

(2003) 12 CAL CK 0011
In the Calcutta High Court

Case No : F.M.A.T. No. 1169 of 2003 and C.A.N. No. 6017 of 2003

Uhita Debsarma

APPELLANT

Vs

New India Assurance Co. and Another

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

General Clauses Act, 1897 — Section 6A
Motor Vehicles (Amendment) Act, 1994 — Section 51
Motor Vehicles Act, 1988 — Section 163A
Repealing and Amending Act, 2001 — Section 2, 4

Citation : (2004) 1 CHN 513 : 108 CWN 1183

Hon'ble Judges : Sadhan Kumar Gupta, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Saidur Rahaman, for the Appellant;Rajesh Singh, for the Respondent

Final Decision : Allowed

Judgement

Aloke Chakrabarti, J.—This appeal was filed challenging the judgment and order passed by the Motor Accident Claims Tribunal on an application filed u/s 163A of the Motor Vehicles Act, 1988. By the impugned judgment, the application has been held to be not maintainable and was therefore, dismissed.

2. The claim application was filed in view of an accident taking place on December 20, 2001 as a result of which the victim died. The reason for holding the claim application to be not maintainable is that Section 163A as introduced in the Motor Vehicles Act, 1988 by the Motor Vehicles (Amendment) Act, 1994 was repealed by the Repealing and Amending Act, 2001. The aforesaid Motor Vehicles (Amendment) Act, 1994 was repealed and the said Repealing and Amending Act, 2001 received assent of the President on 3rd September, 2001 and was published in the Calcutta Gazette dated September 3, 2001.

3. The learned Judge in the Tribunal held that by reason of the said Repealing and Amending Act, 2001 the amendment introduced in 1994 in the Motor Vehicles Act, 1988 no longer is enforceable and therefore, Section 163A thereof

introduced in the year 1994 is to be treated as not available in the Statute book and therefore, present applicant u/s 163A of the Motor Vehicles Act, is not maintainable.

4. Mr. Saidur Rahaman, learned Counsel appearing for the appellant contended that by the said Repealing and Amending Act, 2001, repeal to the amendment already incorporated in the Central Act, the Motor Vehicles Act, 1988 could not be repealed. In support of such contention, he relied on the provision of Sections 6 and 6A of the General Clauses Act as also the judgment in the cases of Jethanand Betab Vs. The State of Delhi (Now Delhi Administration), and K.K. Vasudeva Kurup Vs. Union of India (UOI) and Others, .

5. Mr. Rajesh Singh, learned Counsel for the respondent insurance company contended that the statutory provision introduced by the Repealing and Amending Act, 2001 is to take effect when admittedly the said provision has not been challenged yet and set aside by any appropriate forum. Mr. Singh further contended that Section 163A introduced by the Motor Vehicles (Amendment) Act, 1994 will not be having its force after the same stood repealed by the Act No. 30 of 2001 as aforesaid.

6. We have considered the provisions of law and the judgments relied on by the respective parties. It appears that Section 163A was inserted in the Motor Vehicles Act, 1988 by Section 51 of the Motor Vehicles (Amendment) Act, 1994 (Act No. 54 of 1994) with effect from 14th November, 1994. The Repealing and Amending Act, 2001 (Act No. 30 of 2001) published in the Extraordinary Gazette of India on 3rd September, 2001 was enacted to repeal certain enactments and to amend certain other enactments. The Act consisted of 4 sections as follows:--

"1. This Act may be called the Repealing and Amending Act, 2001.

2. The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

3. The enactments specified in the Second Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

4. The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered or any right, title obligation of liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted or the proof of any past act or thing; not shall this Act affect any principle or rule of law, or established jurisdiction form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed ; nor shall the repeal by

this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title privilege, restriction, exemption usage, practice, procedure or other matter or thing not now existing or in force."

