

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3406 OF 2008
[Arising out of SLP (Civil) No. 12575 of 2008 (@ CC 1875 of 2008)]

State of Punjab & Ors.

...Appellants

Versus

Bhajan Kaur & Ors.

...Respondents

JUDGMENT

S.B. SINHA, J :

1. Delay condoned.

2. Leave granted.

3. Whether Section 140 of the Motor Vehicles Act, 1988 (for short "the 1988 Act") will have a retrospective effect is the question involved herein.

4. An accident took place on 8.01.1983. The deceased was a driver of a truck bearing No. PUC 9005. It collided with a bus belonging to the appellant bearing registration No. PBL-2310. It was being driven by one Sampuran Singh. A claim petition was filed in relation to the said accident purported to be in terms of Section 110-A of the Motor Vehicles Act, 1939 (for short "the 1939 Act").

5. Appellants herein denied and disputed their liabilities. Several issues were framed by the learned Tribunal. The said claim petition was dismissed by an award dated 12.10.1984.

A First Appeal was preferred by the respondent No. 1 against the said award dated 12.10.1984. A learned Single Judge of the High Court disposed of the same awarding a sum of Rs. 15,000/- by way of compensation by way of no fault liability. An intra-court appeal was preferred thereagainst. Relying on or on the basis of a decision of the said Court in Mosmi and Another v. Ram Kumar and others [1992 ACJ 192], it was held:

"In view of the authoritative pronouncement, this appeal is disposed of by holding that the claimant

would be entitled to a sum of Rs. 50,000/- (Rs. Fifty thousand only) under "no fault liability". In addition thereto, they would also be entitled to interest @ 9% per annum from the date of application till payment. However, in case, any amount was paid to the claimant in view of the order dated 31.8.1993 passed by this Court, the same shall be deducted out of this amount."

6. Before advertng to the questions raised in this appeal, we may notice that a statement was made at the bar that the State is not interested in the matter but only intended to get the law settled. We, therefore, did not issue any notice to the respondents and requested Ms. Meenakshi Arora, learned counsel to assist us in the matter.

7. Section 92-A of the 1939 Act provided for payment of a sum of Rs. 15,000/- by way of no fault liability. It was raised to Rs. 25,000/- by reason of Section 140 of the 1988 Act. However, with effect from 14.11.1994, by Amending Act 54 of 1994, the quantum of the amount payable has been raised to Rs. 50,000/-.

8. Indisputably, under the 1939 Act only a sum of Rs. 15,000/- was payable by way of no fault liability.

The question which arises for consideration in this appeal is as to whether it has a retrospective effect. In our opinion, it does not have.

9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of rule of law.

Section 92-A of the 1939 Act created a right and a liability on the owner of the vehicle. It is a statutory liability. Per se it is not a tortious liability. Where a right is created by an enactment, in absence of a clear provision in the statute, it is not to be applied retrospectively.

10. Ms. Arora, however, has drawn our attention to a decision of the Kerala High Court in *United India Insurance Co. Ltd. v. Padmavathy and others* [1990 ACJ 751]. The Kerala High Court referred to a decision of this Court in *M.K. Kunhimohammed v. P.A. Ahmedkutty* [AIR 1987 SC 2158] wherein the following observations were made:

"Having regard to the inflationary pressures and the consequent loss of purchasing power of the rupee we feel that the amount of Rs. 15,000 and the amount of Rs. 7,500 in the above provision

appear to have become unrealistic. We, therefore, suggest that the limits of compensation in respect of death and in respect of permanent disablement, payable in the event of there being no proof of fault, should be raised adequately to meet the current situation."

In Padmavathy (supra), the Kerala High Court held:

"11. The said suggestion of the Supreme Court was given due respect by the law-making machinery when the Bill was finally introduced in Parliament. This fact can be discerned from the Statement of Objects and Reasons prefaced in the new Act. Therefore, in effect, Parliament has only retained the same right which was conferred on the victims, through Chapter VIIA of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on a par with the amount fixed earlier. Hence, Section 6 of the General Clauses Act would not impede the enforcement of Section 140 of the new Act in relation to an accident which occurred prior to the coming into force of the new Act.

