APPELLATE CIVIL

Before D. Falshaw, C. J., and A. N. Grover, J.

THE UNIQUE MOTOR AND GENERAL INSURANCE COMPANY LTD.,— *Appellant*

versus

KARTAR SINGH AND ANOTHER,—*Respondents.*

F.A.O. 129 of 1961.

1964

September, 1st.

Motor Vehicles Act (IV of 1939)—Ss.110 and 110-A to 110-F—Motor Accidents Claims Tribunal constituted under—Whether has jurisdiction to entertain claim application in respect of an accident which occurred prior to its constitution—Suits pending in Civil Courts at the time the Tribunal is constituted—Whether can be proceeded with—S.96 (2)—Insurer—Whether entitled to take all defences open to the insured.

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(3) 1962 P.L.R. 1110.

Held, that there is ordinarily no vested right in a trial in a particular forum or according to a particular procedure but once the trial has begun according to the law which was in force on the date of the institution of the action, certain other vested rights emerge, e.g., the right of appeal to a particular Court or forum. 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. It therefore follows that such actions as were pending on the date the Tribunal was constituted would proceed in the ordinary way in the ordinary Courts but, if any compensation was sought to be claimed after the constitution of the Tribunal even with regard to an accident which took place before it came into existence, it could be claimed only in accordance with the procedure prescribed in the Motor Vehicles Act and before the Claims Tribunal and the civil Courts would have no jurisdiction to entertain any suit in respect of it. The only result after a Tribunal has been constituted for that area is that applications can be made to it and not to the Civil Courts which by the express words of section 110-F have been debarred from entertaining any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. All that the Legislature has done while substituting the present section 110 as also introducing sections 110-A to 110-F in the Act by the amending Act of 1956, is to provide a cheap and speedy remedy for the enforcement of the substantive right of an injured person to claim compensation which he could claim in the form of damages in tort in a Civil Court. Thus, no rights are affected and it is only the remedy which has been changed for enforcing that right. As regards the period of limitation for making application for compensation to the Tribunal in respect of the accidents which occurred prior to the date of its Constitution is concerned, the Tribunal has the power to condone the delay and in cases of this nature unless the claimant has been guilty of gross laches or negligence even after the Constitution of the Tribunal, the delay would normally be condoned.

Held, that in view of the conditions of the policy of insurance, the insurer is entitled to take up all the defences which the insured could take and is not confined only to the defences mentioned in section 96(2) of the Motor Vehicles Act, 1939.

Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 1st November, 1961 to a larger Bench for decision owing to the important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble the Chief Justice Mr. Falshaw and the Hon'ble Mr. Justice A. N. Grover, on 1st September, 1964.

Regular First Appeal from the order of Shri G. S. Gyani, Motor Accidents Claims Tribunal, Punjab, Chandigarh, dated the 15th March,

1961, awarding Rs. 8,000 with costs in favour of the applicant and against the respondents and further ordering that by virtue of section 96 of the Motor Vehicles Act the Unique Motor and General Insurance Co. Ltd. Bombay, should pay the said amount.

N. N. GOSWAMI AND A. M. SURI, ADVOCATES, for the Appellant.

H. R. SODHI AND C. L. LAKHANPAL, ADVOCATES for the Respondents.

JUDGMENT.

Grover, J.

GROVER, J.—This judgment will dispose of First Appeals from Orders Nos. 129 of 1961 and 163 of 1961, which have been referred by a learned Single Judge for decision by a Division Bench in view of the nature of the points involved.

On 27th November, 1958 Kartar Singh, who was returning from his office at Jullundur to his village Nangal Shama, on the Jullundur-Hoshiarpur Road, was struck down by a truck No. PNE-1478 while he had got down from his bicycle and was standing on the kutcha portion of the road. He received several injuries and later on filed an application on 13th May, 1959, under section 110-A of the Motor Vehicles Act, 1939 (hereinafter to be called the Act) before a Tribunal which was constituted for the first time by a notification, dated 13th March, 1959, with effect from 10th February, 1959. The question of jurisdiction of the Tribunal to entertain and decide that application, apart from other matters, was raised by the appellant-company, which happened to be the insurer of the truck which caused the accident. According to the company, the Tribunal had not been constituted when the accident took place and, therefore, the remedy of the injured person was to file a suit within one year in the Civil Courts and not to institute a petition under section 110-A of the Act after the expiry of a period of 60 days from the date of the accident. It was also pleaded on behalf of the company that such defences, as were open to the owner of the truck, could be taken up by the company. These points were repelled by the Claims Tribunal. The Tribunal held that it was a fit case in which the delay in filing the claim application should be condoned and after giving decision on other issues, an award in the sum of Rs. 8,000 with costs was made in favour of Kartar Singh.

