

(1995) 04 KAR CK 0027
In the Karnataka High Court
Case No : M.F.A. No. 2313 of 1992

Wilfred

APPELLANT

Vs

Maniyar

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166 (3), 166 (4), 217 (1)

Citation : (1995) 2 ACC 517 : (1995) ACJ 673 : (1995) ILR (Kar) 1908 : (1995) 3 KarLJ 591

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : S.P. Shankar and R. Sharatchandra, for the Appellant; T.R. Devkumar, for R2, for the Respondent

Final Decision : Allowed

Judgement

V.P. Mohan Kumar, J.—A short question arises for consideration in this Appeal. An accident took place on 10.1.1988 involving two K.S.R.T.C. Buses. A Claim Petition was preferred on 10.7.1989 claiming compensation for the personal injuries sustained after the Motor Vehicles Act, 1988 came into force on 1.7.1989. Section 166(3) provided that no application for compensation may be entertained by the Tribunal after 6 months of the occurrence of the accident. The Proviso further provided that an application may be entertained after six months if the claimant showed sufficient cause for the delay, but even such an application cannot be entertained after the lapse of twelve months.

2. In this case, the accident as stated above took place on 10.1.1988. The claimant was sandwiched between two K.S.R.T.C. buses, resulting in his ribs being fractured. The claimant claimed compensation to the tune of Rs. 75,000/- under various heads. The respondent denied the accident and disputed the claim.

3. The Tribunal after evidence held that the accident was a result of rash and negligent driving of the buses in question. It assessed the compensation payable

at Rs. 21,400/- (wrongly stated as Rs. 20,400/-) together with interest at 9%. But, it held that the Claim Petition is barred by limitation. On this view the Claim Petition was dismissed. The claimant has come up in Appeal.

4. As it is, the application initiated is beyond twelve months from the date of the accident. Clearly it is barred by limitation. But, while the Appeal was pending by virtue of the Motor Vehicles (Amendment) Act, 1994, enacted on 14.11.1994, Section 166(3) was omitted. The contention urged by the learned Counsel for the appellant is that the application cannot be treated as barred by limitation in view of the omission of the sub-section from the Statute.

5. By this amending Act, Section 158(6) of the Principal Act was amended in the following manner:

"(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

It has now become the duty of the Officer in-charge of the Police Station to forward the report within 30 days after the accident to the nearest Claims Tribunal. Section 166(4) was also amended as :

"(4) The Claims Tribunal shall treat any report of accidents forwarded to it u/s (6) of Section 158 as an application for compensation under this Act."

(underlying for emphasis)

Section 166(3) which prescribed the period of limitation was omitted by means of Section 53 of the amending Act. The relevant provision reads as follows :

"(b) Sub-section (3) shall be omitted."

It is to be noted that this omission simpliciter did not make any provision to control the proceedings pending on the date of the amendment. This is a partial repeal and it is relevant to advert that when the object of the Act is only to repeal a portion of an Act. the words "shall be omitted" is normally used (See Halsbury's Laws of England, 3rd Edition, Volume 36, page 462). Hence the amending Act 1994 repealed Section 166(3) from the Statute Book. We are therefore to consider the effect of this repeal to a pending proceedings.

6. By means of Section 217(1) of the Motor Vehicles Act 1988, the 1939 Act was repealed. By means of the amending Act 1994, there was a partial repeal of Section 166 of the 1988 Act. The question then that might arise is the effect of Section 6 of General Clauses Act, 1897.

7. An appeal is a continuation of the original proceedings. It is pending the appeal the repeal of Section 166(3) has been given effect to. The effect of a repeal is that the statute is completely obliterated as if it had never existed. The law of limitation is a procedural law (vide C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others, And as held in K. Kapen Chako Vs. The Provident Investment Company (P) Ltd., . thus :

"If the legislature forms a new procedure, alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties it will be held to apply prima facie to all actions, pending as well as future."

There is no express intention contra in the repealing enactment saving the operation of the pending proceedings as far as the applicability of the repealed provision is concerned. It is also settled law that no one has any vested right in any procedural law and therefore any change in the procedural law has a retrospective effect and is applicable to Judicial proceedings initiated before the repeal. As stated by Maxwell in Interpretation of Statutes, 11th Edition, page 216:

"No person has a vested right in any course of procedure. He has only right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending, and, if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode."

In this context we may also advert to the Decision of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, That was a case where an accident took place on 22.1.1989. The application for compensation was made before the Tribunal on 15.3.1990. The claim was rejected on the ground of limitation. The contention urged by the claimant was that under the Motor Vehicles Act. 1939 (which preceded the present Act) the claimant had a right to file a Claim Petition even more than six months after the expiry of the period of limitation and that the said right is preserved by reason of the provision of Section 6 of the General Clauses Act. 1897. The Supreme Court rejected the contention on the ground that the claimant having not initiated proceedings when the Tribunal had powers to condone delay and set in motion the right under 1939 enactment, it cannot be said that the right to make such an application without actually invoking the same can be said to be a vested right saved u/s 6 of the General Clauses Act. It stated as hereunder:

"...Having actually initiated the proceedings 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."

