MADHYA PRADESH HIGH COURT

Kumari Sushma Menta

Vs.

Central Provinces Transport Services Ltd

Misc. (First) Appeal No. 58 of 1961, decided on 24.4.1962., from order of M.P. Motor Accidents Claims Tribunal (Addl. S.J.), Jabalpur
(T.C. Shrivastava and S.P. Bhargava, JJ.)

19.4.1961. 24.4.1962

JUDGMENT

Shrivastava, J.

1. This order governs the disposal of three other miscellaneous appeals Nos. 59, 60 and 86, all of 1961, also. All these appeals are filed by the applicants in. petitions which were filed before the Motor Accidents claims Tribunal, Jabalpur, for recovery of compensation, in respect of personal injuries caused to them in motor accidents. A preliminary objection regarding the maintainability or the applications was raised and the Court upheld the objection and returned the plaint in each case for presentation to the Civil Court. It is against these orders that the four appeals are directed.

2. The dates on which the accidents occurred and the claims were filed are given below :

Case No.	Date of accident	Date of filing claim
M.A. No. 59/61 and M.A. No. 60/61	18-9-1959	12-11-1959
M.A. 58/61	12-6-1959	29-9-1959
M.A. 86/61	24-1-1959	28-9-1959

3. Sections 110, 110-A to 110-F were introduced in the Motor Vehicles Act, 1939, by the Motor vehicles (Amendment) Act, 1956 (100 of 1956) providing for the constitution of one or more Motor Accidents Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving death or bodily injury. On 18-9-1959 a Notification was published in the Madhya Pradesh Gazette bearing the date 7-8-1959 under which a Tribunal was constituted at Jabalpur

for several districts including the places where the accidents in the four cases before us occurred. It will be noticed from the dates of accidents and the dates of filing the claims before the Tribunal as given in the preceding paragraph that in the first two cases the accident had occurred after the date of the Notification but before its publication and in the other two cases the accidents occurred before the constitution of the Tribunal.

4. The only question which arises in these appeals is whether the petitions lay before the Tribunal, it would be convenient to give the material provisions introduced by the Amendment of 1956. They are as below :

> 110. (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as 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.
> 110-A (1)
> (2).......
> (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.
> 110F. Where any Claims Tribunal has been constituted for any area, no Civil Court shall nave 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 snail be granted by the Civil Court."

5. Sri R.S. Dabir for the appellant contends that the Tribunal has jurisdiction to entertain an application irrespective of the fact whether the accident occurred before or after its constitution. In any case, he contends that the Tribunal has jurisdiction to entertain applications in respect of prior accidents even though the Civil Court may also have jurisdiction to try a suit for damages or compensation in respect of such

accidents. Shri K.L. Gupta for the respondents, on the other hand, contends that the jurisdiction of the Tribunal does not extend to such cases, as the amendment made in 1956 has no application to accidents which occurred before the constitution of the Tribunal and the only remedy for claiming compensation in such cases is to file a civil suit.

6. Before we consider the respective contentions we may refer to the contention of Sri Dabir that the Tribunal was really constituted on 7-8-1959, which is the Gate or the notification as given in the Madhya Pradesh Gazette, dated 18-9-1959, on which it was published, Section 110 provides for the constitution of the Tribunal "by notification in the Official Gazette". In view of the express wordings of this section, it appears to us that the Tribunal cannot be constituted unless the notification is published in the Gazette. On general principles also this interpretation can fie supported, as the persons concerned must know that a Tribunal has been constituted; and this is possible only when the notification is published in the Gazette. Accordingly, we hold that the date of the constitution of the Tribunal is 18-9-1959. The position in all the four cases therefore is that the accidents had occurred before the constitution of the Tribunal. The general principles on the question of giving retrospective effect to legislation are not in dispute. It is well settled that no statute, unless it be a statute dealing with procedure, should be construed to have a retrospective operation unless it so provides either expressly or by necessary implication or intendment and that a statute is not to be construed to have a greater retrospective operation than its language renders necessary. As regards procedural laws Maxwell on The Interpretation of Statutes (Tenth Edition) observes on page 225 :

> "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 he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode. The remedy does not alter the contract or the tort; it takes away no vested right, for the defaulter can have no vested right in a state of the law which left the injured party without, or with only, a defective remedy."