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The company has filed an appeal (F.A.O. 129 of 1961) challenging the decision as also the award made by the Tribunal whereas Kartar Singh has filed F.A.O. 163 of 1961 claiming enhancement of compensation to Rs. 19,150.

In the appeal of the Insurance Company, the following three points have been urged by its learned counsel:—

(1) The accident having taken place on 27th November, 1958 long before the constitution of the Tribunal, it had no jurisdiction whatsoever to entertain the claim application and make an award in favour of the claimant;

(2) the company is entitled to take all the defences which could be taken by the insured by virtue of a specific condition in the insurance policy; and

(3) the Tribunal failed to frame any issue or give a finding that there had been any negligence on the part of the truck driver and in the absence of any such finding, no compensation could have been awarded.

In order to decide the first point, it is necessary to refer to the relevant provisions of the Act. Section 110 provides for the constitution of Motor Accidents Claims Tribunals for such areas as may be specified in the notification by a State Government for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles. Section 110-A deals with the application for compensation. Sub-section (3) of that section is to the effect that no application for compensation shall be entertained unless it is made within 60 days of the occurrence of the accident. However, according to the proviso, the Claims Tribunal may entertain the application after the expiry of the said period of 60 days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Section 110-B relates to the making of the award by the Claims Tribunals, section 110-C, to the procedure and powers of such Tribunals, section 110-D, to the appeals

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which can be filed against the orders of the Tribunal, section 110-E, to the recovery of money awarded by the Claims Tribunal from insurer as arrears of land revenue and section 110-F bars the jurisdiction of the Civil Courts in these words:—

> "Where any Claims Tribunal has been constituted for any area, no Civil Courts 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."

In *Kumari Susma Mehta* v. *Central Provinces Transport Services Ltd.* (1), a Division Bench has held that section 110-F does not affect the right to file a suit in respect of a cause of action which had accrued before the constitution of the Accidents Claims Tribunal. It is the Civil Court that has jurisdiction to entertain a claim for compensation instituted after the constitution of the Tribunal in respect of an accident which had ~~accrued~~ occurred before its constitution and the Tribunal does not have any concurrent jurisdiction to entertain such claims. In this case the accidents with regard to which the claims had been filed had taken place before the constitution of the Tribunal. It may be mentioned that the notification constituting the Tribunal was published on 18th September, 1959 but the Tribunal had been constituted, with effect from 7th August, 1959. The Court held that the date of the Constitution of the Tribunal was 18th September, 1959. It felt that so far as the question of applicability of an enactment to suits filed before the enactment came into force was concerned, the position was clear that the subsequent law did not affect the pending suits but the position regarding the second point, namely, whether the suits could be filed even after the constitution of the Tribunal in respect of causes of action which had arisen prior to its constitution was not so clear. A number of cases were discussed in which the well-settled rule had been applied that unless an enactment was either in express terms or by necessary implication retrospective, it could not affect pending actions. The Madhya Pradesh Court thus came to the

(1) A.I.R. 1964 M.P. 133.

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conclusion that any enactment which has the effect of destroying an existing right cannot be given retrospective effect without express words and this rule also extends to the remedy which a litigant has for obtaining relief by means of a suit. In the earlier decision in *Khatumal* v. *Abdul Qadir* (2), on which reliance was placed, what was decided was the applicability of the aforesaid rule to a pending action and it was stated in clear terms that the question whether after the constitution of the Claims Tribunal, the Civil Court's jurisdiction to entertain a claim for compensation in respect of an accident taking place before its constitution was taken away, did not arise in that case. The contention that the Tribunal would have concurrent jurisdiction with the Civil Court in such cases was not accepted by the Madhya Pradesh Court.

