Punjab-Haryana High Court
Tek Chand Behal And Anr. vs Khem Chand And Ors. on 31 October, 2007
Equivalent citations: 2008 ACJ 421
Author: V Jain
Bench: V Jain, S Kant, M Grover
JUDGMENT Vijender Jain, C.J.

1. A common award having come into existence on 30.8.1993 on the claim petitions preferred by various claimants under the Motor Vehicles Act,1988 (hereinafter described as `the `1988 Act'), resulted in the filing of the appeals by the owner and the driver of the offending tempo involved in the accident, which had taken place on 29.3.1989 in the area of Malerkotla.

2. When the matter was taken up for hearing by the learned Single Judge, a preliminary objection was taken by the learned Counsel appearing for the respondents that the appeal was not maintainable as the appellants had not complied with the provisions of Section 173(1) of the 1988 Act, which required them to deposit a sum of Rs.25000/-or 50% of the amount awarded as a pre-requisite to the filing thereof.

3. The appellants tried to skirt their liability to comply with the requisites of Section 173(1) of the 1988 Act on the ground that the accident had taken place on 29.3.1989 before coming into force of the said Act which came to occupy the field w.e.f. 1.7.1989. The plea raised on the logic, that the date of accident is the time when the liability of the offending vehicle and insurance company which has assured the same, begins with the accident, and since the accident took place when Motor Vehicles Act,1939 (hereinafter referred to as `the 1939 Act') was in existence, therefore, all consequent liabilities including the right of appeal would be determined under the 1939 Act and not under the 1988 Act.

4. Provoked by near palatable pleas raised by the counsel for the parties and noticing certain judgments with which we propose to deal with in the later part of discussion and which provided a sea-saw of the rights of an appellant in almost near like situation as the one in hand, Surya Kant,J., vide his order dated 6.12.2006, chose to refer the matter to a larger Bench so as to settle the controversy. The said order is reproduced below:

This appeal has been preferred by the owner and driver of the delinquent tempo against whom the impugned award dated 30.8.1993 has been passed by the Motor Accident Claims Tribunal (MACT), Sangrur.

At the outset, a preliminary objection has been taken by Learned Counsel for the respondents that the present appeal is not maintainable as the appellants have not deposited a sum of Rs.25,000/-or 50% of the amount awarded in terms of first proviso to Section 173(1) of the Motor Vehicles Act (59 of 1988). It is argued that though the accident took place on 29.3.1989, i.e., before the Amended Act came into force with effect from 1.7.1989, however, the claim petition(s) were instituted on different dates in September 1989 after the new Act had come into force. Relying upon a judgment of the Hon'ble Supreme Court in the case of Ramesh Singh and Anr. v. Cinta Devi and Ors. , it is argued

that the right to appeal crystalizes in favour of the appellants on the institution of the claim application in the tribunal of the first instance, therefore, the law as it was in force on the date of institution of the claim petition shall govern the substantive right to appeal.

On the other hand, Learned Counsel for the appellants relies upon a Division Bench judgment of this Court in Laxminarain alias Kaka and Anr. v. Balbir Kaur and Ors. (1992-1) PLR 563 wherein in somewhat similar circumstances the Bench took up the view that it shall be the date of the accident which shall be taken as the date of application of the state of law. In the present case, the accident admittedly took place prior to the new enactment coming into force.

In order to effectively address the preliminary objection raised regarding maintainability of the appeal, firstly, reference may be made to the judgment of the Hon'ble Supreme Court in the case of Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and Ors. wherein it was held that the right to appeal which is a substantive right becomes vested in a party when proceedings are first initiated and before a decision is given by the inferior court. Such a vested right cannot be taken away except by express enactment or necessary intendment. In the afore-mentioned case since the sales tax returns were filed before the new enactment came into force, their Lordships held that the assessee had a right to appeal without depositing the assessed tax as required by the amended law, for the reason that the proceedings before the inferior tribunal had been initiated before the new law came into force.

