

Madhya Pradesh High Court

New India Insurance Co. Ltd. And ... vs Prakash Narain Agnihotri And Ors. on 9 October, 1998

Equivalent citations: 1999 ACJ 897, AIR 1999 MP 53, 1999 (2) MPLJ 217

Author: Khan

Bench: A Mathur, B Khan

JUDGMENT Khan, J.

1. This appeal raises an interesting issue viz. :--

"Whether amending Motor Vehicle Act 54 of 1994 adding Section 163-A to the Act effective from 14-11-1994 was attracted to the claim case of respondents' referable to Motor Accident occurred two months or so earlier on 14-11-1994. In other words whether the amending Act could be given deemed retrospective effects in the facts and circumstances of the case."

2. One 16 years old Mamta riding on her vehicle was hit by the offending Bus on 16-9-1994, she sustained injuries and ultimately succumbed on 25-09-1994. Her claimants filed claim case No. 102/94 and M.A.O.T., Dhar, awarded them Rs. 1,80,300/- with 12% interest, after assuming the income of the deceased to be Rs. 15,000/- p.a. in accordance with second schedule framed under Section 163-A brought in force on 14-11-1994.

3. Appellants contend that Tribunal could not have resorted to schedule prepared under Section 163-A, which had come into force two months after the accident, to fix the income of the deceased notionally at Rs. 15,000/- p.a. In other words it is sought to be projected that rights of parties were governable by the law in force on the date of accident which did not provide for any notional fixation of income and not by the law on the date of decision by Tribunal. Reliance in this regard is placed on judgments of some High Courts and Section 6 of the General Clauses Act to reiterate the otherwise known position that the rights of the parties qua their liability were liable to be determined as per law prevailing on the date of accident.

4. The case of the claimants on the other hand is that the law applicable was the law available on the date of decision by the Tribunal. Therefore, even though amending Act of 1954 was not explicitly retrospective in operation, it could not be excluded by the Tribunal on the date of decision. Alternatively it is submitted that there was no harm in taking it as a guideline for awarding just and appropriate compensation notwithstanding the date of accident; Support for this is drawn from 1994 MPLJ 709, AIR 1975 1576 (sic) and also AIR 1997 J & K 83 to which one of us Khan, J., was a party.

5. The short question that arises is whether Tribunal had fallen in error by drawing from the schedule prepared under Section 163-A which had admittedly come into force after the accident?

6. The answer has to be in negative. Because in our view the Tribunal was bound to apply and administer the law as it stood on the date of passing the award. It could not shut its eyes to it and was duty bound to apply it. The date of accident was immaterial for all practical purposes because the law as it stood on that date was silent on the issue of fixing the notional income of accident

victims. The matter did not involve any conflict between old law and new law. As a matter of fact Section 163-A and the Schedule prepared under it came into existence first time and took effect from 14-11-84. It did not scrap or repeal any existing provision. It only made a new provision to cater to certain requirements and to further make the statute beneficial and purpose-

ful. Section 6 of the General Clauses Act had thus no application in the matter because no repeal of any old law was involved.

7. This view finds support elsewhere also if one were to look across the fence. It was first enunciated in Bagh Singh's Case, AIR 1985 SC 1576 holding that amended provision of Land Acquisition Amendment Act, 1984, though not given any retrospective operation were applicable to all proceedings relating to compensation pending on the date of the commencement of amending Act or subsequent thereto. The principle was reiterated in New Theatre Limited Case, AIR 1984 SC 1 laying down as under :--

"Two contentions have been raised by the appellant in this appeal. The first is that the amended Section 9 of the Madras City Tenants' Protection Act cannot be invoked in the present case, and that Section 9, as it stood before the amendment, is the provision which governs the rights of the parties. The other contention is that, in any event, the amended Section 9 could not have been invoked in the appeal pending in this Court.....

We are clear in our mind that if the suit was pending on the date when the amendments in the principal Act were brought into force, the amended provisions of the Act will govern the disposal of the suit."

8. This was followed by a Division Bench judgment of Jammu and Kashmir High Court, AIR 1997 J & K 83 to which one of us (Khan, J) was party and wherein it was held as under (at Page 84) :--

"The occurrence of accident is not material but the date of presentation of claim or date of decision of claim would be material for the purpose of operation of Section 166 Sub-clause (3). On the date when the Tribunal decided the matter, there, was no restriction with regard to the limitation. Once the matter is pending in the Court and the law is amended, law shall be applicable as it existed on the date on which the matter was decided."

9. Looking at it from the other angle even if it was accepted that amending Motor Vehicle Act 54 of 1994 was not retrospective in operation, nothing debarred or stopped the Tribunal from treating it as an index and guideline for assessing the earning of victim and determination of just compensation. This was approved by the Apex Court in R. N. Gupta's case 1990(1) SCC 356 and was followed by a Division Bench of this Court also in 1994 MPLJ 709. A perusal of this Judgment indicates that this Court had taken a consistent view in the matter by giving retrospective operation to the provisions of Section 92A of Motor Vehicle Act by holding that even though the provisions were not retrospective in operation it served as a legislative guideline for determining the compensation in cases of fatal accidents. This view had the support of host of other judgments including that of Bombay and Kerala High Court in AIR 1997 Bom 52 and AIR 1989 Kerala 95.

10. Having said all this, we find there is much ado about nothing. All that the Tribunal had done was to assess the income of the deceased Mamta at Rs. 15,000/- p.a. as per Schedule 2 prepared under Section 163-A which was brought in force on 14-11-1994. Had the Tribunal not drawn from the aforesaid Schedule it had still to fall back upon some method for determining the compensation. Therefore, it was wholly illogical to contend that it could not adopt the Schedule as a guideline merely because it had come into existence two months after the date of accident ignoring that award was passed by the Tribunal two years thereafter. Viewed thus, we find no merit in this appeal which is dismissed.