Mohd. RiyazuddIn Vs. the General Manager, A.P.S.R.T.C.

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Court : Andhra Pradesh

Decided On : Aug-03-1990

Reported in : 1991(1)ALT506

Judge : P.L.N. Sarma, J.

Acts : Motor Vehicles Act, 1939 - Sections 110A(3) and 110D; Motor Vehicles (Amendment) Act, 1988 - Sections 166(3)

Appeal No. : Appeal Against Order No. 1117 of 1990

Appellant : Mohd. Riyazuddin

Respondent : The General Manager, A.P.S.R.T.C.

Advocate for Def. : K. Harinath, S.C.

Advocate for Pet/Ap. : S. Subrahmanyam, Adv.

Disposition : Petition allowed

Judgement :

P.L.N. Sarma, J.

1. Initially, the petitioner preferred C.R.P.No. 266 of 1990 to this Court against an order of the District Judge-cum-Motor Accidents Claims Tribunal, Nalgonda dismissing the application filed to condone the delay in filing the claim petition

under Section 110-A Clause 3 of Motor Vehicles Act (Act 4 of 1939). It is admitted that revision petition is not maintainable and only C.M.A. lies against the said order. (Vide Babumiyam & Mastan, 1985 (1) ALT 47. The counsel for the petitioner requested permission to convert the revision petition into CM.A., in view of the Judgment of the Division Bench referred to supra (1). The limitation as well as stamp which is required to be paid on Memorandum of Appeal are the same for both the revision as well as CM.A. and the appeal also lies to this Court. So, in the interests of justice, the petitioner is permitted to convert the above Revision Petition No. 266 of 1990 as CM.A. Having given permission, I am proceeding to dispose of the matter.

2. The revision is filed against an order of the learned District Judge dated 16-11-1989 in I.A.No. 1182 of 1987. The relevant facts are as follows:

3. The petitioner filed the claim petition under the provisions of Motor Vehicles Act (Act 4 of 1939 (hereinafter referred to as 'the Act) along with I.A.No. 1182/87 for condoning the delay of 1283 days in filing the claim petition. The petitioner stated that on 8-11-1983 at 6.30 P.M., the driver of A.P.S.R.T.C Bus bearing No. APS 4710 drove the bus in a rash and negligent manner at Bhongir Depot and hit the appellant while it was taking a turn. Due to the accident, he suffered serious fractures and as a consequence, he was permanently disabled. He stated that he was not able to file the claim petition within the time on the ground that he was illiterate and he was not aware of the procedure ; that he has taken treatment for fractures for a very long time ; that he is still suffering with pain and that therefore, he could not file the claim petition within the period of limitation. Hence, he prayed for condoning the delay in filing the claim petition for compensation.

4. The same was resisted by the respondent denying that the accident took place on account of rash and negligent driving of the driver of the bus and that the affidavit does not disclose reasons for condoning the inordinate delay in filing the claim petition.

5. The learned District Judge, Nalgonda dismissed the application on two grounds. Firstly, on the ground that the delay was not properly explained in spite of affording sufficient opportunity by granting adjournments and the petitioner has not adduced

any evidence, neither he examined himself as a witness to show that he was prevented by sufficient cause from filing the petition within time etc., and secondly on the ground that by the time the application was taken up for disposal Motor Vehicles Act 59 of 1988 came into force which prescribed the period of limitation of six months and also restricted the power of the Court to condone the delay for a period of more than six months thereafter. The present revision is filed questioning the said order.

6. The learned counsel for the petitioner raised the following points :

1. The law of limitation as existed on the date of filing of the claim petition alone applies and not the subsequent changes brought about either by amendment or by repeal. The present application for compensation having been filed with a petition 1o condone the delay on 8-5-1987 itself, the law of limitation applicable as on that date alone will govern the situation and not the provisions of limitation contained in Motor Vehicles Act 59 of 1988 which came into force on 1-7-1989.

2. There is-no provision in the Motor Vehicles Act 59 of 1988 (hereinafter referred to as 'New Act') making the provisions of the 'New Act' applicable to pending proceedings.

3. Section 217 of the 'New Act' specifically saved the application of Section 6 of the General Clauses Act and therefore, the right accrued prior to the coming into force of the 'New Act' for filing the claim petition is a vested right and the same cannot be taken away by the new Act.

7. I will take up the points in seriatim.

8. Point No. 1 :-For considering this point, it is necessary to refer to the relevant provisions of both the 'old Act' as well as the 'new Act'. Under the 'old Act', Section 110-A (3) is the provision prescribing limitation for filing of an application for compensation before the Claims Tribunal which is as follows :

'Section 110-A (3) : No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :

Provided that the claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.'

While in the 'new Act', the provision prescribing limitation is contained in Sub-section (3) of Section 166 which is as follows :

Section 166(3) : No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelvemonths, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.'

