
(1988) 07 GAU CK 0001
In the Gauhati High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Ramesh Kalita and Others

RESPONDENT

Date of Decision : 29-07-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A

Citation : (1989) 1 ACC 248 : (1989) ACJ 607

Hon'ble Judges : J.M. Srivastava, J

Bench : Single Bench

Judgement

J.M. Srivastava, J.—The appellant the New India Assurance Co. Ltd., hereafter the Company assails the award dated 21-4-87, u/s 92-A of the Motor Vehicles Act 1939, hereafter the Act, by the Motor Accident Claims Tribunal, Kamrup, Gauhati.

2. Briefly, the relevant facts are that the accident had occurred on 19-12-78. The claim for compensation for the death of Diganta Kalita was made by his father and was pending, when on 1-10-82 the Motor Vehicles Amendment Act 1982 Act 47 of 1982 came into force and a new chapter VII-A "liability without fault in certain cases", which included Section 92-A, was introduced. The claimant respondent moved u/s 92-A for award of Rs. 15,000/-. The learned tribunal by the impugned award, held that the provisions of Section 92-A were available and court be invoked in a pending claim case for claim thereunder. The award for Rs. 15,000/- in favour of the claimant was made and the appellant Company was directed to make payment.

3. Aggrieved, the Company has come in appeal and Shri G.K. Talukdar, learned Counsel appearing on its behalf, has contended that the accident in respect of which the claim was made had occurred prior to the coming into force of said Section 92-A itself, and hence the award was illegal.

4. Shri Das, learned Counsel appearing for claimant respondent has supported the award.

5. The only question for consideration is that whether the provisions of Section 92A are available, for a claim, in a compensation case pending in respect of an accident which had occurred before the said provision had come into force, on 1-10-1982. Section 92-A in Chapter VII-A Liability without fault reads:

(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, or, as the case may be, the owners of the vehicles 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 Sub-section (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. Shri Talukdar, learned Counsel for the appellant, has argued that Section 92-A amends substantive law creates a new right, i.e. to recover compensation without consideration of fault and hence it could not have retrospective operation that is it could not be invoked in cases of accident which had occurred prior to its coming into force.

7. Shri Talukdar has relied upon Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, , where in Para 17 it was observed "All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive."

8. It may however be noted that the principle laid down is not that in no case there can be retrospective operation of a law which affects substantive rights. The crucial test shall be that what is the legislative intent and where the legislative intent can be gathered that the law was intended to have retrospective operation, the Courts shall be well within their jurisdiction to give effect to that intention. In the said authority itself it was said that "Hence the question

whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not."

9. Shri Talukdar has cited *Yashoda Kumari v. Rajasthan State Road Transport Corporation* 1984 ACJ 716 where it was held that Section 92-A did not have retrospective operation because the legislature has not given it, retrospective operation. It was observed in Para 6:

In the present case there is no question of interpretation of any section. The only question is whether Section 92-A which came into existence and was inserted only in the year 1982 will have any effect on the present case where the incident took place in the year 1968 and the claim petition had been decided in 1972. The section has not been given retrospective effect and, therefore, in my opinion the argument of learned Counsel for the appellant has no force and deserves to be rejected.

(Emphasis supplied)

10. *Ratni Devi S. Suka v. B.V.R. Reddy* 1988 ACJ 142 was also cited, where also it was held, that Section 92-A did not have retrospective operation. *The Oriental Fire and General Ins. Co. v. Shantabai S. Dhume* 1987 ACJ 198 (Bombay) relied upon by learned tribunal was also considered. It was held:

