

MADHYA PRADESH HIGH COURT

Jaswant Rao

Vs.

Kamlabai

Misc. Appeal No.254 of 1989
(A.G. Quareshi and S.D. Jha, JJ.)

21.06.1990

JUDGMENT

S.D.Jha, J.

1. This order will dispose of the appellant's application for exemption from depositing the amount of Rs. 25000/- (I.A. No.241 /90) and respondent's objection under proviso to Section 173(1) of the Motor Vehicles Act, 1988, as to deposit of Rupees 25000/- or 50% of the amount so awarded, whichever is less, in the manner directed by this Court.

2. At the hearing of applications Sri N.S. Purohit, for the appellant and Shri R.C. Kochatta, for the respondents-objectors, were heard.

3. Shri Purohit mainly relying on the decisions of this Court in *Lakhmichand v. Mitthu*,¹ *Chuluram v. Bhagatram*² *Sitaram v. Chaturao*,³ and *Dattatray v. Mangal*,⁴ submitted that the appeal under the old Motor Vehicles Act, 1939, did not require any such deposit being made and Section 217 of the Motor Vehicles Act, 1988, providing for repeal and savings does not show that the new provision is to apply to appeal against award in respect of which claim was presented before the present Act was brought into force. On the other hand sub-section (4) shows that mention of particular matter in the section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1987, with regard to the effect of appeals. Sri Purohit, therefore, submitted that predeposit of amount under the proviso to Section 173(1) of the Motor Vehicles Act, 1988 may not be insisted upon and appeal rejected on that count.

4. Sri Kochatta, however, strongly relying on a Division Bench decision of Allahabad High Court in *Oriental Insurance Co. Ltd., Haldwani v. Dhanram Singh*,⁵ submitted that this decision was a complete answer to Shri Purohit's contention. Allahabad High Court relying on decisions referred to therein in the judgment in paras 14 and 15 held as under:-

"From the above decision two things are clear i.e. only substantive rights possessed by a party is of a right to appeal and secondly the forum where the appeal will lie and the limitation to do so are all matters of procedure which are not saved by the repealing Act."

"A look at Section 217 of the new Act in the light of the decision referred to earlier it will be noticed that there is no specific provision to save the right of the appellant under the old Act but in view of Section 6 of the General Clauses Act which have been made applicable it would be proper to assume that in cases decided before the repealing Act came into force the right of appeal will survive and can be enforced by lodging an appeal but this right of filing of appeal must be availed only in the manner provided under the repealing Act i.e. as required by Section 173 of the new Act."

Before dealing with merits of the arguments of the parties material portions of Section 217 of the Motor Vehicles Act, 1988 may be reproduced

S.217. Repeal and savings.-

(1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereafter in this section referred to as the repealed enactments) are hereby repealed.

(4) The mention of particular matters in this case shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals. (Sub-sections (2) and (3) are not material for the present order).

From the foregoing it would be seen that the repealing provision does not prejudice or affect the right of appeal which a party may have had under the repealed Act.

5. Under Section 110-D of the repealed Act a person aggrieved by an award of Claims

Tribunal subject to amount in dispute in the appeal being not less than Rs. 2000/- had an unrestricted right of appeal without any condition as to pre-deposit of the awarded amount. In *Lakhmichand v. Mitthu (supra)* this Court was dealing with Section 96(4) of Civil Procedure Code inserted by Section 33 of Civil Procedure Code (Amendment Act, 1976). Newly inserted provision barred appeal except on question of law from a decree in any suit of the nature cognizable by Court of Small Causes when the amount or value of the subject-matter of the original suit did not exceed Rs. 3,000/-. Relying on four Division Bench cases of this Court in *Chuluram v. Bhagatram (supra)*; *Shesh Kumar v. Kesheo Narayan*,⁷ *Sitaram v. Chaturao*, (1981 Jab LJ 171) (*supra*) and *Dattatray v. Mangal (supra)* as also *Kashibai v. Mahadu*,⁷ Sri G. P. Singh, C.J. observed as follows:-

" It is well settled that the right of appeal accrues to the parties to the suit on the date of the institution of the suit.

6. In order to see whether rights or liability under the repealed law have been put to an end by the new enactment, the proper approach is not to enquire if the new enactment has by its new provision kept alive rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. Absence of saving clause in a new enactment preserving the right of liabilities under the repealed law is neither material nor decisive of the question. *Jayantilal Amratlal v. Union of India*,⁸ relied on.

7. In *State of Bombay v. Supreme General Films Exchange Ltd.*,⁹ relying on a series of earlier decisions on the point it has been held (at pp.984-985 of AIR):-

"It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."

8. In *Collector of Customs and Excise, Cochin v. A.S. Bava*,¹⁰ the Supreme Court reiterated its earlier observations in *Hossein Kasam Dada (India) Ltd. v. State of M.P. (supra)* in the following terms (at p. 16 of AIR) :

"There can be no doubt that the new requirement touches the substantive right of appeal vested in the appellant. Nor can it be overlooked that such a requirement is calculated to interfere with or fetter, if not to impair or imperil, the substantive right. The right that the amended section gives is certainly less than the right which was available before. A provision which is calculated to deprive the appellant of the unfettered right of appeal cannot be regarded as a mere alteration in procedure. Indeed the new requirement cannot be said merely to regulate the exercise of the appellant's pre-existing right but in truth whittles down the right itself and cannot be regarded as a mere rule of procedure."

From the foregoing it would appear that the requirement as to pre-deposit of awarded amount as a condition of appeal would not appear to be a matter of mere procedure. 8A. Section 217 of 1988 Act reproduced above or Section 173(1) *ibid* does not show that old rights available to a party under Section 110-D are taken away.

9. As already observed under Section 110-D of the Motor Vehicles Act, 1939 a party unless the case fell under sub-clause (2) i.e. the amount in dispute was less than Rs. 2000/- had an unfettered right of appeal to High Court without any condition as to pre-deposit of the awarded amount. This right has not been taken away by Section 217 or 173(1) of the Motor Vehicles Act, 1988. On the other hand sub-section (4) of Section 217 shows that application of Section 6 of General Clauses Act, 1897 to the situation is saved. Having regard, therefore, to the ratio of M. P. High Court decision in *Lakhmichand v. Mitthu*,¹¹ and Supreme Court decisions referred to above, requirement as to payment of Rupees 25,000/- or 50% of the amount awarded whichever is less required under proviso to Section 173(1) of the 1988 Act cannot be insisted upon when the claim for compensation was presented before coming into force of the 1988 Act.

10. Respondent's objection for rejecting the appeal for non-compliance with proviso to Section 173(1) (I.A. No.241/90) is, therefore, rejected. The appeal even without compliance of the proviso is held maintainable. In view of this order I.A. No.241/90 appellant's application for exemption from depositing the amount of Rs. 25000/- is dismissed as in fructuous.

11. Appellant's application for stay of I.A. No.2399/90 shall now be set down for

hearing.

Petition allowed.

Cases Referred.

1. AIR 1984 Mad Pra 112
2. AIR 1980 Mad Pra 16
3. 1981 Jab LJ 171
4. AIR 1983 Mad Pra 82
5. AIR 1990 All 30
6. 1980 MPLJ 335
7. AIR 1965 SC 703
8. AIR 1971 SC 1193
9. AIR 1960 SC 980
10. AIR 1968 SC 13
11. AIR 1984 Mad Pra112