In Vitthalbhai Naranbhai Patel v. Commissioner of Sales Tax, M.P., Nagpur , the Hon'ble Supreme Court reiterated the principles enunciated by it in M/s Hoosein's case (supra) and observed that when a lis commences, all rights get crystalized and no clog upon a likely appeal can be put, unless the law was made retrospective. Relying upon the afore-mentioned judgments, the Supreme Court in Ramesh Singh's case (supra), in the context of right to appeal under the Motor Vehicles Act (Amended Act, 1988) has held that the right to appeal will crystalize in the appellant on the institution of the application in the tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the new Act.

5. On a plain reading of the afore-mentioned judgments, it appears that the clog, if any, on the right to appeal, is to be determined in the light of the date when proceedings before the inferior tribunal were initiated. In other words, in a motor accident claim case, it is not the date of accident but the date of filing of an application before the inferior tribunal which shall determine the imposition of clog, if any,on the right to appeal. However, in Padma Srinivasan v. Premier Insurance Co. Ltd. , the Hon'ble Supreme Court, in the context of liability of insurer arising out of a motor accident, has held that, since the liability of the insurer to pay claim under a motor accident claim policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. The view taken by the Division Bench of this Court in Laxminarian alias Kaka's case (supra) solely rests upon the above quoted judgment of the Hon'ble Supreme Court.

6. Apparently, both the views cannot be reconciled. If the date of accident is taken as the date to determine the state of law for the purpose of filing an appeal, it would be somewhat contrary to the

observations made by the Apex Court in Ramesh Singh's case (supra) where the crystalization of the right to appeal has been made dependent upon the institution of the application in the tribunal of first instance. Since the Apex Court judgment in Ramesh Singh's case (supra) is later in time and the controversy afore-mentioned is likely to arise in number of cases, it desirable and expedient that the issue is decided by a Larger Bench. Let the records of this case be placed before Hon'ble the Chief Justice for constitution of an appropriate Bench.

7. The Division Bench before whom the matter was placed, deliberated upon it and in its wisdom, referred it to a still larger Bench vide its order dated 3.8.2007, which reads as under:

1. Questioning the award dated 30.8.1993, the owner and driver of the tempo bearing registration No. DBL 7000 filed the above appeal.

(a) When the matter was heard by Mr. Justice Surya Kant, a preliminary objection has been taken by the learned counsel for the respondents stating that the appeal is not maintainable as the appellants have not deposited a sum of Rs.25,000/-or 50% of the award in terms of first proviso to Sub section (1) of Section 173 of Motor Vehicles Act, 1988. After placing reliance on the decision of this Court and Supreme Court and finding controversy as to the applicability of Motor Vehicles Act and the same is likely to arise again and again expressed that the issue is to be decided by a larger Bench. Based on the said reference and on the orders of the Hon'ble Chief Justice the matter is posted before us.

(b) Admittedly, the accident took place on 29.3.1989 i.e. before the Motor Vehicles Act, 1988 came into force w.e.f. 1.7.1989, the claim petition was instituted in September 1989 i.e. well after the new Act had come into force. It was argued that the right to appeal crystallize in favour of the appellants on the institution of the claim petition in the Tribunal at the first instance, therefore the law as it was in force on the date of institution of the claim petition shall govern the substantive right to appeal. However, the counsel for the appellants contended that it shall be the date of the accident which shall be taken as the date of application of the Law and the accident having taken place prior to the new enactment came into force, there is no obligation of fulfilling the conditions as provided in first proviso to Section 173(i) of Motor Vehicles Act, 1988.

2. In the light of the above controversy let us consider the issue raised before us.

(a) As said earlier the accident took place on 29.3.1989. The new Act came into force on 1.7.1989. The claim petition was filed in September 1989 under the new Act. The claim petition was decided, in terms of the Motor Vehicles Act, 1988.