The learned Counsel for the appellant relied upon the decision of the Bombay High Court in *Oriental Fire and Genl. Ins. Co. Ltd. v. Shantabai S. Dhume* 1987 ACJ 198 (Bombay), wherein it is held that Section 92-A has to be applied to all the pending cases irrespective of the date on which the accident occurred. It is held that the retroactivity is implicit in the provision and retroactivity is implicit in the provision and retroactivity has to be read in view of the beneficial provision embodied in Section 92-A. The question of making the provision retrospective in pending matters applies only to the minimum procedural matters but not substantive matters. Section 92-A seeks to fix the liability irrespective of negligence and this burden is put upon the owner of the vehicle ultimately being passed on to insurance company. This protection is entirely a new dimension and placed the burden upon the owner of the vehicle for the first time. At the time when the claim is made or the accident happened the question of paying this amount irrespective of the negligence could not have been visualised by the owner and the insurance company was not apprised of this situation of the payment of minimum amount. The insurance policy is the product of the contractual nexus between the parties and bilateral contracts are modelled or founded on the basis of the situations and circumstances existing at the time when the contract was entered into. Further this provision can be considered as affecting the vested rights accrued to the parties and as such it will be straining

the section if the retroactivity is sought to be spelt out. Therefore, I am unable to subscribe to the view propounded by the Bombay High Court. Taking into consideration the totality of circumstances, namely, the contributory negligence by the deceased and also considering the estimate of his earnings upto 55 years only and his contribution to the family the reasonable estimate of compensation that can be made is Rs. 10,000/-. The claimants are entitled to compensation at the rate of Rs. 10,000/-. The appeal is partly allowed. No costs.

11. Shri Talukdar has also cited *Ram Mani Gupta v. Mohammad Ibrahim and Ors.* 1985 ACJ 476 where a Division Bench of Allahabad High Court has also taken a similar view that Section 92-A does not have retrospective operation. In para 26 and 27 it was held:

26. Section 92-A has not been introduced for the purpose of protecting the public from any evil or abuse. Under the Law of Torts, the liability to pay compensation for death arises when the defendant is negligent. There is no liability if death is caused due to the negligence of the deceased. Under the law as it stood on the date of accident, the respondents were not liable as the accident took place due to the rash and negligent driving of the motor cycle by the deceased.

27. Section 92-A introduces a new principle of liability, and makes the defendant liable to pay Rs. 15,000/- even if there is no negligence of the defendant and also in cases where the accident took place due to the negligence of the deceased. The section itself came into operation on 1-10-1982. There is no express provision that it will operate retrospectively. The language also does not imply that retrospective effect is intended. It is not a case where the legislative intent is clear and compulsive. We are of the opinion that Section 92-A is prospective and it cannot be given effect to retrospectively. The appellants are not entitled to the benefit of this provision.

12. Shri Talukdar has submitted that the provisions of Section 92-A do affect the substantive right of the owner of the motor vehicle of not being liable unless there was negligence or rashness in driving the motor vehicle causing the accident, that there was nothing in the language of Section 92-A, which may lead to the conclusion that the legislative intent was to give to it retrospective operation and that as against Bombay High Court, Rajasthan, Allahabad and Andhra Pradesh High Courts have taken the view that Section 92-A cannot be invoked in respect of an accident prior to 1-10-82.

13. Shri P.K. Das, learned Counsel for the claimant respondent has of course cited *Oriental Fire and General Insurance Co. Ltd. Vs. Shantabai S. Dhume and Others*, The main consideration in giving Section 92-A retrospective operation appears to have been that the provision constitute a beneficial piece of legislation and the legislative intendment appeared clear. It was observed in Para 5:

The legislative intendment appears thus clear and what was apparently meant is to provide for compensation in all accident cases involving motor vehicles where death or permanent disablement occurred, the question as to whether the

accident was due to the fault of the driver of the vehicle, or of the victim, or due to a mechanical failure, or to force majeure, being entirely irrelevant and immaterial. The legislative intentment is manifestly to give some relief to those who have the misfortune of meeting with such accident or to their families. Section 92-A embodies and is, as such, a piece of welfare legislation which requires a liberal interpretation so as its benefits may be extended to all victims of accidents or their families, especially when nowhere in the said provision of law it is postulated that the benefit is given prospectively only and on the contrary it would appear from its wording that the said benefit is to be given in all cases where an accident occurred and as a result thereof, a death or a permanent disablement was occasioned. The Statement of Objects and Reasons of the Amendment Act to some extent corroborates this view for it particularly indicates that the intention of the Legislature was to remove the evil and mischief that people who suffered the accident had to face, being sometimes unable to prove the negligence or rashness of the driver or the owner of the vehicle and, therefore, unable to get the compensation they were entitled to.

