GUJARAT HIGH COURT

Natverlal Bhikhalal Shah

Vs.

Thakarda Khodaji Kalaji

Spl. C.A. No. 110 of 1966

(P.N. Bhagwati, J.)

01.03.1966

JUDGMENT

P.N. Bhagwati, J.

1. On 26th July 1962 one Somaji Khodaji met with his death as a result of an accident caused by a motor truck within the area of the Mehsana District. At the date of the accident there was no Motor Accidents Claims Tribunal (hereinafter referred to as the Claims Tribunal) in existence for the area of the Mehsana District, but on 20th June 1963 such Claims Tribunal was constituted by the State Government by a notification issued under Section 110(1) of the Motor Vehicles Act, 1939. The legal representatives of Somaji Khodaji thereupon preferred an application before the Claims Tribunal on 24th July 1963 claiming compensation for the death of Somaji Khodaji, The application was directed against the owner of the motor truck, the driver of the motor truck and. the insurer with whom the motor truck was insured. The owner of the motor truck and the insurer resisted the application and amongst the various defences taken by them was one relating to the jurisdiction of the Claims Tribunal. They contended that since the accident had occurred prior to the constitution of the Claims Tribunal or at any rate beyond a period of sixty days before the constitution of the Claims Tribunal, the Claims Tribunal had no jurisdiction to entertain the claim under Section 110-A and the application was, therefore, liable to be dismissed The Claims Tribunal tried this issue as a preliminary issue and following the decision of the Bombay High Court in *Abdul Mahumed v. Peter Leo D 'Mellow*[1], held that the Claims Tribunal had jurisdiction to entertain claims arising out of accidents which occurred more than sixty days prior to the constitution of the Claims Tribunal provided they were not time-barred at the date when the Claims Tribunal was Constituted. The Claims Tribunal accordingly rejected the preliminary objection of the owner of the motor truck and the insurer and directed the application to proceed further. The owner of the motor truck thereupon preferred Special Civil Application No. 110 of 1956 and the insurer preferred Civil Revision Application No. 80 of 1966 challenging the decision of the Claims Tribunal.

2. The main question that arises for consideration in these two cases is whether the Claims Tribunal constituted under Section 110(1) of the Motor Vehicles Act, 1939, has jurisdiction to entertain claims in respect of accidents which occurred prior to the

[1]66 Bom LR 551

constitution of the Claims Tribunal. The determination of this question depends on the true interpretation of certain provisions of the Motor Vehicles Act, 1939, as amended by Central Act 100 of 1956 but before I refer to these provisions it is necessary to notice how the law stood at the date when these provisions were brought on the statute book. Prior to the enactment of these provisions the legal representatives of a deceased person who died as a result of an accident arising out of the use of a motor vehicle could sue the wrongdoer for damages in the ordinary civil Courts by virtue of the provisions of the Indian Fatal Accidents Act, 1855, and the period of limitation provided for such suit by Article 21 of the Indian Limitation Act, 1908 was one year computed from the date of death of the deceased person. It was felt by the Legislature that this remedy by way of suit in the ordinary Civil Courts was an expensive remedy and used to take long before effective relief could be obtained by the unfortunate dependents of the deceased person who might in many cases be rendered destitute and helpless as a result of the death of the deceased person. The Legislature, therefore, with the object of providing a cheaper and more expeditious remedy introduced by way of amendment in the Motor Vehicles Act, 1939, a group of sections consisting of Section 110 in its present form and Sections 110-A to 110-F by Central Act 100 of 1956 which came into force on 16th February 1957. These sections provided a complete self-contained machinery for adjudication of claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles.

