

RAJASTHAN HIGH COURT

Yadav Motor Transport Co.

Vs.

Jagdish Prasad

Civil Revn. No. 553 of 1966

(L.N. Chhangani, J.)

13.03.1969

ORDER

L.N. Chhangani, J.

1. This is a defendants' revision and is directed against the order of the Senior Civil Judge, Baran dated 26th July 1966 deciding issue No. 6 in favour of the plaintiff-respondent and overruling the defendants' objections as to the maintainability of the civil suit. The facts giving rise to revision application are briefly these : On 15th March 1964 the plaintiff-respondent Jagdish Prasad, while going on a cycle from Kota on the Kota-Jhalawar road was knocked down at about 8 A. M. near 6th furlong of 7th mile by motor truck No. RJR 977 and received some injuries. The truck was registered in the name of M/s. Yadav Motor Transport Co., Nasirabad, the defendant-petitioner No. 1 and the defendant-petitioner No. 2 is said to be one of the partners of the Yadav Motor Transport Co. Defendant-petitioner No. 3 Ghasiram is said to be the driver of the truck. At the time of the accident there was no Motor Accidents Claims Tribunal (hereinafter referred to as the Claims Tribunal) in existence for the area in which the accident took place. However, Government of Rajasthan, in the exercise of the power conferred by Section 110 of the Motor Vehicles Act, 1939 issued notification dated 9th November 1964 constituting Motor Accidents Claims Tribunals for the areas specified in column 3 of the notification. The District and Sessions Judge, Kota was constituted a Tribunal for districts Kota, Bundi and Jhalawar. It was after the constitution of this Tribunal that the plaintiff-respondent Jagdish Prasad filed a suit in the court of the District Judge which was transferred to the court of the Senior Civil Judge on 12th March, 1965, claiming an amount of Rs. 70,000/- as compensation. The defendants resisted the suit and inter alia pleaded that the Civil

Court had no jurisdiction to try the suit after the constitution of the Motor Accidents Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939.

The trial court framed a number of issues. Issue No. 6 covered the defendants' objection as to the maintainability of the suit and reads as follows :

'Whether this court has jurisdiction to entertain this suit' ?

The trial Judge referred to the cases cited before him by the counsel for the parties and then emphasised the fact : "A claim is to be filed before the Tribunal within two months from the accident, therefore, by the time the Tribunal was constituted no time remained to file this instant claim before the Tribunal as the period of two months from 15th March 1964 had already expired." The judge thereafter observed : "It shows that the bar under Section 110-F does not apply to the facts of the instant case as it was a question relevant to any claim for compensation which may be adjudicated upon by the "Claims Tribunal." Without commenting upon the cases he observed : "None of the above cases is on all fours with the case in hand and none of the cases has decided to oust the jurisdiction of the civil court. The likely anomaly is the abrupt closing of remedy in a civil suit by the constitution of the Claims Tribunals on 19th November 1964 without there being any positive alternative remedy to the plaintiff." With these observations the Court decided issue No. 6 in favor of the plaintiff. The defendants have come in revision.

2. During the pendency of the revision the petitioners Nos. 2 and 3 died but as the petitioner No. 1 is competent to agitate the controversy raised in the revision petition the revision was heard on merit. The question for determination is whether Section 110-F bars the jurisdiction of the civil court in respect of a claim made after the constitution of the Tribunal even though the claim arose out of the accident occurring before the constitution of the Tribunal. It may be mentioned however that the question relating to the jurisdiction of the Civil court to continue the trial of cases which had been entertained before the constitution of the Tribunal does not arise or call for examination.

3. It may be pointed out that prior to the introduction of Section 110-F in the present form in the Motor Vehicles Act of 1939 by the amending Act No. 100 of 1956 with effect from 16th February 1957, a person suffering injuries in an accident could file a civil suit within one year of the date of the accident in a civil court. The legislature

presumably considering the remedy of a suit inconvenient, dilatory and expensive provided a complete self-contained machinery for adjudication of claims for compensation in respect of accidents involving the death of or bodily injury to the persons arising out of the use of the motor vehicles. Section 110 of the Act provided for the constitution by the State Government by a notification in the official gazette of Motor Accidents Claims Tribunal for such area as may be specified therein 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-A provides for making of applications for compensation. Sub-section (3) of Section 110-A provides that no application for compensation shall be entertained unless it is made within sixty days of the occurrence of the accident. Section 110-B and Section 110-C provide for the award of compensation by the Tribunal, its powers and procedure to be followed and for appeals against awards. Then Section 110-F which is important runs as follows :

"Bar of Jurisdictions of Civil Courts. - 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 claims for compensation shall be granted by the civil court."

