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**(1976) 01 KAR CK 0014**  
**In the Karnataka High Court**  
**Case No : Misc. First Appeal No. 19 of 1973**

The Premier Insurance Co. Ltd.

APPELLANT

Vs

Padma Srinivasan

RESPONDENT

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**Date of Decision :** 09-01-1976

**Acts Referred:**

Karnataka Rent Control Act, 1961 — Section 21 (2)  
Motor Vehicles Act, 1939 — Section 95 (2), 95 (2) (a)

**Citation :** (1976) ACJ 190 : AIR 1976 Kar 187 : (1976) ILR (Kar) 823 : (1976) 1 KarLJ 168

**Hon'ble Judges :** M. Sadanandaswamy, J;D. Noronha, J

**Bench :** Division Bench

**Advocate :** N. Bheemacharya, for the Appellant; S.V. Srinath, for the Respondent

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## Judgement

This Judgment has been overruled by : Padma Srinivasan Vs. Premier Insurance Company Limited, (1982) ACJ 191 : AIR 1982 SC 836 : (1983) 53 CompCas 333 : (1982) 44 FLR 271 : (1982) 1 SCALE 107 : (1982) 1 SCC 613 : (1982) 3 SCR 244 : (1982) 14 UJ 248

Sadanandaswamy, J.—The appellant is an Insurance Company. The appeal is filed, against the award made by the Motor Accidents Claims Tribunal at Bangalore, dated 20th November, 1972 in M. C. (M. V. C.) No. 120 of 1970. The respondent preferred an application u/s 110-A of the Motor Vehicles Act for compensation on account of the death of her husband who died in a motor accident which took place in Bangalore on 5-4-1970. The lorry bearing Recitations No. MYT 3298 insured with the present appellant-Company was involved in the accident. In the objection Statement filed by the appellant-Company before the Tribunal it was alleged that on a search in the Office of the appellant Company there was no reference to this lorry being insured with the Company, that there must have been some fraud in the matter of having insured this lorry and that otherwise the appellant-Company would have issued a policy if a duplicate of the certificate of insurance had been sent to the Office. The

appellant-Company therefore put the petitioner to strict proof of the insurance having been effected by the owner of the lorry with the appellant-Company. It, therefore, denied its liability. On a consideration of the evidence, the Tribunal held that the claimants viz., respondent 1 and her children were entitled to a compensation of Rs. 60,000/-. It has also held that the liability of the Insurer the present appellant is limited to Rs. 50,000/-.

2. It is contention of Mr. Bheemacharya, learned counsel appearing for the appellant-Company, that the liability of the Insurer must be confined to the maximum u/s 95, Clause (2) of the Motor Vehicles Act, 1939 as it stood prior to its amendment by the Motor Vehicles (Amendment) Act, 1969 (Act No. 56 of 1969). According to the appellant-Company, no policy of insurance had been issued by it. Exhibit P-9 is the certificate of insurance issued by the Agent of the appellant-Company on 31-5-1969. The period covered by that certificate is from 30th June 1969 to 29th June 1970. The accident took place on 5-4-1970. Under Act No. 56 of 1969, the word "fifty" was substituted for the word "twenty" in sub-clause (a) of Clause (2) of Section 95. The amendment was brought into effect from 2-3-1970. Thus, though the insurance was effected before the amendment of the Act, the accident took place subsequent to the coming into effect of the amendment of Section 95, clause (2), sub-clause (a). It is the contention of Mr. Bheemacharya that the said amendment has no retrospective effect and that the liability must be confined to the one under the Act as it stood before the amendment. The Certificate of Insurance, Exhibit P-9 mentions the liability as the one under Chapter VIII of the Motor Vehicles Act, 1939. Hence, according to the terms of Exhibit P-9, the liability was only to the maximum extent of Rs. 20,000/-. It is his contention that the Amendment Act does not specifically state that it has retrospective operation and that therefore it must be construed as having prospective operation only and not to affect the existing contractual rights and obligations.

3. It is contended Mr. Srinath, appearing for the respondent, that the insurer did not urge this plea before the Tribunal. But it is open to the Insurer to urge this question in appeal (See 1968 Acc CJ 1 (Madh Pra), Manjula Devi Bhuta v. Manjusri Raba).

4. In Craies on Statute Law, 7th Edition, at page 390 the following observation of lord O'Hagan in Gardner v. Lucas (1878) 3 AC 582 has been cited with approval-

"Unless there is some declared intention of the legislature - clear and unequivocal - or unless there are some circumstances rendering it inevitable that we should take the other view, we are to presume that an Act is prospective, and not retrospective."

