bombay High Court.

The Kerala High Court felt that the Parliament had retained the same right which has been conferred on the victim u/s 92-A of 1939 Act but enhanced the compensation amount to make the right realistic. With respect, the Kerala High Court was right in observing that the Parliament increased the amount of compensation under the principle of "no fault liability" because of erosion of value of currency but we are unable to share the view that the said fact is enough to warrant the conclusion that the liability to pay enhanced compensation is retrospective in operation. With respect, such a view overlooks that the right and the corresponding liability accrues on the date of accident and that cause of action cannot be made dependent upon the legislative changes which may be effected during the pendency of the proceedings for seeking compensation.

(emphasis supplied)

Pendse, J. proceeded to observe that the liability is crystallised the moment the accident, takes place and the person discharging the liability knows the quantum of compensation payable. According to their Lordships, "the mere fact that such a compensation is not paid on the date of the accident or the application seeking compensation remains pending till the date of amendment of legislative provision prescribing enhanced compensation, cannot alter or impose additional liability or create any new right to demand additional compensation." It was for the said reason that their Lordships differed from the view adopted in Padmavathy's case 1990 (1) KLT 750.

9. With great respect we may say that we find it difficult to follow the view taken in Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another, The nub of the decision in Padmavath's case 1990 (1) KLT 750 is that no new right has been created, nor has any additional liability been imposed through Section 140 of the new Act. All that Parliament did through the enactment of the said provision was only to update or attune the right with the prevailing money value. In other words, the amount of Rs. 15,000 during the pre-new Act period, when calculated in terms of fall in the currency value, is the same as Rs. 25,000 during the post new Act period. If the actual payment was made only after the coming into force of the new Act, the mere fact that date of accident was before the new Act does not matter.

10. After bestowing our consideration on the question in the light of the reasoning made by their Lordships of the Bombay High Court in Prakash Chandumal Khatri and another Vs. Suresh Pahilajrai Makhija and another, (cited supra), we are, with great respect, unable to follow suit. On the other hand, we may reiterate the ratio adumbrated in Padmavathy's case 1990 (1) KLT 750.

In the result, we dismiss these appeals.

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