(b) The Motor Accident Claims Tribunal pronounced its award on 13.8.1993. The first proviso to Section 173(1) of the Motor Vehicles Act (59 of 1988) requires the owner to deposit a sum of Rs. 25,000/-or 50% of the amount awarded along with the memo of appeal.

(c) The dispute in the present case is whether rights of the parties, in appeal, would flow from the date of accident i.e.29.3.1989 or from the date, the claim petition was filed i.e. in September 1989.

3. As per Section 1(3) of the Motor Vehicles Act, 1988 the Act is prospective in operation. There appears to be two sets of judgments, the first taking the view that right to appeal arises when proceedings are first initiated, and the other taking the view that right to appeal stands crystallized on the date of the accident. If the first view is accepted, then, as in the present case, the claim petition which was filed, after coming into force of the 1989 Act, the appeal could only have been filed after complying with the first proviso to Section 173(1) of the Motor Vehicles Act, 1988. If the second view is to be accepted and it is to be held that right to appeal crystallizes on the date of the accident, as the accident in the present case occurred prior to the coming into force of the 1988 Act, the appeal may have to be filed without complying with the first proviso to Section 173(1) of the Motor Vehicles Act. However, this view may be fraught with difficulty, whereas in the present case, the accident may be prior to the 1988 Act but the claim petition was filed after the coming into force of 1989 Act.

(a) In Hoosein Kasam Dada (India) Ltd. v. State of Mahdya Pradesh , it was held that a right to appeal, a substantive right, becomes vested in a party, when proceedings are first initiated and a subsequent amendment cannot take away this right.

(b) In Garikapati Veeraya v. N. Subbiah Choudhry and Ors. , it was held that the right of appeal is not a mere matter of procedure but is a substantive right. The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. The right to appeal accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

4. A similar view has been expressed by a Constitution Bench of the Supreme Court in Shyam Sunder and Anr. v. Ram Kumar and Anr. 2001 (3) RCR (Civil) 754, where, while considering the effect of an amendment in Section 15 of the Punjab Pre-emption Act, 1930 on pending suits and appeals, it was held that in the absence of any thing in the amending Act to show that it is retrospective, it would not affect the rights of the parties, accrued to them, prior to that and subsisting till the date of decree of first Court (including the right to appeal).

5. In Ramesh Singh and Anr. v. Cinta Devi and Ors. , a two Judges Bench of the Supreme Court, while considering, whether after the repeal of the 1939 Act, it would apply to appeal, impugning an award pronounced under the 1939 Act, it was held that in such a situation, appeal would be filed under the 1939 Act. It is relevant to point out that in this case, the award was passed under the 1939 Act, whereas in the reference, before us, the award was passed under 1988 Act.

6. Three Judges Bench of the Supreme Court in Padma Srinivasan v. Premier Insurance Co. Ltd. , held that the liability of the insurer would arise from the date of the accident. A Division Bench judgment of this Court, reported in Punjab Law Reporter (Vol. CI-(1992-1) 563 has also held to the same effect.

7. We have already observed that there is no provision in the 1988 Act giving a retrospective effect. It is not in dispute that the claim petition was filed only under the provisions of 1988 Act and award came to be passed only under the 1988 Act. In the normal circumstances, the Courts are governed by the law prevailing on the date of cause of action i.e. date of accident, however, as discussed earlier, in the case in hand though the accident occurred while 1939 Act was in force. Admittedly the claim petition was filed after the commencement of 1988 Act and the award was passed only as per the provisions of 1988 Act. Though, the right to appeal accrues to the litigant and exists from the date the lis commences, as observed in AIR 1957 SC 540 such a right is to be governed by the law prevailing at the date of the institution of the suit or proceeding. In 1996 ACJ 730 the Hon'ble Supreme Court has held that appeal would be filed under 1939 Act, the factual position therein clearly show that the award therein was pronounced under the 1939 Act, in such a situation, it was held that appeal would be filed under the 1939 Act. In the case in hand as stated earlier the award was passed under the 1988 Act.