4. The contention of the petitioner is that once a Claims Tribunal is constituted the jurisdiction of the civil court to entertain suits for compensation is ousted as Section 110-F confers exclusive jurisdiction on the Claims Tribunal. The respondent's submission on the other hand is that the right of a suit being a vested right could not be taken away by Section 110-F which cannot be said to have retrospective operation. The learned counsel for the respondent relied upon a few decisions of the Madhya Pradesh High Court and one Single Bench decision of the Punjab High Court reported in *Mulak Raj Bhola Shah v. Northern India Goods Transport Corporation Ltd.*,¹

5. Taking up the Madhya Pradesh decisions the earliest case is one reported in *Khatumal Ghanshamdas v. Abdul Qadir Jamaluddin*,² In that case the controversy related to the continuance of the civil suit which had already been instituted prior to the constitution of the Tribunal and the Court did not decide the question whether after the constitution of the Claims Tribunal the civil court jurisdiction to entertain the

claim for compensation in respect of an accident taking place before the constitution of the Tribunal was taken away or not. The respondent's counsel therefore cannot derive much assistance from this case. Another case of the Madhya Pradesh High Court is the decision reported in *Iqbal Prakash v. State of Madhya Pradesh*,³ where it was held that a claim for compensation instituted after 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 :

"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."

The third case of the M. P. High Court is the decision reported in *Sushma Mehta v. Central Provinces Transport Services Ltd.*,⁴ where it was observed that any enactment which has the effect of destroying an existing right cannot be given retrospective effect without express words. The Court also referred to the case of *Colonial Sugar Refining Co. Ltd. v. Irving*.⁵ where the right to appeal was treated as a vested right, and on analogy extended it to the remedy which a litigant has for obtaining relief by means of a suit.

6. I have given my careful consideration to the cases of the Madhya Pradesh High Court and have not felt persuaded to follow the view taken by that High Court. In considering the question of vested right a distinction must be drawn between what is a substantive right and the procedural right. The right to compensation for injuries is a substantive right and ordinarily such a right cannot be construed to have been taken away by a statute except by express words of the statute or necessary intendment. The same however cannot be said with respect to the forum in which an action can be agitated. No litigant has or can have vested right in a particular forum. He cannot say as a matter of right that a suit or an application should be tried by this or that forum which existed on the date his cause of action arose. Forum belongs to the realm of procedure and does not constitute substantive right of a party or a litigant. Similarly, limitation cannot be treated as a vested right. A litigant cannot say, where the legislature abolishes a forum that he can wait until the last day of limitation as a matter of- right and therefore the court should be retained for his purpose though abolished for other purposes. The matters relating to forum and limitation relate to the law procedure and should be governed by the law in force at the time of the institution of the Tribunal. A reference to authoritative text books on interpretation shows

consistent support of a view that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the court even where the alteration which the statute makes, has been disadvantageous to one of the parties. I need only refer to Salmond on Jurisprudence. Salmond considers

"that the substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained." He gives the illustration in this manner:

"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 fulfill their functions."

The same view has been approved in a number of leading cases. In *Ramkaran v. Ramdas*,⁶ Suleman C. J. observed :

"No doubt, a substantial right is not assumed to be taken away by a new Act unless it expressly says so. But a right to sue in one Court rather than another or a right to wait for a particular period of time before suing is not a substantial right. The selection of forum and the period of limitation are ordinarily matters of procedure only. The selection of a Court in no way affects the right of suit itself. The Limitation Act does not necessarily extinguish the right though it certainly places a bar against the remedy by suit."

