

(1999) 03 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 500 of 1997

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Mehtab Bai and Others

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2000) ACJ 1274 : AIR 1999 Raj 293 : (1999) 3 RLW 1392 : (1999) 3 WLC 386

Hon'ble Judges : Amaresh Ku. Singh, J

Bench : Single Bench

Advocate : R.K. Mehta, for the Appellant; Jagdish Vyas, for the Respondent

Judgement

Amaresh Ku. Singh, J.—Heard the learned counsel for the appellant and the respondents Nos. 1, 2 and 3.

2. This appeal is directed against the judgment dated 20-1-1997 passed by the learned Motor Accident Claims Tribunal, Udaipur in claim case No. 216/95 filed u/s 163-A of the Motor Vehicles Act, 1988.

3. The learned counsel for the appellant has submitted that the learned Tribunal was not justified in giving the impugned judgment as the application u/s 163-A of the Motor Vehicles Act, 1988 was not maintainable. The ground on which the above submission is made is that Section 163-A of the Motor Vehicles Act, 1988 was added by an amendment which came into force on 14-11-1994 whereas the accident resulting in the death of Jagdish occurred on 6-6-1994.

4. The learned counsel for the respondents-claimants has supported the impugned judgment passed by the learned Tribunal and prayed for dismissal of this appeal.

5. It appears that an application u/s 163 of the Motor Vehicles Act, 1988 was filed by Shri Mehtab Bai, Ramesh and Sushri Sita (respondent Nos. 1, 2 and 3), with the prayer that compensation to the tune of Rs. 6,88,500/- be awarded to

them. According to the averments made in the claim petition, the deceased Jagdish was working as a conductor on the bus No. RPJ-6667. On the date of accident, he was getting a salary of Rs. 2,100/- per month. On 6-6-1994, at about 3.30 p.m., when the deceased Jagdish was opening the "side windows of the bus, the driver drove the bus rashly and negligently and as a consequence Jagdish fell on the road and died. The claim petition was contested by the United India Insurance Co. Ltd. (non-petitioner No. 3) as well as by the non-petitioner No. 2. As many as four issues were framed by the Motor Accident Claims Tribunal. No separate issue was framed regarding the alleged rashness and negligence committed by the driver in driving the bus.

6. The claimants examined Smt. Mehtab Bai, AW-1 and Kailash, AW-2. Some documents were produced in evidence and they were exhibited. No evidence was produced on behalf of the non-petitioners. The learned Tribunal, after hearing the parties awarded a sum of Rs. 2,32,500/- to the claimants and this sum was made payable by the non-petitioners Nos. 2 and 3 who were held by the Tribunal jointly and severally responsible for the payment of compensation. A perusal of the impugned judgment passed by the Tribunal shows that the petition filed by the claimants u/s 163 of the Motor Vehicles Act, 1988 was treated as petition u/s 163-A of the Motor Vehicles Act, 1988 and, therefore, the learned Tribunal dispensed with the necessity of proving the alleged rashness and negligence in driving the bus.

7. In view of the above facts and submissions made by the learned counsels for the parties, three questions arise for the decision of this appeal :--

(1) Whether the provisions of Section 163-A of the Motor Vehicles Act, 1988 were applicable to the claim petition filed by the respondents 1, 2 and 3?

(2) Whether the learned Tribunal was justified in treating the petition filed by the respondents Nos. 1, 2 and 3 as a petition u/s 163-A of the Motor Vehicles Act, 1988 ? and

(3) What order should be passed in order to do justice to the parties ?

8. Section 163-A of the Motor Vehicles Act, 1988 was added by the Act No. 54 of 1994 which came into force on 14-11-1994. The accident in the instant case occurred on 6-6-1994. The learned counsel for the appellant has submitted that Section 163-A of the Motor Vehicles Act, 1988 has no retrospective application. His argument is that Section 163-A of the Motor Vehicles Act, 1988 creates a separate and new liability and new rights in favour of the claimants and, therefore, unless the section can be said to have been made retrospectively applicable, it should be held that section has no retrospective application. The general principle on which reliance has been led by the learned counsel for the appellant is, that any statute which creates a new liability or new right must be held to be prospective in its operation unless the legislature expressly provides that it shall have retrospective application. The learned counsel has placed reliance on several decisions to which I shall be referring in a moment.