8. Though, the liability of the insurer would arise from the date of accident as observed by the Supreme Court in Padma Srinivasan v. Premier Insurance Co. Ltd. considering the fact that the claimant availed the provisions of 1988 Act, filed claim petition and award was also passed under the same Act, we are of the view that the provisions of 1988 Act are alone applicable to the present appeal,consequently, appellants have to comply with the Ist proviso to Section 173(1) of the Motor Vehicles Act, 1988. In view of divergent views and in the light of our conclusion which runs counter to the earlier Division Bench decision of this Court, we feel that the issue referred before us be heard by a Full Bench. Registry to place both the files (FAO No. 7 of 1994 and FAO No. 8 of 1994) before Hon'ble the Chief Justice for passing appropriate orders.

8. We are now confronted with a needling proposition and a question which has been aptly delineated by the Division Bench while referring the matter to a larger Bench and it is as follows:

Whether the rights of the parties, in appeal, would flow from the date of accident, i.e. 29.3.1989 or from the date, the claim petition was filed, i.e. in September,1989? Before we traverse upon the path of deliberations, we appropriately sought the assistance of Shri L.M.Suri, Senior Advocate, who was appointed as amicus curiae to assist this Bench.

9. Shri L.M.Suri, learned Senior Advocate, during the course of assisting the Court, contended that though the liability of the insurance company vis-a-vis the claimants would start on the date of accident, yet, the right of appeal would be governed by the statute which holds the field on the date when such right fructifies, implying thereby that the right to appeal would not be dependent on the date of accident.

10. We have heard the learned Counsel for the parties at length. Whenever an amending statute is introduced seeking to repeal an old law, which, in the wisdom of the legislators, had outlived its utility, it invariably causes some ripples when the cause and effect of such a legislation is tested on the touchstone of judicial legitimacy. The course of a legislative process and the consequent judicial interpretations are like a flowing river which changes course according to its needs and sometimes changes with the intervention of an outside force which, in the case of legislation, is the judicial

hand. The gentle friction between the legislative process and the consequent judicial interpretation is akin to the shifting tectonic plates which keep moving along the social fault lines.

11. Likewise, the 1988 Act when it took the field, repealed the 1939 Act and did not provide for any retrospective operation and in the process, some grey areas emerge like the proposition at hand.

12. Section 1(3) of the 1988 Act provides that this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and any reference therein to the commencement thereof shall, in relation to a State, be construed as a reference to the coming into force of it in that State.

13. Section 217 of the 1988 Act lays down that the 1939 Act stands repealed. The relevant portion of this Section reads as under:

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.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments,

(a) any notification, rule, regulation, order or notice issued, or any appointments or declaration made, or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;

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14. Propositions have emerged before the Courts variously much like the creases of a crumpled cloth, which needs to be ironed out, to harmonise and achieve the intended benefits of a legislation. Identifying a few, are the following contingencies which have been thrown up at some point of time or the other and answered by the Courts but which still continue to emerge as teasers to a judicious mind:

(i) An accident which takes place prior to the commencement of the 1988 Act and claim petition being filed under the 1939 Act, but an appeal preferred under the 1988 Act.

(ii) An accident prior to the 1988 Act, proceedings qua the claim petition under the 1939 Act culminating into an award again under the 1939 Act, but an appeal filed under the 1988 Act.

(iii) An accident during the enforcement of the 1939 Act, the claim petition filed under the 1988 Act and resultant appeal is also under the 1988 Act.

15. The afore propositions have been answered by a slew of judgments which has also, in the process, created some haze which has apparently sought to cloud the answer, the present reference also being result of the said haze created by the observations of their Lordships of the Supreme Court in Padma Srinivasan v. Premier Insurance Co. Ltd. and by a Division Bench of this Court in Laxminarain Alias Kaka and Anr. v. Balbir Kaur and Ors. 1992(1) P.L.R. 563.

