

MADHYA PRADESH HIGH COURT

Khatumal Ghanshamdas

Vs.

Abdul Qadir Jamaluddin

Misc. Petn. No. 86 of 1960
(P.V. Dixit, C.J. and K.L. Pandey, J.)

25.01.1961

JUDGMENT

Dixit, C.J.

1. This is an application under Articles 226 and 277 of the Constitution of India for the issue of a suitable direction restraining the Claims Tribunal constituted under Section 110 of the Motor Vehicles Act, 1939, from adjudicating upon a claim for compensation made by the opponent No. 1 Abdul Qadir in respect of a bodily injury caused to him by a truck owned by the petitioner and driven by the opponent No. 2 Lachhmandas on 24th August 1958.

2. The accident occurred on 24th August 1958 in Bhopal. The State Government constituted a tribunal for this area under Section 110 of the Act by the Home Department's Notification dated the 7th August 1959. The Tribunal was not in existence before this date. Before the constitution of the Tribunal, the opponent Abdul Qadir made an application on 20th August 1959 in the Court of the Additional District Judge Bhopal, for being allowed to sue as a pauper for claiming the relief of compensation of Rs. 41,080/- on account of the injury caused to him from the petitioner and the opponent Lachhmandas. During the pendency of an enquiry into his pauperism, Abdul Qadir preferred a claim for compensation before the Tribunal on 10th September 1959. He also applied under the proviso to Sub-Section (3) of Section 110-A for condonation of the delay in filing the application for compensation. Before the Tribunal, the petitioner raised the objections that the claim for compensation being one arising out of an accident occurring before the constitution of the Tribunal could not be entertained by the Tribunal, and that there was no ground for condonation of the delay in the filing of the application for compensation. Both these objections were

overruled by the Tribunal.

3. The question raised in this petition as to the competency of the Tribunal to entertain Abdul Qadir's claim for compensation turns on Sections 110(1) and 110-F of the Act. Sub-Section (1) of Section 110 empowers the Government to constitute by a notification 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 Section 110-F is 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."

It is clear from these provisions, and especially from the opening words of Section 110-F "Where any Claims Tribunal has been constituted for any area", that civil Court's jurisdiction to entertain a claim for compensation on account of a motor vehicle accident involving the death of, or bodily injury to, a person is excluded only on the constitution under Section 110 of a Claims Tribunal for the area concerned. There can be no doubt that a claim for compensation in respect of accidents occurring after the constitution of the Tribunal can be entertained by the Tribunal alone. The question here is whether the Tribunal has jurisdiction to entertain a claim in respect of an accident taking place before its constitution. This involves the question whether Section 110-F has retrospective operation so as to apply even to a claim for compensation pending in a civil Court.

4. Now, it cannot be denied that where no Tribunal is constituted under Section 110 a claim for compensation spoken of in Section 110(1) can be made only in a Civil Court. Section 9 C.P.C. provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred. When a Tribunal is constituted under Section 110, then the jurisdiction of the civil Court is expressly ousted under Section 110-F. The question is whether the express ouster of the civil Court's jurisdiction provided by Section 110-F is

retrospective in its character. It is a well settled rule of construction of statutes that no statute, unless it be a statute dealing with procedure only, be construed to have a retrospective operation unless it so provides either expressly or by a necessary implication or intendment, and that a Statute is not to be construed to have greater retrospective operation than its language renders necessary. When a statute deprives a person of his right to sue or affects the power or jurisdiction of the Court in enforcing the law as it stands, its retrospective character must be clearly expressed. There is no express provision in Section 110-F making it retrospective so as to apply to claims for compensation in respect of accidents occurring before the constitution of the Claims Tribunal. The language of Section 110-F is also of such as to compel us to hold that the necessary implication or intendment of that provision is that civil court's jurisdiction for entertaining the claims of compensation in respect of accidents occurring before the constitution of the Tribunal is excluded. Section 110-F says that "where any Claims Tribunal has been constituted for any area, no civil Court shall have jurisdiction to entertain any question"The use of the word "entertain", is significant. That word means 'to receive and take into consideration'. The plain meaning of the expression "no civil court shall have jurisdiction to entertain is that no civil Court shall have jurisdiction to entertain a suit in its inception. Section 110-F does not use the word "maintain" or "continue with" and does not say that no civil Court shall have jurisdiction to maintain or continue with any question relating to any claim for compensation. What Section 110-F prohibits the Civil Court from doing after the constitution of a Claims Tribunal is the entertainment of a claim at the very inception and not the taking into consideration of any claim already made before it. It follows, therefore, that Section 110-F has no applicability whatsoever to the claims pending in civil Courts at the time of the constitution of the Claims Tribunal.