7. The question of giving retrospective effect to legislation may be considered in the following four aspects. (i) where it affects the right proper; (ii) where it affects the right to bring a suit to enforce a right; (iii) where it affects a his which has been

already commenced; and (iv) where it relates to certain steps in working out the remedy. So far as the first and the fourth aspects are concerned, there is little doubt that in the first case the subsequent legislation cannot have any effect to destroy an existing substantive right without express words and in the fourth case no express words are necessary to give retrospective effect and the subsequent law applies to the pending action.

8. So far as the question of applicability of an enactment to suits filed before the enactment comes into force is concerned, the position is fairly clear that the subsequent law does not affect the pending suits, the position regarding the second point is not so clear; out the preponderance of view is that there is a vested right of cringing a suit and such a right cannot be taken away without express words. We shall refer to some of the decided cases which throw light on this controversy. In *Girdharilal Son and Co. v. Kappini Gowder,* [1] the question which came in for consideration was whether Section 69(2) of the Partnership Act, which creates a bar to the maintenance of an action by an unregistered firm, is applicable to a cause of action which accrued before the commencement of the Act if instituted after the 1st October 1933, that is, the date on which Section 69(2) came into force. Venkataramana Rao, J. was of the opinion that the condition of registration was merely a rule of procedure and hence concluded that the suit was not maintainable. Pandrang Row, J. held that the condition was not merely a rule of procedure and therefore Section 69(2) could not be given retrospective effect and could not act as a bar to the suit. The third Judge, Varadacharar, J. preferred to decide the case on the language of Section 74(b) and held that the remedy of suit was saved and Section 69(2) did not affect it. However, we may refer to Pandrang Row, J.'s opinion in which he observed :

> "That a right of action is a substantive right is not disputed; there is considerable authority in support of that position and it is not necessary to refer to the large number of cases which bear on the point. It is enough to mention in re, Joseph Suche and Co. Ltd., 1875-1 Ch D 48 and in re, Athlumney, 1898-2 QB 547."

The learned Judge also referred to *Henshall v. Porter,* [2]

9. The point was considered in some detail by the Federal Court in *United Provinces v. Mt. Atica Begum,* [3] We may refer to the following Observations of Sulaiman, J. :

> "Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so. It is a well recognized rule that statutes should, as far as possible be so interpreted, as not to affect vested rights adversely, particularly when they are being litigated. When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed. Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability. The learned Judge then referred to several English Decisions some of which are *Smithies v. National Association or Operative Plasterers,* [4] *Thistleton v. Frewer,* [5] and *Colonial Sugar Refining Co. v. Irving,* [6] The last case is the leading case on the rights of a litigant who as commenced an action before the change in law. The following observations of Lord Machaghten are very often quoted :
> "On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it so more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, to accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary internment."

Further :

> "To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal."

These observations, it would appear to us, apply with equal force when the remedy of a suit is replaced by a remedy in another tribunal.

10. In *Gopeshwar v. Jiban Chandra,* [7] a Full Bench of the Calcutta High Court, after referring to the 1905 AC 369 (supra), observed :

> "Equally is a right of suit, a vested right, and in *Jackson v. Woolly,* [8] the Court of Exchequer Chamber declined, in the absence of something putting the matter beyond doubt, to put on an Act a construction that would deprive any person of a right of action vested in him at the time of the passing of the Act. Williams, J., said :
> 'It would require words of no ordinary strength in the statute to induce us to say that it takes away such a vested right.'

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 plaintiff was thereby deprived of a right of suit vested in him at the date of the passing of the amending Act. Similarly, in *Gursaran Das v. Parmeshwari Charan,* [9] the following observations were made in respect of the right to bring a suit:

> "'So at the time when the new Section 139A was inserted in the Act their right to bring an action in the civil Court for a declaration that they are the occupancy raiyats of the land and for recovery of possession had already accrued. There is nothing in the Amending Act be 1920 to show that the Legislature intended to give the new Section 139A retrospective effect and to destroy the right which had already accrued prior to the section coming into force. The plaintiffs had a vested right to Institute the present suit in a Civil Court and they had acquired this right before the amendment came into force. Several other cases have been cited on the point; but we do not consider it necessary to refer to them. From the decisions which we have cited above, it is clear that any enactment which has the effect of destroying an existing right cannot be given retrospective effect without express words and this rule also extends to the remedy which a litigant has for obtaining relief by means of a suit.