16. In Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh , it was held that a right to appeal is a substantive right which becomes vested in a party when the proceedings first initiated and subsequent amendment cannot take away this right. Some of the observations made in this judgment are extracted below:

A right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in and before a decision is given by, the inferior Court. Such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication.

17. In Garikpati Veeraya v. N.Subbiah Coudhry and Ors. , their Lordships of the Supreme Court held that "the right of appeal is not a mere matter of procedure but is a substantive right. The institution of the suit carried with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. The right to appeal acc rues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of institution of the suit or proceedings and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

18. Similarly, a Constitution Bench of the Supreme Court held in Shyam Sunder and Anr. v. Ram Kumar and Anr. 2001(3) R.C.R. (Civil) 754, that "in the absence of any thing in the amending act to show that it is retrospective, it would not affect the rights of the parties, accrued to them, prior to that and subsisting till the date of decree of first Court (including the right to appeal)."

19. In Ramesh Singh and Anr. v. Cinta Devi and Ors. , a two-Judges Bench of the Supreme Court, while considered the repeal of the 1939 Act, concluded that where an award had been pronounced under the 1939 Act, the appeal would logically flow from the same Act and not be governed under the 1988 Act.

20. The aforementioned judgments broadly proceed on the time- tested, unshakable and settled proposition that an appeal is the creation of a statute and the substantive right of appeal is governed by the law prevailing at the date of institution of the suit or initiation of the lis and not by any amending provision of law.

21. In Padma Srinivasan v. Premier Insurance Co. Ltd. (supra) a three-Judges Bench of the Apex Court held that the liability of the insurer would arise from the date of accident.

22. A Division Bench of this Court in Laxminarain Alias Kaka and Anr. v. Balbir Kaur and Ors. (supra), has also held to the same effect.

23. The observations in the above mentioned two judgments flow from the premise that the accident having taken place prior to the commencement of the 1988 Act and the liability of the insurance company having come in existence because of the accident, would logically entail all the proceedings under the 1939 Act.

24. In Ramesh Singh and Anr. v. Cinta Devi and Ors. (supra), it was further held as under:

The 1988 Act does not expressly or by necessary implication make the relevant provisions retrospective in character; the right to appeal crystallised in the appellant on the institution of the application in the Tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the 1988 Act.

25. A closer look at the facts of the reported case show that the claim petition was filed under the 1939 Act, but the award was pronounced after commencement of the 1988 Act, which prompted their Lordships to come to the conclusion that the appeal would also be filed under the 1988 Act, but in Padma Srinivasan's case (supra), the situation was different as in that case, the claim petition was preferred under the 1939 Act, but the award was passed after the liability of the insurer was enhanced by virtue of the Amending Act of 1969 whereby a limited amendment was carried out qua the liability of the insurer.

26. In Philip v. Surendran , a Division Bench of Kerala High Court, while considering the effect of Section 217 of the 1988 Act which deals with the repeal and savings, observed as under:

... We do not find anything in this section which expressly takes away the right of appeal which a party had under the 1939 Act nor anything which requires us necessarily to imply that such an appeal has to comply with the provisions of Section 173 of the 1988 Act. Counsel was not able to point out any express provision, or any other, which leads to an inference of necessary implication. In the absence of any such provision, it has to be held in line with the catena of decisions of the Supreme Court that the vested right of appeal under the 1939 Act has not been taken away or limited or made subject to the conditions as contended by counsel for the first respondent.

xx xx xx xx xxxx According to us, appeals arising out of proceedings initiated before July 1,1989, when the 1988 Act came into forced, are not subject to the limitations, prescribed by Section 173 of the latter Act, irrespective of the date on which the award was passed, or the appeal was instituted whether before or after July 1,1989. The appellant before us was not, therefore, bound to comply with the requirement of deposit under Section 173 of the 1988 Act. The appeal is maintainable without such deposit. The preliminary objection raised by the counsel for the first respondent is overruled.