3. Section 110 which is the first section in this group of sections provides for the constitution and jurisdiction of the Claims Tribunal. Sub-section (1) of Section 110 provides that the State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles. It was in exercise of the power conferred under this provision that the Government of Gujarat by a notification dated 20th June 1963 published in the Official Gazette dated 4th July 1963 constituted the Claims Tribunal for the area of the Mehsana District. Section 110 Sub-section (2) prescribes the composition of the Claims Tribunal and Sub-section (3) of Section 110 lays down the qualifications for appointment as a member of the Claims Tribunal by providing that a person shall not be qualified for appointment as such member unless he is, or has been, a Judge of a High Court, or is, or has been, a District Judge, or is qualified for appointment as a Judge of the High Court. Section 110-A Sub-section (1) enacts that "an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made" by the person sustaining the

injury or by the legal representatives of the deceased where death has resulted from the accident and Sub-section (2) of Section 110-A declares that every application shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Sub-section (3) of Section 110-A prescribes the period of limitation for such application and it runs as follows:

> "(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."

Section 110-B provides for the making of the award of compensation by the Claims Tribunal and Section 110-C prescribes the procedure and powers of the Claims Tribunal. The award of the Claims Tribunal is appealable under Section 110-D and under that section an appeal lies to the High Court against any award of the Claims Tribunal provided the amount in dispute in the appeal is not less than Rs. two thousand. Section 110-E deals with execution of the award of the Claims Tribunal by providing that the amount due from an insurer under an award may be recovered as an arrear of land revenue and Section 110-F which is the last section in this fasiculus of sections bars the jurisdiction of the Civil Court in respect of claims triable by the Claims Tribunal in the following words:-

> "110. F. 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."

The question which arises for determination on these sections is as to what is the precise extent of the jurisdiction of the Claims Tribunal in respect of claims for compensation: does the jurisdiction extend to claims in respect of all accidents irrespective as to when they occurred, whether prior or subsequent to the constitution of the Claims Tribunal or is it limited only to claims in respect of accidents occurring subsequent to the constitution of the Claims Tribunal ? The question is primarily one of construction and is not entirely free from difficulty and as a matter of fact there is a sharp conflict of opinion amongst the different High Courts on the determination of the question. It would, therefore, be preferable first to examine the language of the sections for the purpose of arriving at their true meaning without reference to the authorities and then to turn to the authorities to see how far they support or militate against the view which I am inclined to take on principle on a construction of the sections.

4. Now it is the first and primary rule of interpretation of a statute that the language used by the Legislature must be construed in its natural and ordinary sense and if there is nothing to modify,

nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. Section 110 Sub-section (1) empowers the State Government, by notification in the Official Gazette, to constitute for such area as may be specified in the notification a Claims Tribunal for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles. On a plain natural construction of this sub-section, the jurisdiction conferred on the Claims Tribunal is to adjudicate upon all claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, irrespective as to when the accidents occurred, whether prior to or subsequent to the constitution of the Claims Tribunal. The reference in sub-section accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles" is general in nature and is not qualified by any limitation as regards the point of time at which the accident should occur in order to attract the jurisdiction of the Claims Tribunal, The sub-section doe's not require that the accident should take place prior to the constitution of the Claims Tribunal before it can be adjudicated upon by the Claims Tribunal. Mr. M. C. Shah, learned advocate appearing on behalf of the insurer, attempted to import this limitation in the construction of the sub-section by relying on the present participle "arising" which qualifies the word "accident" but, grammatically, I think, this present participle is not indicative of the point of time when the accident should occur but is descriptive of the nature of the accident, namely, that the accident should be one arising out of the use of motor vehicles. As a matter of fact if the Legislature wanted to confine the jurisdiction of the Claims Tribunal to claims for compensation in respect of accidents occurring subsequent to the constitution of the Claims Tribunal, there was nothing to prevent the Legislature from adding the words "subsequent to the constitution of the Claims Tribunal" at the end of the sub-section,. But the Legislature deliberately did riot employ such limitative words restricting the jurisdiction of the Claims Tribunal. The words used by the Legislature are sufficiently wide to take in a claim for compensation even in respect of an accident arising prior to the constitution of the Tribunal and there is no reason why I should place on the Sub-section a construction which would have the effect of cutting down the full natural import and meaning of the words. It would amount to adding words to The sub-section which are not there if the Subsection is construed" as limited only to accidents arising subsequent to the constitution of the Claims 'Tribunal.

