

(1991) 09 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No. 3504 of 1991

Vinod Gurudas Raikar

APPELLANT

Vs

National Insurance Co. Ltd. and others

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A(3), 166(3)
General Clauses Act, 1897 — Section 6
Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 — Section 51
Code Of Civil Procedure (Anendment) Act, 1951 — Section 20(b)
Motor Vehicles Act, 1939 — Section 110

Citation : (1991) 2 ACC 449 : (1991) ACJ 1060 : AIR 1991 SC 2156 : (1992) 2 BLJR 816 : (1992) 75 CompCas 611 : (1991) 3 JT 660 : (1992) 1 KLT 338 : (1992) 1 PLJR 3 : (1992) 101 PLR 156 : (1991) 2 SCALE 493 : (1991) 4 SCC 333 : (1991) 3 SCR 912 : (1992) 1 UJ 129

Hon'ble Judges : L. M. Sharma, J;J. S. Verma, J

Bench : Division Bench

Advocate : Dhruv Mehta, S. K. Mehta and Aman Vachher, for the Appellant; Jitender Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J. 1. Special leave is granted.

2. The appellant was injured in a road accident and his claim petition has been dismissed as being barred by limitation. The accident took place on 22.1.1989. The Motor Vehicles Act, 1939 was repealed by Section 217(1) of the Motor Vehicles Act, 1988 which came into force on 1.7.1989. The period of limitation for filing a claim petition both under the old Act and the new Act being six months expired on 22.7.1989. The claim petition of the appellant, however, was filed belatedly on 15.3.1990 with a prayer for condonation of delay. The Accident Claims Tribunal held that in view of the provisions of Sub-section (3) of Section 166 of the new Motor Vehicles Act, the delay of more than six months could not be condoned. The application was accordingly dismissed. The appellant

unsuccessfully challenged the decision before the High Court.

3. It has been contended that since the accident took place when the old Motor Vehicles Act was in force, the proceeding before the Accident Claims Tribunal must be held to be governed by the old Act, and his petition cannot be dismissed on the basis of the provisions in the new Act.

4. The period of limitation for filing a claim petition both under the old Act and the new Act is six months from the date of the accident. The difference in the two Acts, which is relevant in the present case, is in regard to the provisions relating to condonation of delay. In view of the proviso to Sub-section (3) of Section 166 of the new Act, the maximum period of delay which can be condoned is six months, which expired on 22.1.1990. If the new Act is held to be applicable, the appellant's petition filed in March had to be dismissed. The case of the appellant is that the accident having taken place before the new Act came into force, the proceeding is governed by the old Act, where there was no such restriction as in the new Act. The question is as to which Act is applicable; the new Act or the old.

5. It has been contended by the learned Counsel that under the old Act the appellant had a right to file a claim petition even more than six months after the expiry of the period of limitation, and this right is preserved by reason of the provisions of Section 6 of the General Clauses Act, 1897. Reliance has been placed on clauses (c) and (e). The relevant portion of the section reads thus:

6. Effect of repeal-Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) ...

(b) ...

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) ...

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

We are unable to agree. Clause (e) is not attracted because, by the enactment of the new law the remedy of the appellant has not been affected at all. His right to claim compensation by filing the claim within the same period of limitation has been preserved. And there was no application for condonation of delay in a

proceeding pending at the time of repeal so as to allow him to claim any privilege available under the old Act. So far the applicability of Clause (c) is concerned, the question depends on whether the appellant had got an accrued right or privilege under the old law which he could not have been deprived of by the repealing legislation.

6. Even independent of the General Clauses Act, it is firmly established that unless a new statute expressly or by necessary implication says so, it will not be presumed that it deprives a person of an accrued right. On the other hand, a law which is procedural in nature, and does not affect the rights, has to be held to be retrospectively applicable. The question is whether the appellant has been deprived of an accrued right or privilege in the present case.

7. It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act-subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it impractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, . The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March, 1967 the Claims Tribunal u/s 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribing 60 days as the period of limitation. The respondent filed the application in July, 1967. It was held that not having filed a suit before March, 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the Constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110A(3).

8. The learned Counsel strenuously contended that the present case must be considered as one where an accrued right has been affected, because the option to move an application for condonation of delay belatedly filed should be treated

as a right. This cannot be accepted. There is a vital difference between an application claiming compensation and a prayer to condone the delay in filing such an application. Liberty to apply for a right is not in itself an accrued right or privilege. To illustrate the point, we may refer to some cases.

9. In *Director of Public Works and Anr. v. Ho Po Sang and Ors.* [1961] 2 AER 721 a Crown lessee in respect of certain premises which were in occupation of tenants and sub-tenants entered into an agreement with the appellant Director for developing the site by erecting buildings. The erection of the new buildings necessitated the demolition of the existing buildings. Under the provisions of an Ordinance a Crown lessee was entitled to recover vacant possession of the premises if he obtained a re-building certificate from the Director. On the application of the Crown lessee a proceeding for grant of the certificate was started and the Director issued a notice under the Ordinance indicating his intention to grant the re-building certificate. Before the certificate could be finally issued, the relevant provision of the Ordinance entitling the lessee to recover vacant possession of the premises was repealed. The lessee claimed the right to vacant possession by relying on certain provisions dealing with rules of interpretation similar in terms to Section 6 of our General Clauses Act. The plea was rejected on the ground that although the lessee was entitled to make an application for vacant possession before the Ordinance was repealed, it did not amount to an accrued right or privilege, capable of being preserved after the repeal of the Ordinance, as the right was dependent on the actual issuance of a certificate.