27. A Full Bench of Madhya Pradesh High Court in New India Assurance Co.Ltd. v. Nafis Begum and Ors. had the occasion of dealing with the propositions, particularly with reference to the

applicability of Section 92-A of the 1939 Act. Some of the observations made in that judgment are extracted below:

The rights and liabilities under the Act arise on happening of the accident and not on any subsequent date. The filing of the claim petition before the Claims Tribunal has no relevance with regard to the rights and liabilities of the parties which should be governed by the state of law existing on the date of the accident and not on the state of law existing on the date of filing of the claim petition or of the filing of th eappeal in the case. If the rights and liabilities of the parties were held to depend on any change of law effected subsequent to the accident, discriminatory situation is likely to arise between the parties involved in accidents happening even on the same date. The date of accident should therefore be taken as the date of application of the state of law existing then.... The legislature thereby has reserved to itself the right to enforce several provisions of the Amendment Act from a suitable date to be notified in the official Gazette. The very fact that the provisions of Section 92-A have been brought into force with effect from 1.10.1982 and not from any date prior to it is a sure indication that the legislature never intended to give benefit of the new provisions based on no fault liability to parties involved in accidents taking place prior to coming into force of the said provision.... The provisions under consideration create new rights in favour of victims involved in motor accidents and impose new liabilities on owners and insurers. A retrospective operation of changed law to past accidents is bound to adversely increase liabilities of the owners and insurers. It seems apparently unjust to impose fresh liabilities on owners and insurers for past events on the basis of subsequent change in law which was not in contemplation of the parties either at the time of insurance or accident.

...When a change in law is brought about prospectively, it has always the result of application of unamended law to past events and the amended law to the subsequent happenings. A cut off date based on the coming into force of new provisions is always in contemplation of legislature while enacting a law prospectively.

28. Another Full Bench of the same High Court in Gaya Prasad and Ors. v. Suresh Kumar and Ors. , dealt with the following two questions:

(i) Whether the insurer and/ or the owner/ driver of the offending vehicle against whom an order of compensation is passed in terms of the provisions of Section 140, Motor Vehicles Act,1988 has a right of appeal against that order under Section 173 of the Act?

(ii) Whether any appeal filed on or after 1.7.1989, challenging an order of compensation passed by Motor Accidents Claims Tribunal in terms of provisions of Section 140 of the Motor Vehicles act or the final award passed under Section 168 of the Act, can be entertained without the appellant fulfilling the requirement of the provisions contained in Section 173 of the Act of making requisite deposit of the sum contemplated thereunder?

29. Since in the instant case, we are required to answer the question similar to the one mentioned at number (ii) above, it will be useful to extract the observations made in the said judgment in relation to the same. The relevant portions thereof read as under:

We proceed to answer the second question now. At para 5, Section 173 of the new Act has been extracted in extenso, but in dealing with the second question, reference is to be made also to Section 217 as that has a material bearing on the question mooted. Therefore, relevant portion of that section is also extracted:

xx xxxx xx xx xx xx xx xx xxx We conclude accordingly, answering in the negative the second question. We reiterate that the law applicable for the exercise of the right of appeal against `award' passed by MACT is the law in force on the date on which the appeal is preferred; the procedure prescribed under the new law would apply to the appeal to be preferred thereunder. We hold that to any appeal pending disposal on 1.7.1989, already preferred under Section 110-D(old), the provisions of Section 173 (new) would not apply; but, to any appeal preferred under the new provision, the old procedure which has been repealed would not apply. In any appeal preferred under Section 173, after 1.7.1989, irrespective of the date of accident and date also of the `award' (whether passed under Section 110-B, old, or Section 168, new), the appellate court would be required, as statutorily mandated under the first proviso to Section 173(1), to pass necessary order in regard to the requisite deposit to be made for the appeal to be heard and decided. However, in respect of any pending appeal, no deposit, as is contemplated under the new proviso, is required to be made; hearing of that appeal would proceed and decision on that appeal is to be rendered on merits in case only of challenge made in such an appeal to an `award' finally passed by MACT and the appeal challenging any order of interim compensation would be liable to be dismissed as not maintainable. We express our respectful agreement with Allahabad High Court's Division Bench decision in Dhanram Singh's case, 1990 ACJ 41 (Allahabad) and we are constrained to hold also that the law laid down in Jaswant Rao's case, 1991 ACJ 344 (MP), by this Court is not the correct law. That decision stands overruled.