5. Turning to Section 110-A it provides that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of sec, 110 may be made by the injured person or by the legal representatives of the deceased person where death has resulted from accident. The right to make an application is conferred by this sub-section but in this sub-section too there is nothing which indicates that the application can only be made in respect of an accident which occurred subsequent to the constitution of the Claims Tribunal. So long as the accidents of the nature specified in Section 110 Sub-section (1), namely, it is an accident '- involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, an application for compensation arising out of such accident can be made to the Claims Tribunal. Of course the

accident must be before the date of the application but beyond this limitation inherent in the nature of the application itself there is no other limitation as to the point of time when the accident should have occurred. Sub-section (2) of Section 110A then indicates the Tribunal to which the application must be made. It says that the application shall be made to the Claims having jurisdiction over the area in which the accident occurred. Here again there is no reference to the point of time at which the accident should have occurred.

6. Then comes Section 110-A Sub-section (3) which prescribes the period of limitation for an application to the Claims Tribunal. The strongest reliance was placed on this provision and it was contended by Mr. M. C. Shah on behalf of the insurer that this provision postulated the existence of the Claims Tribunal during the entire period of sixty days from the date of the occurrence of the accident, for then only could the applicant have a clear period of sixty days within which he could apply to the Claims Tribunal at any time during such period. He urged that no application for compensation could possibly be made to the Claims Tribunal within a period of sixty days from the date of the occurrence of the accident if the Claims Tribunal was not in existence at any time during the said period and came into existence subsequently after the expiration of the said period and, therefore, the remedy of an application for compensation to the Claims Tribunal could not possibly apply to a claim in respect of an accident arising more than sixty days prior to the constitution of the Claims Tribunal. If the remedy of an application for compensation to the Claims Tribunal was not applicable to a claim in respect of an accident arising more than sixty days prior to the constitution of the Claims Tribunal, equally, he argued, it could not have been intended to apply to a claim in respect of an accident occurring within the period of sixty days immediately preceding the constitution of the Tribunal. To hold that the remedy of an application for compensation to the Claims Tribunal was applicable to a claim in respect of an accident arising within the period of sixty days preceding the constitution of the Tribunal would be an unreasonable construction of the statute for in that event it might happen that in many cases the remedy of the injured person or the legal representatives of the deceased person would become barred even before they might become aware of the constitution of the Claims Tribunal and in any event an unreasonably short time might remain available to them within which they would have to prefer an application for compensation to the Claims Tribunal. He agreed that the proviso to Sub-section (3) of Section 110-A no doubt empowers the Claims Tribunal to entertain the application after the expiry of the period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time but urged that this proviso could not help in a case where the accident occurred more than sixty days prior to the constitution of the Tribunal. The proviso, he submitted, postulated that the Claims Tribunal was in existence and the applicant could have made the application in time, but was prevented by sufficient cause from doing so and, therefore, it could have no application where the Tribunal was not in existence during the period of sixty days from the date of the occurrence of the accident. His contention, therefore, was that Sub-section (3) to Section 110-A and the proviso could be given full meaning and effect only if the view was taken that an application for compensation to the Claims Tribunal could be made only in respect of accidents occurring

subsequent to the constitution of the Tribunal.