In an earlier case of *Abbott v. Minister of Lands*, [1895] AC 425 the appellant was entitled to make purchases of Crown land adjoining his holding by virtue of certain statutory provisions, which were repealed before he could effectively enforce his right. Besides raising other grounds in respect of his claim, he argued that the right which he had under the repealed enactment was a "right accrued" and of which he could not be deprived of by the repeal. Rejecting the plea, it was observed that the mere right existing in a class of persons to take advantage of an enactment, cannot in absence of any act done by the claimant towards availing himself of that right be deemed a "right accrued".

10. In *Isha Valimohamed and Another Vs. Haji Gulam Mohamad and Haji Dada Trust*, the respondents let out the premises in question to the appellants in 1951 in a place where, by the Saurashtra Rent Control Act, sub-letting by a tenant was prohibited. The appellants sub-let the premises at a time when the Act was in force. In 1963 the Act was repealed and the Bombay Rent Act was made applicable, under which there was no such prohibition against sub-letting. In a suit for eviction filed subsequently the High Court assumed that a notice under the Transfer of Property Act was necessary to terminate the tenancy which had not been done before the repeal, but still held that since the respondents had an accrued right within the meaning of Section 51 of the Bombay Rent Act (the provisions whereof were similar to those in Section 6 of the General Clauses Act)

the respondents were entitled to a decree. The decree was confirmed by the Supreme Court but not on the above ground. This Court held that a notice under the Transfer of Properties Act was not necessary and in that view it confirmed the decree of the High Court. With respect to the finding of the High Court regarding the respondents' acquiring an accrued right even on the assumption that a notice under the Transfer of Properties Act was necessary, it was held that the right of a landlord to recover possession is not an accrued right before the issue of a notice if under any law it was necessary for the landlord to issue the notice to determine the tenancy. The principle laid down there supports our view.

A question, though not identical, but somewhat similar came up for consideration by this Court in *Lalji Raja and Sons Vs. Firm Hansraj Nathuram*, . The appellants had obtained a money decree against the respondents in a court in West Bengal in 1949, and got it transferred for execution to the court at Morena in the then State of Madhya Bharat. On the respondents objection on the ground of lack of jurisdiction the Madhya Bharat Court dismissed the execution petition. The matter was thereafter taken to the High Court and this Court, but without any success. The decision partly rested on the ground that the Indian CPC was not applicable to the State of Madhya Bharat. Subsequently the Code was extended to that area which had become a part of the State of Madhya Pradesh and a fresh order was passed by the West Bengal Court transferring the decree to Morena Court. The judgment debtors challenged the jurisdiction of the court on various grounds. One of the points which was urged was that in view of Section 20 Clause (b) of the CPC (amendment) Act, 1951 by which the Code was extended to Madhya Bharat and other areas, the Judgment debtors' right to resist the execution was protected. Reliance was placed on the proviso to the repeal clause in the section which declared that the repeal would not affect any right, privilege, obligation or liability acquired accrued or incurred under the repealed clause. The judgment debtors objection was over-ruled by this Court. Relying on several English decisions including that in *Abbott v. Minister for Lands*, [1895] AC 425, it was observed that the mere right existing at the date of the repeal of statute, to take advantage of provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause.

11. In the case before us the period of limitation for lodging the claim under the old as well as the new Act was same six months which expired three weeks after coming in force of the new Act. It was open to the appellant to file his claim within this period or even later by 22.7.1989 with a prayer to condone the delay. His right to claim compensation was not affected at all by the substitution of one Act with another. Since the period of limitation remained the same there was no question of the appellant being taken by surprise. So far the question of condonation of six months delay was concerned, there was no change in the position under the new Act. In this background the appellant's further default has to be considered. If in a given case the accident had taken place more than a year before the new Act coming in force and the claimant had actually filed his petition while the old Act was in force but after a period of one year, the position

could be different. Having actually initiated the proceeding when the old Act covered the field a claimant could say that his right which had accrued on filing of the petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condonation of delay can be governed only by the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes applicability of the enactment when the need arises to take its benefit. In the present case the occasion to take the benefit of the provision for condonation of delay in filing the claim arose only after repeal of the old law. Obviously the ground for condonation set up as 'sufficient cause' also relates to the time after the repeal. The benefit of the repealed law could not, therefore, be available simply because the cause of action for the claim arose before repeal. 'Sufficient cause' as a ground of condonation of delay in filing the claim is distinct from 'cause of action' for the claim itself. The question of condonation of delay must, therefore, be governed by the new law. We accordingly hold that the High Court was right in its view that the case was covered by the new Act, and delay for a longer period than six months could not be condoned. The appeal is dismissed, but in the circumstances, without costs.