xx xx xx xx xx xx xx A reading in juxtaposition of Section 173 of the New Act with Section 110-D of the Old Act shows that the right of appeal, the forum, the limitation, have all been kept intact with the only distinction that a condition as to deposit of a limited amount out of the awarded amount has been imposed on the appellant to make the appeal entertainable. It is not a case where the right of appeal has been taken away or repealed or such onerous conditions have been imposed as to narrow down and whittle down substantially the right of appeal compared with the predecessor right of appeal.

xx xx xx xx xx xx xx Second question arising out of M.M.No. 138 of 1991 is answered unanimously, also in the negative. In respect of any appeal filed after 1.7.1989 under Section 173, challenging any award passed under Section 168 after 1.7.1989, in terms of the first proviso to Section 173(1), it would be necessary for the appellant to make the requisite deposit contemplated thereunder irrespective of the date of accident. Accordingly, Jaswant Rao v. Kamlabai , stands overruled.

30. The Motor Vehicles Act is a beneficial piece of legislation intended to benefit the victims of road accidents and the purpose behind the introduction of Section 173 of the 1988 Act making the deposit of Rs.25000/-or 50% of the awarded amount, a [pre-requisite to the filing of the appeal by the insurer or the owner and the disbursing of the same to the claimants as an interim measure, shows that the intention is to afford immediate and instant relief to the aggrieved party to help it to tide over the immediate crisis. Any interpretation of this provision of law which derails the objective of

the 1988 Act can only be termed as self-defeating.

31. As noticed in Full Bench decision of Madhya Pradesh High Court in Gaya Prasad and Ors. v. Suresh Kumar and Ors. (supra), which we approvingly note, the right of an appeal under the predecessor Act is akin to the right to appeal under the successor Act, with the requirements of Section 173 as an add on. Every beneficial legislation has to be interpreted in a benevolement manner so as to achieve the intending legislation.

32. That apart, right to file an appeal is a substantive right which accrues to a person and shall be governed by the law that holds the field and the law under which the list commences.

33. Even if the liability of the insurance company and insured begins with the accident, but the appeal and the right thereto fructifies and is determined under the new Act, much like an embryo which germinates and flowers subsequently even though the fusion of cells takes place at an earlier point of time.

34. Section 217 of the 1988 Act repeals the 1939 Act with certain savings which are not encompassing the proceedings, like the one in hand and, therefore, the clear intendment of the Legislature can neither be watered down nor can an illusion be introduced to create a mirage when neither was intended. Thus, we hold that the requirements of Section 173 of the 1988 Act would have to be complied with in:

(i) the cases where claim petitions are preferred under the new Act (1988 Act) regardless of the date of the accident, which may under the 1939 Act;

(ii) the provisions of Section 173(1) would also apply to cases where accident and award are prior to the coming in to force of the 1988 Act, but appeal is filed under the said Act; and

(iii) the amended Act would not apply to cases where appeals have been preferred under the 1939 Act but have not been decided when the new Act came into existence.

35. As a consequence, we disapprove the view of the Division Bench of this Court in Laxminarain Alias Kaka and Anr. v. Balbir Kaur and Ors. (supra).

36. We dispose of the reference as above and remit the matter back to the learned Single Judge for disposal of the appeal on merits.