The view taken in the above case that the inhibition against giving retrospective effect to an enactment without express words when it has the effect of destroying the existing right extends to the remedy also which a litigant has for obtaining relief by means of a suit runs counter to the observations of Sulaiman, A.C.J., (as he then was) in *Hazari Tewari* v. *Mt. Maktula Chaubain* (3). In that case a suit for possession had been filed by a Thekadar against his landlord on the allegation that although a lease was granted in 1923 the lessee was never put in possession. According to the plaint, the cause of action had accrued on the date of execution of the lease and also at the end of each year on the dates of the realisation of the lease money. It was not disputed that if the new Tenancy Act were applicable, the suit would be cognizable by the Revenue Court. The Court had no doubt that even if the Thekadar had been wrongly prevented from exercising his right, it was open to him to sue in the Revenue Court for the recovery of possession and compensation. Section 230 of the new Tenancy Act created a bar to the jurisdiction of the Civil Court in the matter of a suit in respect of which adequate relief could be obtained by means of a revenue suit. Sulaiman, A.C.J., who delivered the judgment of the Bench, after holding that the case of the Thekadar was covered by the new Act, made the following observations, which are noteworthy:—

> "It seems to us that a right of action is something different from the choice of the forum. There

(2) A.I.R. 1961 M.P. 295.
(3) A.I.R. 1932 All. 30.

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may be a vested right of action when the cause of action has accrued before the old Act has been altered; but there can be no vested right in the choice of a particular forum. If the legislature has though 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."

He further went on to examine the point that by applying the above rule, the period of limitation would be cut down if the new Act were made applicable. Section 220 of the new Tenancy Act made the period of limitation prescribed for suits by tenants applicable to suits by Thekadars, and in that way a period of six months was prescribed with regard to a suit under section 212 of that Act. The learned Acting C.J. made the following observations on this aspect of the matter:—

> "This is however not a point which arises directly in this case, but it may be pointed out that possibly it cannot be said that there is a vested right in a litigant to wait for a particular period of limitation before instituting his suit."

In *United Provinces* v. *Mt. Atiqa Begum* (4), the Bench consisted of Gwyer C.J., Sulaiman and Varadachariar JJ. Sulaiman J., who delivered a separate judgment, dealt with the law relating to pending actions. He reiterated the well-known principle that Courts have leaned very strongly against applying a new Act to a pending action when the language of the statute does not compel them to do so. It is necessary to refer to the following portion from his judgment at page 37 because the learned counsel

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(4) A.I.R. 1941 F.C. 16.

for the company has relied on it in support of his proposition:—

> "When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed."

But the entire discussion in the judgment of Sulaiman J. was confined to the position relevant to pending actions. It is not possible to find any contradiction between the views expressed by Sulaiman J. when he was on the Bench of the Federal Court and those which he expressed in *Hazari Tewari's case* (3). The distinction which he made out in the earlier case between the applicability of the rule to pending actions and those which had yet to be instituted was fully justified and must be kept in mind while deciding the present question.

In all authoritative books on interpretation of statutes, it is consistently stated 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. A person has only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode. But to deprive a suitor in a pending action of an appeal to a superior Tribunal which belonged to him as of right is a very different thing from regulating procedure (Maxwell on Interpretation of Statutes, 11th Edition, pages 216-217), In Craies on Statute Law, 6th Edition, at page 400, it is stated that it is perfectly settled that if the Legislature forms a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way, clearly there bygone transactions are to be used for and enforced according to the new form of procedure. Salmond considers that substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with

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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 fulfil their functions."

There is thus a good deal of support for the view expressed in *Hazari Tewari's case* that a right of action is something different from the choice of the forum. There is certainly a vested right of action when cause of action has accrued but in the present case the right has not been touched or taken away by the provisions contained in the Act to which reference has been made nor does the constitution of a Tribunal for a particular area take away that right. The only result after a Tribunal has been constituted for that area is that applications can be made to it and not to the Civil Courts which by the express words of section 110-F have been debarred from entertaining any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. All that the Legislature has done while substituting the present section 110 as also introducing sections 110-A to 110-F in the Act by the amending Act of 1956, is to provide a cheap and speedy remedy for the enforcement of the substantive right of an injured person to claim compensation which he could claim in the form of damages in tort in a Civil Court. Thus, no rights are affected and it is only the remedy which has been changed for enforcing that right. If the rule, which has been laid down by Sulaiman, A.C.J., in *Hazari Tewari's case*, contains a correct statement of law, I cannot, with respect, subscribe to the view expressed by the Madhya Pradesh Court in the Bench decision on which the learned counsel for the company has relied. What I am saying finds support from *Bireswar Moral* v. *Indu Bhushan Kundu* (5), and *Subramania Aiyar* v. *Namasivaya Asari* (6). In the Calcutta case while execution of a decree was taking

(5) A.I.R. 1943 Cal. 573.
(6) A.I.R. 1918 Mad. 162.

