New India Insurance Co. Ltd.

Vs

Smt. Shanti Misra, Adult

Civil Appeal No. 210(N) of 1975

(A. Alagiriswami, P. K. Goswami, N. L. Untwalia JJ)

10.10.1975

JUDGMENT

UNTWALIA, J. -

This is an appeal by certificate of fitness granted by the Allahabad High Court. The question of law which falls for determination in this appeal is whether an application for compensation filed under Section 110A of the Motor Vehicles Act, 1939 (for brevity, the Act), arising out of an accident which occurred more than 60 days before the constitution of the Motor Accidents Claims Tribunal under Section 110 could be entertained by the Tribunal or the remedy of the aggrieved person was to institute a civil suit.

2. On September 11, 1966 occurred an accident in which Shri Amar Nath Misra, husband of respondent No. 1 and father of respondents Nos. 2 and 3 met his death due to collision between his motorcycle and a truck owned by appellant No. 2 and insured with appellant No. 1. A cause of action accrued to the respondents No. 1, 2 and 3 (hereinafter called the respondents) to claim compensation as legal representatives of the deceased under the Indian Fatal Accidents Act, 1855. A suit could be brought under Article 82 of the Limitation Act, 1963 within two years of the occurrence of the accident. But in the meantime the Government of Uttar Pradesh constituted the claims tribunal under Section 110A on July 8, 1967. The appellants objected to the jurisdiction of the Tribunal to entertain the application. The Tribunal overruled the objection and held that it had jurisdiction to entertain the application. The appellants filed a writ application in the High Court which was allowed by a learned Single Judge. In appeal filed by the respondents there was a difference of opinion between the two judges constituting the Division Bench. On reference to a third judge the ultimate view taken by the High Court was that the Tribunal had jurisdiction to entertain this application. Hence this appeal.

3. The Act was amended by Central Act 100 of 1956 with effect from February 16, 1956. The original Section 110 was deleted and new Sections 110 of 110F were introduced. The claims tribunals, however, were not constituted by the State Governments at one and the same time. They were constituted with different dates for different areas. Until and unless the claims tribunals were constituted the provisions of the new sections introduced in the 1956 could not be availed of. But as soon as a claims tribunal was constituted the jurisdiction of the civil court was barred by Section 110F which reads as follows :

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by

or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

But difficulties arose in giving full effect to the bar of jurisdiction of the civil court because of the language of Section 110A providing for the filing of an application for compensation. There could not be any debate or dispute that if an accident occurred after the constitution of the claims tribunal, the only remedy of the claimant was to file an application under Section 110A. The jurisdiction of the civil court in such a case was ousted in express language. Suits which had been instituted prior to the constitution of the claims tribunal remained unaffected and had to proceed to disposal in civil courts. In a third type of case also there could not be much scope for debate where an accident had occurred prior to the constitution of the tribunal and the remedy of the suit was barred on the date of such constitution. A barred remedy under no circumstances was meant to be revived under Section 110A. But the difficulty arose in cases where accidents had occurred prior to the constitution of the claims tribunal, the remedy of action in civil court was alive but no suit had been filed. In such cases the vested right of action was not meant to be extinguished. The remedy of either an application under Section 110A or a civil suit must be available; surely, not both. Majority of the High Courts have expressed the view that in such a situation the only remedy available was that of filing an application before the tribunal and the jurisdiction of civil court was barred. Vide Unique Motor and General Insurance Co. Ltd., Bombay v. Kartar Singh (AIR 1965 Punj 102 : ILR (1965) 1 Punj 104 : 66 Punj LR 1083); M/s. V. C. K. Bus Service (P) Ltd., Coimbatore v. H. B. Sethna (AIR 1965 Mad 149 : ILR (1965) 1 Mad 136 : (1965) 1 Mad LJ 203); Palani Ammal v. Safe Service Ltd., Salem (ILR (1965) 2 Mad 145); Natverlal Bhikhalal Shah v. Thakarda Khodaji Kalaji (ILR 1967 Guj 495) Yadav Motor Transport Co. v. Jagdish Prasad, Bhimganj Ward, Kota (AIR 1969 Raj 316) and Thomas v. Messrs Hotz Hotels Ltd. (AIR 1969 Del 3). A contrary view was taken by the Madhya Pradesh High Court in Khatumal Ghanshamdas v. Abdul Qadir Jamaluddin (AIR 1961 MP 295 : 1961 MP LJ 587) Kumari Sushma Mehta v. Central Provinces Transport Service Ltd (AIR 1964 MP 133 : 1962 MP LJ 876). In the first case of Madhya Pradesh observations were obiter dicta because on facts it was a case of a pending suit. Similar obiter dicta were made by a Bench of the Patna High Court following the Madhya Pradesh decisions in the case of Bihar Co-operative Motor Vehicles Insurance Society Ltd. v. Rameshwar Raut (AIR 1970 Pat 172 (Paras 7 and 8) : 1969 BLJR 919). The question falls for determination in this Court for the first time and we have to decided which of the two views is correct.