7. This contention though at first blush attractive, is in my opinion unsound and must be rejected. It is defective in that it fails to give due effect to the language of Sub-section (3) of Section 110-A and the proviso to that sub-section and also ignores the context in which that sub-section together with the proviso occurs. There is no reason for limiting the applicability of Sub-section (3) of Section 110-A and the proviso in the manner suggested by Mr. M. C. Shah. So long as the Claims Tribunal is not constituted for the area in which the accident occurred, there can be no question of making an application to the Claims Tribunal. An applicant can always pursue his ordinary remedy by filing a suit in the Civil Court. But when the Claims Tribunal is constituted under Section 110 Sub-section (1) the Claims Tribunal can, on a plain and natural meaning of the words used in Section 110 Sub-section (1), adjudicate upon a claim for compensation in respect of such accident. An application for compensation arising out of such accident can be made by the applicant under Section 110-A Sub-section (1). When such an application is made the Claims Tribunal would have to consider under Sub-section (3) of Section 110-A whether the application is made within sixty days of the occurrence of the accident. If the application is made within sixty days of the occurrence of the accident, there would be no difficulty and the Claims Tribunal would be competent to entertain it. But if it is not made within sixty days of the occurrence of the accident, the Claims Tribunal would not be competent to entertain it but would be bound to reject it subject to the proviso. Now if the accident occurred more than sixty days prior to the constitution of the Tribunal, the application would necessarily be beyond the period of sixty days of the occurrence of the accident and by force of Sub-section (3) of Section 110-A the Tribunal would, but for the proviso, be bound to reject the application. But the proviso could in such a case be invoked by the applicant and he could contend that he was prevented by sufficient cause from making the application in time and that the application should, therefore, be entertained notwithstanding the fact that it was presented after the expiry of the period of sixty days. I cannot assent to the proposition that the proviso can apply only in a case, where the Claims Tribunal was in existence and the applicant could make an application to the Claims Tribunal in time but was prevented by sufficient cause from doing so. The non-constitution of the Claims Tribunal would in my view be a sufficient cause which can be said to have prevented the applicant from making the application in time. There was some debate before me as to the true meaning of the word "prevented" but according to its plain natural meaning, I think it means nothing more than this that the applicant should not have been able to make the application in time by reason of an involuntary cause. If any involuntary cause operated so as to make it reasonably not possible for the applicant to make the application in time, it would be true to say that the applicant was prevented from making such application in time. The applicant could certainly tell the Claims Tribunal: "I was prepared and indeed very much wanted to make the application in time but could not do so as you were not in existence and I was therefore prevented by your non-existence from making the application in time". The Claims Tribunal can in such a case entertain the application under the proviso notwithstanding the expiry of the period of sixty days. It would, therefore, be seen that Sub-section (3) of Section 110-A and its proviso are not rendered

inapplicable in case of an application for compensation in respect of an accident occurring more than sixty days prior to the constitution of the Tribunal and if that be so, the whole substratum of the argument of Mr. M. C. Shah must disappear. It may also be noticed that in any event, even on the construction suggested by Mr. M. C. Shah, Sub-section (3) of Section 110-A and its proviso would operate in relation to an application for compensation in respect of an accident occurring within sixty days immediately preceding the constitution of the Tribunal. Indisputably in such a case it would be possible to make the application to the Claims Tribunal within sixty days of the occurrence of the accident and if the application is so made, the Claims Tribunal would be bound to entertain it. If the application is not made within sixty days of the occurrence of the accident and the applicant was prevented by sufficient cause from making the application in time, the applicant can invoke the proviso and ask the Claims Tribunal to entertain the application notwithstanding the expiration of the period of sixty days. On a plain grammatical construction of the words used in Section 110-A Sub-section (3) and the proviso, Mr. M. C. Shah was not in a position to resist this conclusion. But his argument was that since the sub-section with the proviso was not applicable in relation to an accident occurring more than sixty days prior to the constitution of the Tribunal, it should equally be held to be inapplicable where the accident occurred within the period of sixty days prior to the constitution of the Tribunal. But this argument is clearly not a valid argument. The true meaning and effect of a section cannot be cut down by such an argument. As a matter of fact one might pose the question: If the Legislature brought within the ambit of the new remedy claims for compensation in respect of accidents occurring within sixty days immediately preceding the constitution of the Tribunal, why should the Legislature have left out of the ambit of the new remedy claims for compensation in respect of accidents occurring more than sixty days prior to the constitution of the Tribunal? The only answer which could possibly be given and was given by Mr. M. C. Shah was that the effect of construing the sections in such a manner would be to deprive the applicant of a vested right of action and such construction should not, therefore, be adopted by the Court. Mr. M. C. Shah submitted that the Court should construe the sections as inapplicable in a case where the accident occurred more than sixty days prior to the constitution of the Tribunal for in such a case the applicant could not possibly comply with the period of limitation set out in Section 110-A Sub-section (3) and his vested right of action which was alive at the date of coming into force of these sections would be destroyed. This argument raised the question of retrospectively of Section 110 and Section 110-A.