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place, an application for relief before the Debt Settlement Board under Bengal Agricultural Debtors Act was filed. That Act was amended, the result of the amendment being that whenever the question of deciding any liability of a debtor arose, the Board was conferred with the jurisdiction to decide it. Notwithstanding the amendment the Munsif decided the question of the decree being a debt against the judgment-debtor. When the matter came before the Bench in an appeal against the judgment of a learned Single Judge, who had taken the same view that was taken by the Munsif and the first appellate Court, the contention that was raised was that the amending Act by necessary implication took away the jurisdiction of the Civil Court to decide the aforesaid question and empowered the Board alone to decide it. After referring to the statement from Craies and Salmond (already extracted) the Bench expressed the view that the amending Act had not touched the substantive rights of the parties and it had simply laid down in what Tribunal the dispute between them as to whether a particular liability was or was not a debt, was to be determined. It simply changed the forum. The provisions of the amending Act relating to this change of forum were, therefore, simply matters of procedure and the Munsif had no jurisdiction in the matter.

It is pointed out on behalf of the company that if after the Tribunal is constituted, no suits can be filed with regard to the accidents which occurred before its constitution, the result would be that the substantive rights not only of the injured person, but also of the insurance company or the insured would be prejudicially affected. In the first place, the limitation of one year which is prescribed for filing a suit for recovery of damages will be cut down to 60 days and secondly, the rights of appeal would be curtailed. Section 110-D of the Act provides for an appeal to the High Court against an award made by a Claims Tribunal, but no appeal can be filed if the amount in dispute in appeal is less than two thousand rupees. It is said that if a suit could be instituted and on the assumption that the trial Court awarded a decree for less than two thousand rupees, the right of appeal to the first appellate Court and second appeal to the High Court would be affected. These contentions though specious do not have much substance. I am inclined to agree, with respect, with Sulaiman, A.C.J. that a litigant does not have

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a vested right to wait for a particular period of limitation before instituting his suit. As regards the right of appeal in case the amount in dispute is less than two thousand rupees, that question could possibly arise only where a suit has already been instituted and is pending at the time when the Tribunal is constituted.

This brings me to another aspect of the matter which may be regarded as creating a difficulty if section 110-F is to be held applicable to those cases where the cause of action arose before the constitution of the Tribunal. It could well be said that logically even those suits which were filed before the Tribunal was constituted but which were pending when the Tribunal came into existence could not be entertained and decided thereafter by the *Civil Courts. Indeed, in Vajechand Ramji* v. *Nandram Daluram* (7), the learned Judges thought that the plaintiff in that case whose action was proceeding in the Mamlatdar's Court when its jurisdiction was taken away with regard to that class of suits could not be said to have any "right, privilege or obligation" to have his case finally decided in that Court. This was in accordance with the dictum of Sargent, C.J. in *Shamlal* v. *Hirachand* (8) "jurisdiction is matter of procedure". In *Subramania Aiyar's case* (9), however, this rule was not applied to a pending case on the ground that the principle of law that a right to prefer an appeal being a vested right could not be affected by legislation and that principle was equally applicable to parties, who had acquired a right to a judgment being regarded as final and conclusive. The following passages at page 163 is noteworthy :—

> "Mr. Rajah Aiyar next referred to cases which have held that there is no vested right in having a case tried by a tribunal which has been deprived of jurisdiction by a subsequent enactment. Such a right has been held by Lord Mcnaughten in *Colonial Sugar Refining Co.*, v. *Irving* (10), as pertaining to the province of processual law, and not to vested right, because so long as there has been no trial, no party has any right to say that the mode of trial or the procedure of trying it shall not be changed."