In *Hazari Tewari v. Mst. Maktula Chaubain*.⁷ it was argued that the law of limitation available to the plaintiff under pre-existing law was a vested right and that therefore the provisions of the new enactment for the filing of application within a particular time could not be read as retrospective. The learned Judges, refuted the contention on the ground that there could be no vested interest in the choice of any particular forum and observed :

"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."

In *Unique Motor and General Insurance Co. Ltd., Bombay v. Kartar Singh*.⁸ *V. C. K. Bus Service Ltd., Coimbatore v. H. B. Sethna*.⁹ *Palani Ammal v. Safe Service Ltd.*¹⁰ and *Natverlal Bhikalal Shah v. Thakarda Khodaji Kalaji*,¹¹ a view has been taken that Section 110-F bars the jurisdiction of civil courts in respect of all claims preferred after the constitution of the Claims Tribunals even though the claims arose out of accidents occurring before the constitution of the Claims Tribunals. I have gone through all the judgments and respectfully agree with the view taken in these decisions and I am unable to follow the view taken by the M. P. High Court. As for the Single Bench decision of the Punjab High Court I need only mention that the earlier Single Bench decision relied upon by the petitioner stands overruled by the later Bench decision of the same High Court reported in *Unique Motor and General Insurance Co. Ltd., Bombay*, AIR 1965 Punjab 102.

7. The learned counsel for the respondent however emphasized the principle 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 legislature then the statute is not any more than any other law to be construed retrospectively and relied upon this principle to support his contention that Sections 110 and 110-A must be held inapplicable to a claim in respect of an accident occurring more than sixty days prior to the constitution of a Claims Tribunal, for in such a case it would be impossible to comply within the period of limitation laid down in sub-section (3) of Section 110-A and the vested right of action of an applicant would be destroyed. He admitted that under sub-section (3) of Section 110-A the Tribunal has been given discretion to entertain applications even after the expiry of sixty days but the discretion of the Tribunal does not amount to giving a vested right to a litigant to secure the entertainment of his application after the expiry of sixty days. The difficulties pointed out by the respondent's counsel are not insurmountable and do not warrant a conclusion that a plain and grammatical meaning of Section 110-A should be departed from on the basis of these difficulties. Referring to these difficulties the Madras High Court took the view that sub-section (3) of Section 110-A would not govern applications in respect of claims arising out of accidents occurring more than sixty days before the constitution of the Tribunal, for

applications under sub-section (3) postulate the existence of a Tribunal. The same High Court expressed the opinion that the proviso to sub-section (3) of Section 110-A can also be used to meet these difficulties. The Punjab and Gujarat High Courts have also met arguments based on these difficulties with reference to the proviso. These difficulties may have some bearing upon interpretation of the provisions governing limitations but they cannot have substantial bearing on the interpretation of Section 110-F. Having regard to all these considerations I am of the opinion that Section 110-F bars jurisdiction of the civil courts in respect of all claims to be made after the constitution of the Tribunals even though the accidents may have occurred before the constitution of the Tribunals. The Senior Civil Judge was not justified in deciding issue No. 6 in favor of the plaintiff and continuing his jurisdiction over the case. His decision on issue No. 6 must be reversed.

8. I therefore accept this revision and holding that the suit was not maintainable reject the plaint of the plaintiff. It will be open to the plaintiff to present an application before the Tribunal and to secure condonation of the delay in presenting the claim before the Claims Tribunal having regard to the observations made in the order of this Court. The respondent shall be entitled to the refund of the Court-fee paid in the court of the Senior Civil Judge.

9. In the circumstances of the case the parties are left to bear their own costs of this revision.

Revision accepted.

Cases Referred.

1. AIR 1962 Pun 307
2. AIR 1961 Mad Pra 295.
3. 1962 MPLJ 465
4. AIR 1964 Mad Pra 133
5. 1905 AC 369
6. 1LR 54 All 299 at p. 306: (AIR 1931 Alla 635 at page 639) (FB)
7. AIR 1932 All 30
8. AIR 1965 Pun 102
9. AIR 1965 Mad 149

10. 1966 ACJ 19 (Mad)

11. ILR (1967) Guj 495