12. For yet another reason, we can support the said conclusion. Section 6 of the General Clauses Act permits switching over to the repealed Act only if a different intention does not appear in the new statute. Such a different intention can be discerned from the new Act. It is in Chapter X of the new Act that provisions regarding "no fault liability"

have been included. The Chapter" starts with Section 140 and ends with Section 144. The last Section reads as follows : "The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force". The different intention manifested in the new Act is that the provisions in Chapter X should get predominance over all other laws. The provisions contained in that Chapter must be given effect to notwithstanding any contrary provision in any other law including Section 6 of the General Clauses Act. All other provisions, therefore, must yield to the provisions contained in Chapter X of the new Act. This is the legislative intention manifested through Section 144 of the new Act."

11. In the decision of the Punjab and Haryana High Court in Mosmi (supra), reliance has been placed upon the judgment of the Kerala High Court.

12. With the greatest of respect to the learned Judges of the Kerala and Punjab & Haryana High Court, we could not persuade ourselves to agree with the said view.

13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As

indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by the Parliament.

Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1.07.1989.

14. Reference to Section 6 of the General Clauses Act, in our opinion, is misplaced. Section 217 of the 1988 Act contains the repeal and saving clause. Section 140 of the 1988 Act does not find place in various clauses contained in Sub-section (2) of Section 217 of the 1988 Act. Sub-section (4) of Section 217 of the 1988 Act reads, thus:

"(4) The mention of particular matters in this section 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."

15. What is, therefore, otherwise saved in Section 6 of the General Clauses Act inter alia is the right. It reads as under:

"6 Effect of repeal.--Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) ***

(b) ***

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;..."

16. Section 6 of the General Clauses Act, therefore, inter alia saves a right accrued and/ or a liability incurred. It does not create a right. When Section 6 applies only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise.

Section 140 of the 1988 Act does not contain any procedural provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood, viz., before the new Act come into force.

17. It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication.

18. In *Garikapati v. Subbaiah Chowdhary* [AIR 1957 SC 540], the law is stated, thus:

"...The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed..."

19. The question was considered by this Court in *Gajraj Singh and Others v. State Transport Appellate Tribunal and Others* [(1997) 1 SCC 650] and the law was stated in the following terms:

"22. Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law. Legal fiction is one which is not an actual reality and which the law recognises and the court accepts as a reality. Therefore, in case of legal fiction the court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore, when Section 217(1) of the Act repealed Act 4 of 1939 w.e.f. 1-7-1989, the law in Act 4 of 1939 in effect came to be non-existent except as regards the transactions, past and closed or saved.

23. In Crawford's Interpretation of Law (1989) at p. 626, it is stated that:

"[A]n express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as a saving clause. Even existing rights and pending litigation, both civil and criminal, may be affected although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation."

At p. 627, it is stated that:

"[M]oreover, where a repealing clause expressly refers to a portion of a prior Act, the remainder of such Act will not usually be repealed, as a presumption is raised that no

further repeal is necessary, unless there is irreconcilable inconsistency between them. In like manner, if the repealing clause is by its terms confined to a particular Act, quoted by title, it will not be extended to an act upon a different subject."

Section 6 of the GC Act enumerates, inter alia, that where the Act repeals any enactment, unless a different intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. In *India Tobacco Co. Ltd. v. CTO* (SCC at p. 517) in paras 6 and 11, a Bench of three Judges had held that repeal connotes abrogation and obliteration of one statute by another from the statute-book as completely as if it had never been passed. When an Act is repealed, it must be considered, except as to transactions past and closed, as if it had never existed. Repeal is not a matter of mere form but is of substance, depending on the intention of the legislature. If the intention indicated either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a case of total or pro tanto repeal.

24. When there is a repeal and simultaneous re-enactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. Such incompatibility would have to be ascertained from

all relevant provisions of the new Act. Therefore, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to obliterate the Repealed Act and to get rid of certain obsolete matters."