(7) I.L.R. 31 Bom. 545.
(8) I.L.R. 10 Bom. 365.
(9) A.I.R. 1918 Mad. 1962.
(10) 1905 A.C. 369

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The position, therefore, is that there is ordinarily no vested right in a trial in a particular forum or according to a particular procedure, but once the trial has begun according to the law which was in force on the date of the institution of the action, certain other vested rights emerge, e.g., the right of appeal to a particular Court or forum. This has now been finally decided in *Garikapati Veeraya* v. *N. Subbiah Choudhry* (11), in which it has been laid down that 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 career of the suit. If it had been intended that section 110-F should apply to pending actions also, there would have been a specific provision to that effect in the Act. In my view, therefore, such actions as were pending on the date the Tribunal was constituted would proceed in the ordinary way in the ordinary Courts but if any compensation was sought to be claimed after the constitution of the Tribunal even with regard to an accident which took place before it came into existence, it could be claimed only in accordance with the procedure prescribed in the Act and before the Claims Tribunal and the Civil Courts would have no jurisdiction to entertain any suit in respect of it. For all these reasons, with respect, the decision of a learned Single Judge in *Mulak Raj* v. *Northern India Goods Transport Corporation Ltd.* (12), on which the learned counsel for the company strongly relied cannot be held to have laid down the law correctly.

The learned counsel for the company laid a great deal of emphasis on the difficulties that would arise with regard to applications to be filed before the Claims Tribunal relating to accidents which occurred prior to its constitution in the matter of limitation. It is pointed out that if a claimant waits for a year for which period he was fully entitled to wait for institution of a suit but before the expiry of the year the Tribunal comes into existence the application filed before it would be very much belated as the period prescribed by section 110-A is sixty days. This argument loses much force when it is borne in mind that the Tribunal has been given the power to condone the

(11) A.I.R. 1957 S.C. 540.
(12) 1961 P.L.R. 524.

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delay and in cases of this nature unless the claimant has been guilty of gross laches or negligence even after the constitution of the Tribunal, the delay would normally be condoned as has been done in the present case. Thus the submission of the learned counsel for the company on the question of jurisdiction cannot prevail and must be repelled.

On the second point, the learned counsel for the company has invited our attention to condition No. 2 in the Insurance Policy which is as follows:—

> "No admission, offer, promise or payment shall be made by the Insured without the written consent of the company which shall be entitled if it so desires to take over and conduct in the name of the insured the defence or settlement of any claim or to prosecute in the name of the insured for its own benefit any claim or indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings in the settlement of any claim and the insured shall give all such information and assistance as the company may require. If the company shall make any payment in settlement of any claim and such payment includes any amount not covered by this policy the insured shall repay to the company the amount not so covered."

He says that in the presence of the above condition notwithstanding the provisions of section 96(2) of the Act the company was entitled to take all the defences which could be taken by the insured and the Tribunal erred on a misconstruction of the law laid down in *British India General Insurance Co.,* V. *Captain Itbar Singh* (13), that the company could take up only those pleas which were permissible under section 96(2) of the Act. He has called attention to the following statement at page 1335:—

> "The statute has no doubt created a liability in the insurer to the injured person, but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore,

(13) A.I.R. 1959 S.C. 1331.

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to the statute for reasons of hardship. We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship, if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do."

The learned counsel for the claimant could not satisfy us how in the presence of the specific condition in the policy and in view of the above observations the company was not entitled to take up all the defences which the insured could take. Our attention was invited to clause 5 of the policy to which the Tribunal also referred, but the condition, which is material, is the one which has been already set out and which was not noticed by the Tribunal at all. The Tribunal followed a somewhat unusual procedure which, it is stated, was done in the interest of justice to allow the company to cross-examine all the witnesses. That, however, was not sufficient because the company was initially debarred by the Tribunal from taking up all the defences which it could in the name of the insured.

The third point is also connected with the second point discussed above and it is wholly unnecessary to say anything about it because that is a matter which will require consideration of the Tribunal when it is decided afresh in accordance with the order which is presently to be made.

In the result, both the appeals are allowed and the award made by the Tribunal is hereby set aside. The case is remanded to the Tribunal for a fresh decision in accordance with law. The parties are directed to appear before the Tribunal on 5th October, 1964. There will be no order as to costs in this Court.

D. FALSHAW, C.J.—I agree.

B.R.T.