14. The following portion of statement of objects and reasons of the Amending Act of 1982 was noted:

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.

It was further held-

They thus indicate the background and the reasons for introducing a particular piece of legislation and serve the purpose of helping in the search for the intentment of the Legislature in enacting an Act. Section 92-A is intended to provide social justice by giving compensation without proof of fault or negligence by the driver or owner of the vehicle and as such in my view it is manifest that the question as to whether the cause of action arose prior to its coming into force or not becomes irrelevant for the material consideration for the purpose of awarding compensation under the said provision of law being whether the case giving rise to that liability is still pending.

15. The learned Counsel for the respondent has cited American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another, where it was observed that construction leading to manifest absurdity, futility, palpable injustice or

absurd inconvenience or anomaly should be avoided.

16. B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, was also cited where it was held that:

While it is a general rule of law that statutes are not to operate retrospectively, they may so operate by express enactment, by necessary implication from the language implied or where the statute is explanatory or declaratory or where the statute is passed for the purpose of protecting the public against some evil or abuse or where the statute engrafts itself upon existing situations etc etc. But it would be incorrect to call a statute "retrospective", "because a part of the requisites for its action is drawn from a time antecedent to its passing". Vide R. v. St. Mary White chapel (Inhabitants) (1848) 12 QB 120. We must further remember, quite apart from any question of retrospectively, that, unlike in the United Kingdom here in India we have a written Constitution which confers justiciable fundamental rights and so the very refusal to make an Act retrospective or the non-application of the Act with reference to a date or to an event that took place before the enactment may, by itself, create an impermissible classification justifying the striking down of the non- retroactivity or non application clause, as offending the fundamental right to equality before the law and the equal protection of the laws.

17. It is significant that by necessary implication from the language or where the statute is passed for the purpose of protecting the public against some evil or abuse or where the statute engrafts itself upon existing situations etc. etc., the retrospective effect to a statute may be considered, to let of operate retrospectively.

18. In Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others, it was laid down:

The primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the Rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the, written word if necessary.

19. It is thus significant that it is enjoined on Courts to so interpret a law, having ascertained the intention so as to promote and advance the object and purpose of the enactment.

20. It is further significant that while doing so the Court may even depart from the rule that plain words should be interpreted according to their plain meaning.

21. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* AIR 1987 SC 1184, the principle was laid down-

These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not turned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obedience to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.

21. In *Craies on Statute Law Seventh Edition* at page 396 under the head "Statutes passed to protect the public sometimes held retrospective", it is stated "If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right".

22. Under the head "Statutes virtually retrospective" at the same page it is stated "Sometimes a statute although not intended to be retrospective, will in fact have a retrospective operation. For instance, if two persons enter into a contract, and afterwards a statute is passed, which, as Cockburn C.J. said in *Duke of Devonshire v. Barrow, etc., Co.*, "engrafts an enactment upon existing contracts" and thus operate so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, in effect, a retrospective operation".

23. It is also a well recognised principle that a statute is not properly called a retrospective statute because a part of the requisite for its action is drawn from a time antecedent to its passing.

24. In *Maxwell on the Interpretation of Statutes*, 11th edition at page 204.

Section 4 - "Retrospective operation", it is said:

Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation.

At page 211, it is stated;

Nor is a statute retrospective in the sense under consideration because a part of the requisite for its action is drawn from a time antecedent to its passing.

25. The provisions of Section 92-A show that the legislature did not use any express words to give retrospective effect, which it could have provided easily by use of words to that effect and in the "commencement" clause of the Amendment Act it was said that it shall come into force on such date as the Central Government may notify. As to the commencement, I do not think it to be conclusive of the legislative intendment against retrospective operation because there were other provisions in the Amending Act and it is well known that such stipulation for commencement is made with a view to make preparation etc. for implementation of the provisions and when the Government is about ready to do so the statute is brought into force. I therefore do not consider the said stipulation about commencement as necessarily showing legislature's intendment against retrospective operation of the provisions of Section 92A. As regards the absence or non-existence of express words to give retrospective effect I am inclined to think that this too should not be considered as clinching the matter under consideration, for the reason, that there is nothing in the said provision, either, which may show that it was not intended to cover cases where death or permanent disability had occurred earlier.