20. In *Ramesh Singh and Another v. Cinta Devi and Others* [(1996) 3 SCC 142] it has clearly been held that Section 217 of the 1988 Act does not expressly or by necessary implication make the relevant provision retrospective in operation.

21. In *Zile Singh v. State of Haryana* [(2004) 8 SCC 1], a Three-Judge Bench of this Court, stated the law, thus:

"17. Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it" (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which

would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231)."

22. In Lohia Machines Ltd. and Anr. v. Union of India (UOI) and Ors. [(1985) 2 SCR 686], this Court held :

"On the other hand it is quite clear that if the relief granted is to be withdrawn with retrospective operation from 1972 the assessee who have enjoyed the relief for all those years will have to face a very grave situation. The effect of the withdrawal of the relief with retrospective operation will be to impose on the assessee a huge accumulated financial burden for no fault of the assessee and this is bound to create a serious financial problem for the assessee. Apart from the heavy financial burden which is likely to upset the economy of the undertaking, the assessee will have to face other serious problems. On the basis that the relief was legitimately and legally available to the assessee, the assessee had proceeded to act and to arrange its affairs. If the relief granted is now permitted to be withdrawn with retrospective operation, the assessee may be found guilty of violation of provisions of other statutes and may be visited with penal consequences..."

23. In M/s. Indian Metals and Ferro Alloys Ltd. & Anr. v. State of Orissa & Ors. [(1987) 3 SCC 189], it was opined :

"25...we hold that the High Court was not right in observing that the orders under Section 22-B of the Act imposing restrictions on consumption of power could not legally and validly be passed by the Government "with retrospective effect" in the middle of a water year. But the position regarding disallowance of clubbing stands on an entirely different footing. If a consumer had been allowed the benefit of clubbing previously, that benefit cannot be taken away with retrospective effect thereby saddling him with heavy financial burden in respect of the past period where he had drawn and consumed power on the faith of the orders extending to him the benefit of clubbing..."

24. In Madishetti Bala Ramul (D) by LRs. v. The Land Acquisition Officer [2007 (8) SCALE 184], this Court observed:

"19. In Land Acquisition Officer-cum-DSWO, A.P. v. B.V. Reddy and Sons, this Court opined that Section 25 being not a procedural provision will have no retrospective effect, holding:

6. Coming to the second question, it is a well-settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it

would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984...."

25. In Ashok Lanka and Anr. v. Rishi Dixit and Ors. [(2005) 5 SCC 598], this Court held:

"A statute must be read reasonably. A statute should not read in such a manner which results in absurdity. A statute, on its plain language, although postulates a prospective operation, it cannot be held to be retrospective only because it would apply for the excise year for which applications were invited despite the fact that the selection process made thereunder is over."

26. The Kerala and Punjab & Haryana High Court proceeded on the basis that Section 6 of the General Clauses Act will apply. If the same applies, it would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. If that be so, the old Act shall apply and not the new one. Construction of a repeal and saving

clause vis-à-vis the statute providing for continuation of orders, etc. must be given the meaning which can be culled out from the statute in question.

27. In Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO and Others [(2007) 5 SCC 447], this Court held:

"106. Furthermore, exemption from payment of tax in favour of the appellants herein would also constitute a right or privilege. The expression "privilege" has a wider meaning than right. A right may be a vested right or an accrued right or an acquired right. Nature of such a right would depend upon and also vary from statute to statute. It has been so held by this Court, while construing Section 6 of the General Clauses Act, in M/s. Gurcharan Singh Baldev Singh v. Yashwant Singh and Others [(1992) 1 SCC 428] in the following terms:

"...The objective of the provision is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability..."

We, therefore, are clearly of the opinion that the 1988 Act does not have any retrospective operation.

28. For the reasons aforementioned, the decisions of Kerala and Punjab & Haryana High Court do not lay down a good law. They are overruled accordingly. However, as the State has not asked for any relief against the respondents, this appeal is dismissed. No costs.

.....J.
[S.B. Sinha]

.....J.
[Lokeshwar Singh Pantia]

New Delhi;
May 08, 2008