That Decision had no occasion to consider the effect of repeal of Section 166(3) of the Act and hence may not apply to this case.

8. We may then notice, that the effect of the partial repeal of the Motor Vehicles Act 1988 by omitting Section 166(3) without a saving clause in favour of pending suit is that all proceedings pending should be disposed off as if Section 166(3) did not exist. By making amendment to Section 158(6) and Section 166(4) the Legislature has in fact done away with formal application and has visualized the Claims Tribunal, treating the report made by the Officer in-charge of the Police Station, itself as a Claim Petition. Section 158(6) indicates that it is a mandatory duty on the part of the Officer in-charge of the Police Station to send the report to the Claims Tribunal within a statutory period. In such a frame Section 166(3) is otiose.

9. We may also notice another aspect. Section 158(6) was differently worded when it was enacted in 1988. Now, by virtue of the unamended Section 158(6) the Officer in-charge of the Police Station after completing investigation was free to forward a copy of the report to the Claims Tribunal. By virtue of Section 166(4) as it originally stood, the Tribunal had discretion to treat the said report as a Claim Petition. If in a given case, a report as mentioned in the unamended Section 158(6) is received by the Claims Tribunal within time, and formal application filed by the claimant is received beyond twelve months of the accident, an incongruous situation may result. Hence to avoid a possible inconsistency both Section 158(6) and Section 166(4) as it stood prior to the amendment cannot co-exist with Section 166(3) of the Act, Section 166(3) has to yield to Section 158(6) and Section 166(4) incorporated in the 1988 Act. It was apparently to achieve this result, Section 166(3) has been repealed. Hence, if the intention of the Legislature is to be achieved, it should be as if it did not exist at all. If so, then obviously the amendment would govern pending proceedings as well.

10. The amendment to Section 166(3) is made perhaps to protect people from their legitimate claim being thrown out. Then as indicated by the Supreme Court in *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, while interpreting these

provisions the following principle can be invoked:

"(5) Two reasons have operated on my mind to lead me to the conclusion that the general rule should not be applied in the present case. First, it is recognised that the general rule is not invariable and that it is a sound principle in considering whether the intention was that the general rule should not be applied, to "look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law and what it was that the Legislature contemplated.": see *Pardo v. Bingham* (1869) 4 Ch A 735 . Again in *Craies on Statute Law*, 6th Edition, it is stated at page 395,

"If a statute is passed for the purpose of protecting the 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."

To the same effect is the observation in *Halsbury's Laws of England*, 3rd Ed. Vol. 36, p. 425. This seems to me to be plain commonsense. In ascertaining the intention of the legislature it is certainly relevant to enquire what the Act aimed to achieve. In (1869) 4 Ch A 735, a statute which took away the benefit of a longer period of limitation for a suit provided by an earlier Act was held to have retrospective operation as otherwise it would not have any operation for fifty years or more in the case of persons who were at the time of its passing residing beyond the seas. It was thought that such an extra-ordinary result could not have been intended. In *R. v. Vine* (1875) 10 QB 195, the words "Every person convicted of felony shall for ever be disqualified from selling spirits by retail... and if any person shall, after having been so convicted, take out or have any licence to sell spirits by retail, the same shall be void to all intents and purposes" were applied to a person who had been convicted of felony before the Act was passed though by doing so vested rights were affected. Mellor, J. observed (pp. 200-201).

"It appears to me to be the general object of this statute that there should be restraints as to the persons who should be qualified to hold licences, not as a punishment, but for the public good, upon the ground of character..... A man convicted before the Act passed is quite as much tainted as a man convicted after: and it appears to me not only the possible but the natural interpretation of the section that any one convicted of felony shall be ipso facto disqualified, and the licences, if granted void."

With the amendments effected to Section 158(6) and Section 166(4) of the Motor Vehicles Act, 1988 the Legislature has clearly indicated that a proceedings for claim of compensation is no more an adversary lis as it used to be. When due to an unfortunate mishap the bread winner of the family quits the scene and leaves the hapless widow and other dependents to mend themselves, the State cannot merely look on as a casual spectator and act merely as an umpire while these helpless dependents fight for the compensation. It is clear from Articles. 38

and Article 39(a) of the Directive Principles of State Policy, the State has a duty to achieve those objects while legislating. It has a more active role to see that there are less number of destitutes in the society. When it moves in this direction and incorporates the provision like Section 158(6) and Section 166(4) in the Statute whereby it becomes the statutory duty of the officials to report regarding the accident to the Tribunal which in turn is treated as a Claim Petition a provision like Section 166(3) is redundant and cannot co-exist. I therefore hold that the amendment to Section 166(3) of the Motor Vehicles Act is retrospective in operation and govern the pending proceedings as well. The Claim Petition is hence not barred by limitation.

11. In the result, the Appeal is allowed. The claimant will be entitled to an award of Rs. 21,400/- with interest at 9% from the date of petition. No cost.

12. Before I conclude, I record my appreciation to Mr. S.P. Shankar, learned Counsel, who argued the Appeal on behalf of the appellant commendably well.