5. That Section 110-F cannot be given retrospective operation so as to affect the claims pending in civil Courts on the date of the constitution of the Claims Tribunal because of the use of the word "entertain" becomes clear from some English decisions. In *Beadling v. Goll*,¹ the Court of Appeal in England held that Section 1 of the Gaming Act, 1922, which provided that "no action for recovery of money under Section 2 of the Act shall be entertained in any court", was not retrospective in regard to the action which had been commenced before the passing of the Act and in which judgment had not been given when the Act came into force. It was held that the words "no action shall be entertained" indicated that the intention of the legislature was that the Act should not be retrospective. The Court of Appeal referred to its earlier

decision in *Smithies v. National Association of Operative Plasterers*,² in which Section 4 of the Trade Disputes Act, 1906, which enacted that "an action of tort against a trade union shall not be entertained by any court", was interpreted as not preventing a Court from disposing of an action begun before the passing of that Act. The decision in *Henshall v. Porter*,³ goes further. In that case it was held that Section 1 of the Gaming Act, 1922, did not prevent the bringing of an action under the repealed section, of the older Act even after the date when the repealing Act came into force in respect of a cause of action which had arisen before that date. On this authority it would seem that the civil Court is not prohibited from entertaining a claim for compensation in respect of an accident occurring before the constitution of the Tribunal even though no claim had been instituted until the Tribunal's constitution. The extreme instance of strong leaning against giving retrospective effect to Provisions affecting the power or jurisdiction of a Court is to be found in *Moon v. Burden*,⁴ That was a case in which the Court of Ex chequer considered the question whether Section 18 of the Gaming Act, 1845, was retrospective. That section contained the words "No suit shall be brought or maintained in any Court of law or equity for recovery of any sum of money" etc. The words. "or maintained" would ordinarily have been held to be applicable to a pending suit. Nevertheless has Court did not apply them to suits which had been-instituted though not decided before the Act came into force. On these authorities it must be held that Section 110-F does not affect the claims for compensation pending in a civil Court in respect of accidents taking place before the constitution of the Tribunal.

6. The question whether after the constitution of the Claims Tribunal the Civil Court's jurisdiction to entertain a claim for compensation in respect of an accident taking place before the constitution of the Tribunal is taken away does not arise in this case. Here the accident occurred before the Tribunal was constituted and the claim for compensation was also made in the Court of the District Judge, Bhopal, before the constitution of the Tribunal. The respondent Abdul Qadir no doubt filed an application under Order 33, Rule 1 C.P.C. of leave to sue as pauper. But having regard to Rule 8 of Order 33 C.P.C., the application under Order 33; R. 1 was nothing but an initiation of a claim for compensation in a civil Court, The proceedings in the claim were thus pending in the Civil Court when the Claims Tribunal was constituted in August 1959. The Tribunal had, therefore, no jurisdiction, whatsoever to entertain the opponent Abdul Qadir's claim. If, as we think, the Claims Tribunal had no jurisdiction to entertain Abdul Qadir's application, for compensation, the question, of condonation by

the Tribunal of any delay in the making of the application for compensation before the Tribunal could not arise. It is only if the Tribunal had jurisdiction to entertain the application that the question whether it should condone the delay would have arisen for consideration."

7. For these reasons, this petition is allowed, and the Claims Tribunal, Bhopal, is restrained from entertaining and adjudicating upon the claim for compensation preferred by the opponent Abdul Qadir. The civil Court in which Abdul Qadir has preferred the claim shall now proceed with it according to law. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of Security deposit shall be refunded to the petitioner.

Writ petition allowed.

Cases Referred.

1. (1922) 39 TLR 128
2. (1909) 1 KB 310
3. (1923) 2 KB 193
4. (1848) 2 Ex 22 : 76 RR 479