9. The first decision on which the reliance has been placed by the learned counsel for the appellant is the decision given by the Hon''ble Supreme Court in Ramesh Singh and another Vs. Cinta Devi and others, In that case, the Hon''ble Supreme Court considered whether the provisions of Section 173 of the Motor Vehicles Act, 1988 which came into force on 1-7-89 had retrospective application. After referring to Section 217(4) of the new Act and Section 6 of the General Clauses Act, the Hon''ble Supreme Court held that the new Act does not expressly or by necessary implication make the relevant provisions retrospective in character. Section 6 of the General Clauses Act, 1897 (Act No. 10 of 1897) deals with effect of repeal. It does not deal with the provisions which create an additional right without repealing any existing provision. The Hon''ble Supreme Court has referred to earlier decision and held that unless the new Act expressly or by necessary implication makes the provisions applicable retrospectively, the right of appeal will crystallise in the appellant on the institution of the application in the Tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the new Act. In other words, the appellant would be entitled to file the appeal without being required to make the deposit under the proviso to Section 173 of the new Act. The question arising before their Lordships of the Hon''ble Supreme Court was whether the provisions contained in Section 173 of the Motor Vehicles Act, 1988 was retrospectively applicable, and the decision given by their Lordships has no direct bearing so far as the provisions of Section 163-A of the Motor Vehicles Act, 1988 is concerned. The general principle that if a statute creates a new liability or creates a new right, then unless there is anything to show that the legislature intends the statute to be made retrospectively applicable, it should be held that it has got only prospective application appears to have been followed by their Lordships of the Hon''ble Supreme Court.

10. The second decision on which reliance has been placed by the learned counsel for the appellant is the decision given by the learned single Judge of this Court in National Insurance Co. Ltd. v. Heera 1988 DNJ 723. The learned single Judge held that the amended subsection (2) of Section 140 of the Act of 1988 enforced w.e.f. 14-11-1994 is relatable to the date of accident on which principle of "No Fault Liability" and delayed payment of such compensation is to be compensated by awarding appropriate interest to the victims from owner(s) of offending vehicle(s) qua insurer(s) treating it to be beneficial piece of legislation, otherwise it would open pandora's box giving a chance to the claimants) to claim additional compensation from enforcement of the Act of 1988 although the language of the aforesaid Sub-section with which it is couched with is clear and there is no room for any confusion or ambiguity. The learned Judge further observed that the Parliament had not chosen to make the provisions of Sub-section (2) of Section 140 of the Act of 1988 to be retrospective in its operation though it is beneficial piece of legislation.

11. I respectfully concur with the view taken by the learned single Judge and I further held that so far as the provisions of Section 163-A of the Motor Vehicles

Act, 1988 are concerned, there is no reason to hold that these provisions should be distinguished from the provisions contained in Section 140 of the Motor Vehicles Act, 1988 so far as the question regarding retrospective application thereof is concerned.

12. The third decision on which the reliance has been placed by the learned counsel for the appellant is the decision given in *Trilok Chand Anand Vs. Om Prakash and Others*, In that case, the accident had taken place in the year 1987 prior to the coming into force of the Amendment Act of 1994 by which Section 163-A was added. Their Lordships of the Madhya Pradesh High Court held that the quantum of compensation was to be fixed otherwise than in accordance with the Schedule referred in Section 163-A.

13. The last decision on which reliance has been placed by the learned counsel for the appellant is the decision given in *The Oriental Insurance Co. Ltd. Vs. Sheela Ratnan and Others*, In this case, the Full Bench of Kerala High Court held that enactment of compensation by way of amendment to Section 140 in 1994 cannot be made applicable to claimants in respect of accidents which had occurred before the date of coming into force of Amendment Act.