4. We shall not read Section 110A as it stood at the relevant time :

> 110A. (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 110 may be made -
>
> (a) by the person who has sustained the injury; or
>
> (b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
>
> (c) by any agent duly authorised by the person injured for all or any of the legal representatives of the deceased, as the case may be :
>
> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representative of the deceased and the legal

representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particular as may be prescribed.

(3) No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

A period of six months was substituted in place of sixty days in sub-section (3) by Act 56 of 1969 with effect from March 2, 1970.

5. On the plain language of Sections 110A and 110F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to cause of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective. The expressions "arising out of an accident" occurring in sub-section (1) and "over the area in which the accident occurred", mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provisions of limitation of 60 days contained in sub-section (3) created an obstacle in the straight application of the well-established principle of law. If the accident had occurred with 60 days prior to the constitution of the tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application, to the tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the tribunal had the power to condone the delay under the proviso. But if the accident occurred more then 60 days before the constitution of the tribunal then the bar of limitation provided in sub-section (3) of Section 110A on its face was attracted. This difficulty of limitation led most of the High Courts to fall back upon the proviso and say that such a case will be a fit one where the tribunal would be able to condone the delay under the proviso to sub-section (3), and led others to say that the tribunal will no jurisdiction to entertain such an application and the remedy of going to the civil court in such a situation was not barred under Section 110F of the Act. While taking the latter view the High Court failed to notice that primarily the law engrafted in Sections 110A and 110F was a law relating to the change of forum.

6. In our opinion in view of the clear and unambiguous language of Sections 110A and 110F it is not reasonable and proper to allow the law of change of forum give way to the bar of limitation provided in sub-section (3) of Section 110A. It must be vice versa. The change of the procedural law of forum must be given effect to. The underlying principle of the change of law brought about by the amendment in the year 1956 was to enable the claimants to have a cheap remedy of approaching the claims tribunal on payment of a nominal court fee whereas a large amount of ad

valorem court fee was required to be paid in civil court. It is legitimate to think that the Legislature did not think it necessary to affect the pending suits but wanted the cheap remedy to be available as soon as the tribunal was constituted by the State Government, in all cases irrespective of the date of the accident, provided the remedy of going to the court was not barred on the date of the constitution of the tribunal. Then, how is the difficulty of limitation in such cases to be solved is the question.

7. In our opinion taking recourse to the proviso appended to sub-section (3) of Section 110A for excusing the delay made in the filing of the application between the date of the accident and the date of the constitution of the tribunal is not correct. Section 5 of the Limitation Act, 1963 or the proviso to sub-section (3) of Section 110A for excuse the delay made in the filing of the application between the date of the accident and the date of the constitution of the tribunal is not correct. Section 5 of the Limitation Act, 1963 or the proviso to sub-section (3) of section 110-A of the Act are meant to condone the default of the party on the ground of sufficient cause. But if a party is not able to file an application for no fault of his out because the tribunal was not in existence, it will not be a case where it can be said that the "application was prevented, by sufficient cause from making the application in time" within the meaning of the proviso. The time taken between the date of the accident and the constitution of the tribunal cannot be condoned under the proviso. Then, will the application be barred under sub-section (3) of Section 110A ? Our answer is in the negative and for two reasons :

> (1) Time for the purpose of filing the application under Section 110A did not start running before the constitution of the tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.
>
> (2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation.