8. It is well-settled rule of construction that retrospective operation ought not to be given to a statute so as to affect vested rights unless that effect cannot be avoided without doing violence to the language of the enactment and that, except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights. But it is equally well-settled that this presumption against retrospective operation of a statute does not apply where the statute affects merely procedural rights as distinguished from substantive rights. As observed by the Supreme Court in *Anant Gopal Shorey v. State of Bombay*[2],

> "No person has a vested right in any course of procedure. He has only the right of prosecution or defense 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 other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective."

The law in force at the time of institution of the action, therefore, governs the procedure. Now it can hardly be disputed that the choice of forum and period of limitation are matters relating to procedure. Salmond in his famous book on Jurisprudence says:

> "Whether I have a right to recover certain property is a question of substantive law, for the determination and the protection of such rights are among the ends of the administration of justice, but in what Courts and within what time I must institute proceedings are questions of procedural law, for they relate merely to the modes in which the Courts fulfil their functions."

Apart from the authority of Salmond there are several decisions which affirm that the choice of forum and period of limitation are procedural matters. The leading case on the subject is ***S****oni Ram v. Kanhaiya Lal*[3]*,*where the Judicial Committee of the Privy Council approved the following statement of the law in *Shiv Shankerlal v. Soni Ram*[4]*,*

[2] AIR 1958 SC 915 [4] ILR 32 All 33 (43)

[3] ILR 35 All 227

> "...The law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding unless there is a district provision to the contrary."

Sulaiman, A. C. J. following this decision of the Privy Council held in *Baijnath v. Dulari Hajjam*[5]*,* that a rule of limitation is a rule of procedure and, unless something special in it justifies a contrary inference, governs all proceedings from the moment of its enactment, even though the cause of action may have accrued before the rule came into existence. The learned Acting Chief Justice also held in *Hazari v. Mt. Martula*[6]*,* that no one has any vested right in the choice of any particular forum and observed:

> "It seems to us that a right of action is something different from the choice of the forum. There may be a vested right of action when the cause of action has accrued before the old Act has been altered, but there can be no vested right in the choice of a particular forum. If the Legislature has thought fit to deprive the Civil Court of its jurisdiction to entertain suits of a particular nature, a plaintiff cannot compel the Civil Court to hear his suit merely because his cause of action had accrued before the new Act depriving the Civil Court of its jurisdiction was passed. The choice of forum is a matter of procedure and not a substantive right, and in most cases a new Act would have a retrospective effect so far as the choice of forum is concerned. The analogy of a new Act not affecting a pending

action does not apply."

It is, therefore, clear that the choice of forum and period of limitation - are matters relating to procedure and they are governed by the law in force at the date of the institution of the action.

9. But this rule is subject to one important qualification and it is that where the retrospective application of a statute prescribing the period of limitation would destroy vested right of action, or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively. The Judicial Committee of the Privy Council in *London and Delhi Sank v. Orchard*[7], in rejecting the literal construction which had been put on Sections 20 and 21 of Act XIV of 1859 observed:

> "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. Their Lordships are of opinion that such a construction would be contrary to the intention of the Legislature."