14. On the other hand the learned counsel for the respondents Nos. 1, 2 and 3 has placed reliance on the decision given by the Hon'ble Supreme Court in *Dhannalal Vs. D.P. Vijayvargiya and Others*, In that case the question before the Hon'ble Supreme Court was whether the claimant was entitled to the benefit resulting from the deletion of subsection (3) of Section 166 of the Motor Vehicles Act, 1988. At page 398 of DNJ, their Lordships observed :-- at page 2157-2158 of AIR

"In this background, now it has to be examined as to what is the effect of omission of Sub-section (3) of Section 166 of the Act. From the Amending Act it does not appear that the said Sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the Amending Act, to show that benefit of deletion of Sub-section (3) from Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of Sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose an accident had taken place two years before 14-11-1994 when Sub-section (3) was omitted from Section 166. For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14-11-1994. Can a claim petition be not filed after 14-11-1994 in respect of such accident? Whether a claim petition filed after 14-11-1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when Sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of Sub-section (3) of Section 166 w.e.f. 14-11-1994? According to us, the answer should be in negative. When Sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The

claim petitions cannot be thrown out on the ground that such claim petitions were-barred by time when Sub-section (3) of Section 166 was in force..... The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final. The aforesaid Amending Act shall be of no help to such claimant. The reason being that a judicial order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal, High Court or this Court in such cases, the benefit of amendment of Sub-section (3) of Section 166 should be extended."

15. Another decision on which reliance has been placed by the learned, counsel for the respondents Nos. 1,2 and 3 is the decision given in Kamta Prasad and Another Vs. Jaggan and Co. and Another, In that case the learned single Judge, after referring to several decision and the provisions contained in Section 217 of the Motor Vehicles Act, 1988 observed :--

"There is nothing in Section 217 of the said Act to suggest exclusion of Section 140 to pending cases. The limit of compensation in the case of death has since been enhanced to Rs. 50.000/- by means of amending Act No. 54 of 1994 which has been enforced with effect from 14-11 -1994. In Lakshmi Narayan Guin and Others Vs. Niranjana Modak, it has been held "that a change in the law during the pendency of an appeal has to be taken into account and would govern the rights of the parties". In this view of the matter I am of the considered view that Section 140 of the Motor Vehicles Act, 1988, as amended by Motor Vehicles (Amendment) Act, 1994 (Act No. 54 of 1994) enforced with effect from 14-11-1994 shall apply to all claims pending before the Tribunal or appellate Court as also the causes of action subsisting on 14-11-1994 notwithstanding that the accident giving rise to the claim had taken place before 14-11-1994."

16. The view taken by the learned single Judge of the Allahabad High Court is contrary to the view taken by a learned single Judge of this Court in National Insurance Co. Ltd. v. Heera (supra) so far as the retrospectively of Section 140 of the Motor Vehicles Act is concerned. However, I concur with the view taken by the learned single Judge of the Allahabad High Court to the extent that the provisions of Section 163-A of the Motor Vehicles Act, 1988 are similar to the provisions of the Section 140 of the Motor Vehicles Act, 1988.

17. I have carefully considered the averments made by the learned counsels for the parties. It is well established that the law of limitation does not extinguish the rights except in exceptional cases where the law expressly declares that after the expiry of the period prescribed by the Act, the rights shall be extinguished or a new right shall be created. The object of limitation Act is to remove the over hanging sword of Democles in the form of threat of a litigation from the heads of the defendants or non-petitioners so that the claimants may not abuse the

powers given to them to move the Courts for the enforcement of their rights. Every right must, therefore, have some legitimate limits. The law of limitation generally does not extinguish the rights nor it creates additional rights. It simply bars the remedy. If this is the correct approach, then it will have to be said that the deletion of Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 by Act No. 54 of 1994 neither created a new right in favour of the claimants nor it created a new liability on the non-petitioners. The observations made by the Hon''ble Supreme Court in *Dhannalal v. D.P. Vijayvargiya* (supra) may thus be held to be applicable to those cases where the Amending Act does not create new rights nor imposes new liabilities.