11. That being the position, it is clear in the instant case that Section 110F in spite of the wide phraseology in which it is worded does not affect the right to file a suit in respect of a cause of action which had accrued before the constitution of the Tribunal. In *Khatumai V. Abdul Quadir,* [10] a Division Bench of this Court held that a sun Which had already been instituted is not affected by Section 110F. In discussing the question the learned Chief Justice went further and observed that "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 adding that "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". In another case, *Iqubal Prakash v. State of M.P.,* [11] it was held that a claim for compensation instituted affect the constitution of the Tribunal could be tried by the civil Court, as Section 110 F was not retrospective, the ground for the decision was that "to require a claimant to apply to the Tribunal within sixty days of the accident when the Tribunal itself did not exist within that period is to ask him to do the impossible".

12. The learned counsel for the appellant nest submitted that even assuming that the civil Court has jurisdiction to entertain the claim, the Tribunal had concurrent jurisdiction to decide the amount of compensation in respect of causes of action which accrued before the constitution of the Tribunal. He relied upon the observations of Willes, J. in *Wolverhampton New water-works Co. v. Hawkesford*[12]

> "There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law : there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of case is, where the statute gives the right to sue, merely, but provides no particular form the remedy; there the party can also proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it .. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class".

13. It is true that the remedy of filing a suit for damages for tort existed prior to the amendment of the Motor Vehicles Act in 1956. In view of the dictum relied upon the remedy provided before the Tribunal by ins amending Act would be in addition to the remedy of suit if nothing else was mentioned to the contrary in me newly introduced Section 110F. The provision in that section is that "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". This sentence makes it

clear that the two remedies cannot exist side by side. As soon as it is held that the Claims Tribunal has jurisdiction to entertain the claim of the appellants, necessarily the jurisdiction of the civil Court is ousted. As we nave held that the civil Court has jurisdiction to try claims in respect of earlier causes of action, it is not possible to hold that the Tribunal also has jurisdiction to try those claims in view of this express provision in Section 110F. The decisions of this Court to which reference has been made by us earlier undoubtedly decide only the question that a civil suit is maintainable to claim compensation in respect of earlier accidents and they do ret decide the reverse of the proposition, namely, whether the Tribunal has jurisdiction in such cases. However, those decisions read with the specific provision in Section 110F lead to the unmistakable conclusion that the jurisdiction of the Claims Tribunal is excluded.

14. This was the view which was taken by a Bench of this Court in *Somaru Mistri v. Claims Tribunal,* [13]It has expressly held in that case that the Tribunal has no jurisdiction to entertain claims for compensation in respect of injuries caused before the constitution of the Tribunal. The decision was given rejecting the miscellaneous petition summarily in motion hearing; but that does not detract from the authority of the decision.

15. In view of what we have said above, Miscellaneous Appeals Nos. 58, 59 and 86 are dismissed with costs. Hearing fee is fixed at Rs. 100/- in each case.

16. In Miscellaneous Appeal No. 60 of 1961, an additional point on the ground of *res judicata* is raised, which will be dealt with in the order in that case.

Appeals dismissed.

Cases Referred.

1. AIR 1938 Mad 688
2. 1923-2 KB 193
3. AIR 1941 FC 16
4. 1909-1 KB 310, 1923-2 KB 193
5. (1862) 31 LJ Ex 230
6. 1905 AC 369.

7. AIR 1914 Cal 806
8. (1858) 27 LJQB 448
9. AIR 1927 Pat 203
10. 1961 MPLJ 587: AIR 1961 Mad Pra 295
11. 1962 MPLJ 465
12. (1859) 6 C.B. NS. 336 at p. 356
13. Misc. Petn. No. 35 of 1961 D/-8-2-1961 (MP)