This principle was applied by a Division Bench of the Bombay High Court in *Khushalbhai v. Kabhai*[8], In that case subsequent to the institution of the plaintiffs' suit, one of the defendants died and his son, as his legal representative, was made a defendant in his stead. The new defendant inter alia objected that his father had been dead more than

[5]ILR 50 All 865 [7]4 Ind. App. 127
[6] AIR 1932 All 30. [8]6 Bom. 26

six months before the application of the plaintiffs to make him a
defendant, and that, therefore, the suit should be held to be abated, as provided by the last clause of Section 368 of the Code of Civil Procedure X of 1877 and Article 171B of the Limitation Act XV of 1877, which prescribed a period of sixty days within which an application should be made to have the representative of a deceased defendant made a defendant to the suit. Both the last clause of Section 368 of the Code of Civil Procedure and Article 171B of the Limitation Act were introduced by the Amending Act XII of 1879. When the Amending Act XII of 1879 was passed the original defendant had been dead for more than six months. The question arose whether the application of the plaintiffs which was made more than six months from the date of death of the deceased defendant was barred by time and the suit should, therefore, be held to have abated. The Bombay High Court held that the provisions of Article 171B should not be given retrospective effect for the effect of doing so would be to destroy the vested right of the plaintiffs to have the representative of a deceased defendant made a defendant to the suit. Melvill, J. speaking on behalf of the Division Bench observed:-

> "Similarly, in the present case, we think that Article 171B, Schedule II, of Act XV of

> 1877, ought not, if possible, to be retrospectively construed. When that Article was introduced into the statute of limitation by Act XII of 1879, the deceased defendant had been dead for six months, and it was, therefore, impossible for the plaintiffs to comply with the requirements of the Article, namely, that an application to have the representative of a deceased defendant made a defendant should be presented within sixty days from the date of the defendant's death. Consequently, to put a retrospective construction upon the Article would be to deprive the plaintiffs absolutely of the right which they previously had, and which all plaintiffs subsequently had, to revive their suit, and this would be an injustice which cannot be presumed to have been within the intention of the Legislature."

The same principle was applied by a Full Bench of the Madras High Court in *Rajah of Pittapur v. Venkata Subba Rao*[9], In that case Kumaraswami Sastriyar J., who was one of the Judges subscribing to the majority view summarized the principle in the following words:

> "The correct rule seems to me to be that though laws affecting limitation might abridge or enlarge periods of limitation in cases of suits or causes of action which were alive at the date when the new enactment came into force and which under the old law would expire after wards, the change cannot unless there is a clearly expressed intention to the contrary either by apt words in the enactment or otherwise, be retrospective so as to destroy rights of suits which were alive on the date."

The learned Judge drew a distinction between a case where a period of limitation is merely abridged and a case where such abridgment has the effect of destroying the right of action which is a vested right. Where the period of limitation is abridged by a new statute, the abridged period of limitation must govern an action instituted after the coming

[9] ILR 39 Mad 645

into force of the statute but if the effect of applying the abridged period of limitation to a cause of action arisen before the statute is to make it impossible to exercise the vested right of action, the statute must be construed as inapplicable to such right of action unless the legislative intent is clear that such vested right of action was intended to be destroyed. The same view was also taken by a Full Bench of the Calcutta High Court in *Gopeshwar Pal v. Jiban Chandra Chandra*[10], The Full Bench in that case laid down that a right of action is a vested right and though a period of limitation for enforcement of such right of action may be abridged by an Amending Act, where the application of the Amending Act makes it impossible to exercise such vested right of action, the Amending Act should be construed as not applicable to such cases. It is, therefore, clear that where a period of limitation prescribed by a statute is such that if held to be applicable to a right of action arisen prior to the coming into force of the statue, it would make it impossible to enforce the right of action, the statute must be construed as inapplicable to such right of action. The amended period of limitation must be held to be not applicable to case where its provisions cannot be obeyed, for otherwise the effect would be to destroy a vested right of action and such injustice could not be presumed to have been intended by the Legislature.