18. In the instant case, the arguments advanced by the learned counsel for the appellant is that Section 163-A of the Motor Vehicles Act, 1988 creates a new right in favour of the claimants and imposes a new liability on the non-petitioners and, therefore, the principle that unless the statute otherwise directs its operation must be held to be prospective only is applicable to the present case. Deletion of Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 was held to be applicable even to the pending cases because its deletion did not create any new right nor it imposes new liability. In fact deletion of Sub-section (3) of Section 166 merely removed the hurdle imposed by law of limitation from the path of the claimants in seeking their remedy by way of filing a petition for compensation. I, therefore, hold that the decision given by the Hon''ble Supreme Court given in *Dhannalal v. D. P. Vijayvargiya* (supra) does not help the learned counsel for the respondent.

19. The law in this regard is no longer *res integra* as it has already been declared by the Hon''ble Apex Court in several cases. In the case of *K.S. Paripoornan Vs. State of Kerala and Others*, the Hon''ble Supreme Court observed (at page 1034 of AIR) ;--

"A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose

new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings."

20. It is thus well established that a distinction has to be made between the statutes dealing with (he substantive rights or liabilities and the statutes dealing with the matters of procedure only and the general rule applicable to the statutes of the first category is that they are to be held prospective in operation-unless the legislature expressly makes them retrospectively operative. The statutes of the latter category are to be regarded as retrospective as well as prospective in operation unless the legislature expressly indicates that they shall have retrospective application only.

21. For the reasons mentioned above, I am of the considered opinion that Section 163-A of the Motor Vehicles Act, 1988 as inserted by Amending Act No. 54 of 1994, creates a new right in favour of the claimants and this right is similar to the right u/s 140 of the Motor Vehicles Act, 1988. Simultaneously, it creates a new liability on the non-petitioners and, therefore, it is to be governed by the rule that unless the legislature make it retrospectively operative, its operation shall be prospective only.

22. The question No. 1 is decided accordingly.

23. In the instant case, the learned Motor Accident Claims. Tribunal has treated the application filed by the respondents Nos. 1,2 and 3 as an application u/s 163-A of the Motor Vehicles Act, 1988. In fact the very mention of Section 163-A of the Motor Vehicles Act, 1988 in the claim petition was unfortunate. In my opinion, the learned Tribunal was not entitled to treat the application as an application u/s 163-A of the Motor Vehicles Act, 1988. The body of the application shows that there was a clear averment that the bus was driven rashly and negligently resulting in the fall of Jagdish on the road and his consequential death. If the application was u/s 163 of the Motor Vehicles Act, 1988 there was no necessity for the claimants to plead in the application that the bus was being driven rashly and negligently. The learned Tribunal, by first treating the application as an application u/s 163-A of the Motor Vehicles Act, 1988 and then rejecting it on the ground that Section 163-A of the Motor Vehicles Act, 1988 was not applicable to the case as the accident had occurred before 14-11-1994 was not proper. In the present case, the application filed by the respondents ought to have been treated as an application u/s 166 of the Motor Vehicles Act, 1988.

24. The second question is decided accordingly.

25. In view of the finding on questions Nos. 1 and 2, the appeal deserves to be partly allowed. The impugned judgment dated 20-1-1997 passed by the learned Tribunal is hereby quashed and set aside. The case is remanded to the learned Tribunal with the direction that the claim petition shall be treated as a petition u/s 166 of the Motor Vehicles Act, 1988. The issues shall be amended accordingly

and after giving opportunity to both the parties for producing their evidence and of hearing, the claim petition shall be disposed of in accordance with law. Since the claimants-respondents were responsible for allowing the mistake to be perpetrated before the Tribunal, it is directed that the parties shall bear their cost of appeal. The cost of proceedings of the Tribunal shall abide the judgment by the Tribunal. Parties are directed to appear before the Tribunal on 7-4-1999. The amount deposited by the appellant at the time of filing of appeal, shall not be disbursed to the respondent-claimants if the same has not already been disbursed.