26. The language of Section 92 A, that, where the death or permanent disablement has resulted from an accident the owner shall be liable to pay compensation in accordance with the provisions of this Section, in Sub-section (2), the fixed sum of compensation payable and in Sub-section (3) that in any claim for compensation Under Sub-section (1) the claimant shall not be required to plead and establish wrongful act, negligence etc. considered together, could well mean that where the claim could be made, that is where death or permanent disability had occurred and the claim was pending, compensation Under Sub-section (1) of Section 92-A could just be claimed and all that would happen would be that the claimant would not be required to plead or establish any wrongful act, negligence or default etc.

27. It, therefore, appears necessary to determine legislative intendment, underlying Section 92A. As the title of the chapter VII A itself shows the legislature intended that some compensation should be paid to the victim of a motor accident in case of death or permanent disability, without going into the question of fault. The intention of the legislature was to provide some relief immediately without even pleading or proof of wrongful act, negligence, default etc. as cause of accident.

28. The statement of objects and reasons of the amending Act noted earlier clearly show that the new provision is manifestly a socially beneficial legislation

intended to provide some measure of protective relief by way of quick payment of some compensation to the affected persons, in view of the grave risk which the public is exposed or subjected most of the time, with increasing numbers of fast moving motor vehicles on the road.

29. The relief which a claimant of a motor vehicle accident, may expeditiously so obtain is not by any standard very great and I am inclined to think that the effect that it may have on the owner of the insurer's right which may be considered as the only right vested and affected, as compared to the benefit to the claimant or the victim, is not such as may be considered so substantial, that that consideration may or should be allowed to prevail, to disallow application of the provision to a claim made thereunder. It is only on ground of the vested right being affected that the view has been taken that the new provision should not be given retrospective effect. I am inclined to think as shown above from the language of Sub-sections (1) and (3) of Section 92-A that it should not be construed as giving retrospective effect to the provision, but even if it be so considered, I am of the opinion that in considering the operation of a socially beneficial legislation, in the absence of anything to the contrary against retrospective operation, as in the present case, it should be reasonably sound to have comparative consideration of the benefit to the people and the nature and extent of the effect on the vested right. The owner and the Insurer were even before liable for compensation on proof of negligence rashness etc. By the new provision to provide some relief expeditiously the effect on the right I am inclined to think should be considered only marginal, for the number of cases in which claim were pending, and in which the claim under the new law is made and in which ultimately it may be found that the death or permanent disability had occurred, not due to the wrongful act, etc. of the owner may not be very large and in any case the burden on the Insurer would not be of such magnitude as may outweigh the consideration of relief and little security to the claimant concerned. I, therefore, think that the consideration to the terms of Insurance, as in Andhra Pradesh case (supra) should not be allowed to prevail in giving retrospective effect to the socially beneficial legislation made with a view to protect the general public against the grave risk which they face while on the road.

30. It may also be noted that undoubtedly full compensation was recoverable on proof of rashness or negligence for which the claim was pending when by the amendment a socially beneficial provision extending some immediate relief was engrafted on the law whereunder the claim was pending and, therefore, it may not be even considered as giving retrospective operation to the law. Just because the claim under it, related to an accident that occurred before the law came into force it may also be said that the amendment may not be considered retrospective in the sense under consideration because a part of the requisite for its action is drawn from a time antecedent to its coming into force, that is the death or permanent disability having occurred before the amended provision came into force.

31. For the aforesaid reasons, I am inclined to take the view that in the application of the new provision of Section 92-A in a case where the claim was pending in respect of an accident which took place earlier than the coming into force of the said provision, it should not be considered as giving retrospective effect to it in the sense under consideration, and even if it is to be so considered, being a socially beneficial legislation in such a case, it should be given retrospective effect.

32. It follows that the impugned order does not suffer from any error or infirmity. This appeal fails and is dismissed. Parties to bear their own costs.