10. This principle was strongly relied upon by Mr. M. C. Shah in support of his contention that Sections 110 and 110A must be held to be inapplicable to a claim for compensation in respect of an accident occurring more than sixty days prior to the constitution of Claims Tribunal for in such a case it would be impossible to comply with the period of limitation laid down in Section 110 Sub-section (3) and the vested right of action of the applicant would be destroyed. Now there can be no doubt that this argument would have been unanswerable if the proviso to Section 110A Sub-section (3) had not been enacted by the Legislature. But the Legislature has by enacting the proviso provided that the Claims Tribunal may entertain the application after the expiry of the period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. The applicant in an application for compensation in respect of an accident occurring more than sixty days before the constitution of the Tribunal can, therefore, contend before the Claims Tribunal that the application should be entertained notwithstanding the expiration of the period of sixty days on the ground that the applicant was prevented by the non-constitution of the Tribunal from making the application in time. The vested right of action of the applicant can thus be enforced by an application before the Claims Tribunal and reading the sections as applicable to a claim for compensation in respect of such accident would not have the effect of destroying the vested right of action. It is no doubt true that the applicant cannot enforce such vested right of action unless the Claims Tribunal is satisfied that the applicant was prevented by sufficient cause from making the application in time, but that condition would not make such vested right of action any the less enforceable. Mr. M. C. Shah, however, urged that the enforceability of the vested right of action would in such cases be dependent on the discretion of the Claims Tribunal and that surely could not have been the intention of the Legislature. But the short answer to this argument is that the discretion of the Claims Tribunal is not an arbitrary or capricious discretion but is a discretion guided and conditioned by judicial principles. It is not left to the whim and fancy of the Claims Tribunal to decide whether to entertain the application or not despite the expiration of the period of sixty days. The Claims Tribunal is bound to entertain the application when it is made out by the applicant that he was prevented by sufficient cause from making the

[10] ILR 41 Cal 1125

application in time and non-constitution of the Claims Tribunal being a sufficient cause preventing the applicant from making the application, the applicant can certainly claim as a matter of right that he was prevented by sufficient cause from making the application in time and that the application should, therefore, be entertained. The construction which I am inclined to place on Sections 110 and 110A therefore does not offend against the principle which denies retrospective operation to a statute of limitation affecting vested rights of action. The Legislature having realized the hardship or injustice which might result from retrospective operation of the period of limitation in Section 110 Sub-section (3) has provided against it by enacting the proviso to that sub-section.