And again the observation of Lord Ashbourne in Smith v. Callander, (1901 AC 297) while dealing with interpretation of a statute so as to have retrospective effect-

"Before giving such a construction to an Act of Parliament one would require that

it should either appear very clearly in the terms of the Act or arise by necessary and distinct interpretation."

has been referred to and it has been further stated as follows:

". ... .. and perhaps no rule or construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the, language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

In Halsbury's Laws of England, Third Edition, Volume 36 at page 423, it has been stated as follows:

"The general rule is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective; and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature."

In Maxwell on Interpretation of Statutes, Twelfth Edition, at page 215 it is stated as follows:

"Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

In Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others, (Rafiquennessa v. Lal Bahadur) the question was whether the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 applied to pending proceedings and it was observed as follows :

" ..... It is not disputed by him that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts, between the parties; but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suit able express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them. Mr. Chatterjee has relied upon the well known observations made by Wright J. in In re Athlumney Ex Parte Wilson ((1898) 2 QBD 547) when the learned Judge said that it is a general rule that when the Legislature alters the rights of Parties by taking away or conferring any right of

action, its enactments, unless in express terms they apply to pending actions, do not affect them. He added that there was one exception to that rule, namely, that, where enactments merely affect procedure and do not extend to rights of action, they have been held to apply to existing rights."

5. The liability of the insurer is that under the insurance Policy issued by him. But in the present case. the liability is determined by the terms of Exhibit P-9 the Certificate of Insurance. It states that the liability is limited to that under Chapter VIII of the Motor Vehicles Act, 1939. It means that the liability was limited to Rs. 20,000/-, according to Section 95 (2) as it then stood. If retrospective effect is given to the amendment Act, it will have the effect of enhancing the liability of the insurer to Rs. 50,000/-. In other words, it affects adversely the existing obligation of the insurer under the terms of the contract entered into by the insurer with the insured. There are no express words giving retrospective effect to the amendment of Section 95 (2) of the Motor Vehicles Act. In the amendment Act, there are no other indications to how that it was the intention of the Legislature to give a retrospective effect to this amendment. Hence the amendment must be held to apply only to policies of insurance or liabilities of the insurer created after the date the amendment came into effect viz. 2-3-1970.

6. Mr. Srinath relied upon the decision of this Court in (1972) 1 MYF LJ 327 (Sha Chunilal Sohanraj v. T. Gurushantappa). In that case sub-section (2) of Section 21 of the Mysore Rent Control Act, 1961 was amended by Mysore Act No. 14 of 1969 during the Pendency of the proceedings arising out of an application of landlord u/s 21(1) (a) of the Act for eviction of the tenant. The was held. following the decision in Shamrao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, . (Shamrao v. Parulekar), that the intention of the legislature must be deemed to be that the substituted provision must be construed as having been part of the Act from the very inception since there was no repugnancy or inconsistency between the old and the new sub-sections. This decision is based on the principle that if there is change in the law during the Pending proceeding, it is the amended law which applies to such a proceeding, and therefore it does not apply to the facts of the present case.

7. The liability of the appellant, therefore, is limited to the one Prescribed u/s 95 (2) of the Act as it stood Prior to its amendment viz., to Rs. 20,000/- We, therefore, allow the appeal and the Award of the Tribunal is confirmed subject to the modification that the liability of the appellant Insurance Company is limited to Rs. 20,000/- instead of Rupees 50,000/-, In view of the fact that the appellant did not urge this question before the Tribunal. the parties shall bear their own costs in this appeal.

8. It is urged by Mr. Srinath that Rs. 25,000/- has already been paid by the appellant after the appeal was filed in this Court, and that it is open to the appellant to recover the excess of Rs. 5,000/- from the owner of the vehicle. But it is submitted by Mr. Bheemacharya that the appellant was bound to deposit Rs. 5,000/- every month, until half the amount awarded by Tribunal has been

deposited, in pursuance of the order of this Court while granting stay and that the appellant has accordingly deposited the above amount. It is clear that the liability of the appellant is limited to Rs. 20,000/- " Appellant is, therefore, entitled to recover back the excess of Rs. 5,000/- deposited by him and drawn by the respondent since the liability of the appellant has been held to be only Rs. 20,000/-.

9. Order accordingly.