8. In Delhi and London Bank Limited v. Melmoth A. D. Orchard (4 IA 127 : ILR 3 Cal 47) Sir Barnes Peacock, delivering the judgment on behalf of the Board said at page 135 :

Indeed, if the construction put upon the Act by the High Court at Bombay, and by the Chief Court in the Punjab, is correct, a judgment creditor could not, after the three years, have enforced a judgment which was in force in the Regulation Provinces when Act XIV of 1859 was passed, or a judgment which was in force in the Punjab at the time when the Act was extended to the province, however diligent he might have been in endeavouring to enforce his judgment, and however unable, with the use of the utmost diligence, to get at the property of his debtor. Such a construction would cause great inconvenience and injustice, and give the Act an operation which would retrospectively deprive the creditor of a right which he had under the law as it existed in the Regulation Provinces at the time of the passing of the Act, and in the Punjab at the time of the introduction of it.

9. In Gopeshwar Pal v. Jiban Chandra Chandra (ILR 51 Cal 1125), Jenkins, C.J. delivering the judgment on behalf of the majority of the Full Bench said at page 1141 :

> Here the plaintiff at the time when the amending Act was passed had a vested right of suit, and we see nothing in the Act as amended that demands the construction that the plaintiff was thereby deprived of a right of suit vested in him at the date of the passing of the amending Act. It is not (in our opinion) even a fair reading of Section 184 and the third Schedule of the Bengal Tenancy Act, as amended, to hold that it was intended to impose an impossible condition under pain of the forfeiture of a vested right, and we can only construe the amendment as not applying to cases where its provisions cannot be obeyed.

The majority of the Full Bench of the Madras High Court in Rajah Sahib Meharban-i-Doston Sri Raja Row v. K. M. Surya Row Bahadur, Sirdar, Rajahmundry Sircar and Rajah of Pittapur V. G. Venkata Subba Row (ILR 34 Mad 645) has taken the same view following the Full Bench decision in Gopeshwar Pal's case (supra) at page 650. Amendment of the law of limitation could not destroy the plaintiff's right of action which was in existence when the Act came into force. We are conscious of the Distinction which was sought to be made in the application of these principles. It was said that the right could not be destroyed but recourse to suit would be available under the old law of limitation. We, however, think that giving retrospective effect to the change of law in relation to the forum, in the context of the object of the change, is imperative. That being so the principles aforesaid for overcoming the bar of limitation will be applicable.

10. Apropos the bar of limitation provided in Section 110A(3), one can say, on the basis of the authorities aforesaid that strictly speaking, the bar does not operate in relation to an application for compensation arising out of an accident which occurred prior to the constitution of the claims tribunal. But since in such a case there is a change of forum, unlike the fact of the said cases, the reasonable view to take would be that such an application can be filed within a reasonable time of the constitution of the tribunal, which ordinarily and generally, would be the time of limitation mentioned in sub-section (3). If the application could not be made within that time from the date of the constitution of the tribunal, in a given case, the further time taken in the making of the application may be held to be the reasonable time on the facts of that case for the making of the application or the delay made after the expiry of the period of limitation provided in sub-section (3) from the date of the constitution of the tribunal can be condoned under the proviso to that sub-section. In any view of the matter, in our opinion, the jurisdiction of the civil court is ousted as soon as the claims tribunal is constituted and the filing of the application before the tribunal is the only remedy available to the claimant. On the facts of this case, we hold that the remedy available to the respondents was to go before the claims tribunal and since the law was not very clear on the point, the time of about four months taken in approaching the tribunal after its constitution can be held to be either a reasonable time or the delay of less than 2 months could well be condoned under the proviso to sub-section (3) of Section 110A.

11. For the reasons stated above, we dismiss this appeal with costs to respondents Nos. 1, 2 and 3.

</html