11. Some reliance was placed on Section 110-F but I fail to see how that section can at all assist

in arriving at the true scope and ambit of the jurisdiction of the claims Tribunal. It is clear on a plain reading of Section 110-F that the jurisdiction of the Civil Court is excluded only when the Claims Tribunal is constituted for the area in question and when the Claims Tribunal is so constituted, the Civil Court ceases to have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal". The words "which may be adjudicated upon by the Claims Tribunal" indicate that the ambit of exclusion of the jurisdiction of the Civil Court is coextensive with the ambit of the jurisdiction of the Claims Tribunal. What is within the cognizance of the Claims Tribunal is taken out of the jurisdiction of the Civil Court. That is the only function discharged by Section 110-F. That section does not, therefore, throw any light on the question as to what is the precise extent of the jurisdiction of the Claims Tribunal and what are the claims which fall within its cognizance. That is a question which depends on the true interpretation of Sections 110 and 110-A and as I have pointed out above, it is clear on a true construction of those sections that claims in respect of all accidents irrespective as to when they occurred, whether prior or subsequent to the constitution of the Claims Tribunal, fall within the cognizance of the Claims Tribunal and the jurisdiction of the Civil Court is excluded in respect of such claims. This view which I am taking on a construction of the language of Sections 110 to 110-F is supported by decisions of at least three High Courts, namely *Abdul Mahomed v. Peter Leo D 'Mellow*[11]*, Unique M & G. I. Co. v. Kartar Singh*[12]*, V.G.K. Bus Service v. H.B. Sethna*[13]*,* and *Palani Ammal v. Safe Service Limited*[14]*,* It is no doubt true that a contrary view has been taken in two decisions of the Madhya Pradesh High Court, one in *Khatumal v. Abdul Qadir*[15]*,* and the other in *Sushma Mehta v. C.P.T. Services Ltd*[16]*.,* but these decisions proceed on the assumption that the right to file a suit in a Civil Court which the injured person or the legal representatives of a deceased person had under the law as it stood prior to the introduction of Sections 110 to 110-F was a vested right and these sections should not be so construed as to affect such vested right. This assumption is clearly unfounded for though a right of action is undoubtedly a vested right, the choice of forum in which the right of action should be exercised is always a matter of procedure and there can be no vested right in any particular forum. I cannot, therefore, accept these decisions of the Madhya Pradesh High Court as laying down the correct law.

12. Whilst it is true that on a proper construction of Sections 110 and 110-A the Claims Tribunal has jurisdiction to entertain claims for compensation in respect of all accidents,

[11] 66 Bom LR 551 [13] AIR 1965 Mad 149 [15] AIR 1961 MP 295
[12] AIR 1965 Pun 102 [14] ILR 1965 (2) Mad 145 : 1966 ACJ 19 [16] AIR 1964 MP 133

irrespective as to when they occurred, whether prior to or subsequent to the constitution of the Claims Tribunal, I must make it clear that if prior to the constitution of the Claims Tribunal a suit has already been instituted in the Civil Court for damages against the wrongdoer, such pending action would not be affected by the constitution of the Claims Tribunal. It is well-settled that so long as a suit is not filed, no one has a vested right in any particular forum but once the suit is filed, the right to carry it to its legitimate conclusion including appeal or appeals becomes a vested right and the provisions of a statute cannot be construed as affecting such vested right unless the language of the statute clearly compels such conclusion. Not only there is nothing in

the present group of sections to show that pending actions were intended to be affected by the constitution of the Claims Tribunal but on the contrary there is the clearest indication in Section 110-F that pending actions are not affected. Section 110-F provides that 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. The bar is against the Civil Court entertaining any question relating to any claim for compensation after the Claims Tribunal is constituted for the area. But if the question is already entertained and that would be when the suit is instituted, the bar would not apply and the Civil Court can proceed to decide the question. It may also be noticed that there is no provision in the Act for transfer of pending suits from the Civil Court to the Claims Tribunal. If, therefore, a suit has already been instituted prior to the constitution of the Claims Tribunal, such suit would not be affected and the Civil Court would be entitled to proceed with it.

13. It must, therefore, be concluded that the Claims Tribunal was right in taking the view that it had jurisdiction to entertain the application though it was in respect of an accident which occurred more than sixty days prior to the constitution of the Claims Tribunal. Mr. M. C. Shah on behalf of the insurer urged that the Claims Tribunal was in error in exercising its power under the proviso to Section 110 Sub-section (3) and entertaining the application despite the expiration of the period of sixty days from the occurrence of the accident. But this argument is without merit for as pointed out by me above, the non-constitution of the Claims Tribunal up to 4th July 1963 constituted sufficient cause preventing the applicants from making the application in time and the Claims Tribunal was, therefore, justified in entertaining the application in exercise of its power under the proviso to Section 110-A Sub-section (3). These were the only contentions urged before me and since there is no substance in them, the Special Civil Application preferred by the owner of the motor truck and the Civil Revision Application preferred by the insurer fail and are dismissed. There will be no order as to costs of both these applications.
Applications dismissed.