7. The First Schedule to the said Act mentioned in Section 2 of the Act contained the enactments repealed by the said Repealing and Amending Act, 2001 to the extent mentioned in the fourth column of the First Schedule. The aforesaid Motor Vehicles (Amendment) Act, 1994 has been included in the said First Schedule showing in fourth column that whole of the Act was repealed thereby. Therefore, it has fallen for our consideration as to whether after the said Repealing and Amending Act, 2001 was enacted, Section 163A will continue to remain in force in the Motor Vehicles Act, 1988.

8. Scope of that very Act namely, the Repealing And Amending Act, 2001 and its effect has been considered by a Division Bench of Bombay High Court in the case of K. K. Vasudeva Kurup (supra). In the said case, the question fell for consideration was as to whether the amendments inserted by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 to the original Act being the Negotiable Instruments Act, 1881, continued to be in force inspite of the repeal of the said Amendment Act, 1988 by the Repealing and Amending Act, 2001. In this connection, Section 6A of the General Clauses Act, 1897, was also taken into consideration. The observation has been made in the said judgment in the following terms:--

"It is clear that Parliament wanted to amend the original Act of 1881 by inserting Chapter XVII in the Act. For that purpose, an Amending Act of 1988 had been enacted. As soon as the Amending Act of 1988 had been brought into force and implemented, the provisions of Chapter-XVII (sections 138 to 142) stood inserted in the original Act of 1881. Thus, from the date on which Amending Act had become law and brought, into force, the provisions in the original Act stood amended containing Chapter XVII (sections 138 to 142). The Amending Act thus served its purpose and object. Nothing was required to be done thereafter so far as Amending Act is concerned and was required to be repealed. The repeal of the Amending Act, however, does not affect the law which already stood amended. Let us consider the legal position."

In the said judgment, law decided by the Apex Court in the case of Jethanand (supra) was also taken into consideration and it was observed as follows ;--

"In our considered opinion, the ratio laid down in Jethanand Betab Vs. The State of Delhi (Now Delhi Administration), directly covered the case on hand and answers the question raised before us by the petitioner. To us, it is clear that once an amendment was made in 1881 Act by the Amending Act of 1988 and it had been brought into force, it has served its purpose and amended the original Act. Its object was to plant necessary amendment in the 1881 Act. Once such planting has been effected, the Amending Act (*Planting Act), having achieved its object, lost its efficacy. It was thereafter not necessary to continue the amending

Act in a statute book. There are several such Amending Acts under which amendments have been made in original Acts. Once the plant takes root in the original Act, an appropriate step is required to be taken by the Legislature. If no action is taken, hundreds and thousands of such Amending Acts continue to remain in statute books. A device is, therefore, adopted by the Legislature to repeal all such Amending Acts, which would repeal only those Acts, i.e. Amending Acts. But such repeal does not affect original Acts which already stood amended. As observed in *Clarke v. Bradlough*, 1881 (1) QBD 63, "Where a statute is incorporated by reference, into a second statute, the repeal of the first statute by a third does not affect the second."

9. The Bombay High Court in holding the aforesaid also considered an additional reason for the same conclusion in view of Section 4 of the Repealing and Amending Act. But the Apex Court considered the provision of law which is similar to that contained in Section 4 of the Repealing and Amending Act, 2001 and held that the said provision has no application to a case of a later amending Act inserting new provisions in an earlier Act and the said legal position does not help the party relying on the same provision.

10. Therefore, in view of the provisions contained in Section 6A of the General Clauses Act and the position in law as decided by the Apex Court in the case of *Jethanand Betab* (supra) and reiterated by the Division Bench in the case of *K. K. Vasudeva Kurup* (supra), we hold that the amendment in the original Act remained in operation and did not get abrogated on introduction of Repealing and Amending Act.

11. In view of the above findings, the ground on which the Tribunal dismissed the claim application, cannot be upheld. For the said reason, the impugned judgment passed by the Motor Accident Claims Tribunal, cannot stand and the same is hereby set aside.

12. The matter is sent back on remand to the Tribunal for decision on merit as the matter is pending for sometime, the Tribunal is directed to decide the matter in accordance with law within a period of two months from the date of receive of a copy of this judgment. The appeal is allowed as above.

Sadhan Kumar Gupta, J.

13. I agree.