In the present case, the accident occurred on 8-11-1983 at 6.30 P.M. at Bhongir Bus-stand as alleged by the petitioner. The claim petition was filed on 8-5-1987 along with the application I.A. No. 1182 of 1987 for condoning the delay in filing the same. The 'new Act' came into force with effect from 1-7-1989. The contention of the petitioner is that even before coming into force of the 'new Act' on 1-7-1989, the claim petition was! already filed on 8-5-1987 along with the application for condoning the delay in filing the claim petition. The petitioner has every right to file the application for compensation under the provisions of the 'old Act.' He had already exercised the same and filed the claim petition along with an application for condoning the delay in filing the same. The law of limitation as existing on 8-5-1987 alone will be applicable to the proceedings initiated by the petitioner and not the provisions of limitation contained in the 'new Act' which came into force long thereafter, viz.. on 1-7-1989. In support of this contention, the learned counsel for the petitioner relied upon some of the Judgments which will be referred to hereinafter.

9. Before going into the decisions, it is necessary to refer to some of the settled propositions of law. It is well settled that Statutes of limitation are regarded as procedural and the law of limitation which applies to a suit is the law in force at the date of the institution of the suit irrespective of the date of accrual of the cause of

action. The object of a statute of limitation is not to create any right but to prescribe periods within which legal proceedings may be instituted for enforcement of rights which exist under the substantive law. Statutes of (imitation are thus retrospective in so far as they apply to all legal proceedings brought after their operation for enforcing causes of action accrued even earlier, but they are prospective in the sense that they neither have the effect of reviving a right of action which is already barred on the date of their coming into operation, nor do they have the effect of extinguishing a right of action subsisting on that date.

10. In a Judgment reported in Mt. Allah Rakhi v. Shah Mohammad, AIR 1934 Privy Council 77, the question which fell for consideration in the appeal was whether the plaintiff's suit to recover possession of certain lands from the defendants was barred by limitation. The ground urged in support of the contention that the suit was barred was with referrence to Section 10 of Limitation Act, 1908 which was subsequently amended by Section 2, Limitation (Amendment) Act, 1929. The contention that was raised before their Lordships of the Privy Council was that by virtue of the amendment of Section 10 of the Limitation Act by Section 2, Limitation (Amendment) Act, 1929, the suit is barred. The amendment came into force with effect from 1-1-1929. In that case, the suit was filed on 29-1-1926. Therefore, the suit was filed prior to the coming into force of the amendment to Section 10 of the Limitation Act. While considering the said contention, their Lordships of the Privy Council stated as follows :

'It was provided by Section 1(2) that the said Amendment Act should come into force on 1st January, 1929. The suit, which is the subject of this appeal, was brought on 29th January, 1926, and the question whether it was then barred by limitation must depend upon the law of limitation which was applicable to the suit at that time.'

However, on a consideration of the other aspects and the earlier decision of the Privy Council, their Lordships held on facts that the suit does not come within unamended Section 10 of the Limitation Act also. Their Lordships of the Privy Council clearly laid down that the law of limitation which was existing as on the date of filing of the suit applies.

11. To the same effect is the decision in Tej Bahadur v. (Firm) Kothi Radha Kishan, AIR 1936 Allahabad 858. In that case, suit was filed on 13th November, 1930. The contention was that the suit became barred on 11th November, 1920 itself which was law of limitation then in force and there could be no revival of the right of suit by the amendment which was subsequently made by the legislature to Section 21 of the Limitation Act. Under the law of Limitation as it stood on 11th November, 1920, a widow having a life estate was not competent to give an acknowledgment which would bind the reversioners. However, in 1927 the Limitation Act (Act 9 of 1908), was amended so as to render such an acknowledgment binding on the reversioners-vide Clause (3), Section 2K Under the terms of the bond in suit, the period of redemption was 10 years. Thus, time would begin to run from 11th November. 1908 and the period of limitation would expire on 11th November, 1920. In view of fact that the suit was filed on 13th November, 1930, a contention was raised that it was barred by limitation. As the law of limitation applicable to the case is the law which was in force at the date of the institution of the suit. The learned Judges in that connection observed as follows :

'Learned counsel for the plaintiff-respondent contends that the law of limitation applicable to the case is the law which was in force at the date of the institution of the suit ; and he has referred us to various authorities for the proposition that the statute of limitation is a law of procedure and that ordinarily it is retrospective in its operation.'

Infact, it is a reverse case where as per the law then prevailing, the right got barred by limitation, it cannot be revived by a subsequent change in the law of limitation and the law of limitation which is applicable to a suit is the law then existing.

12. Likewise, the learned Judges of the Supreme Court in Beepathuma v. Shankaranarayana, : [1964]5SCR836 held as follows :

'There is no doubt that the law of limitation is a procedural law and the provisions existing on the date of the suit apply to it.'

13. To a similar effect is the Judgment of the Supreme Court in Ramprasad v. Vijay Kumar, : AIR 1967 SC278 . Their Lordships of the Supreme Court held as follows:

'But as from April 1, 1951, the Hyderabad Limitation Act was repealed and the Indian Limitation Act, 1908 was extended to the Slate of Hyderabad by the Part B States (laws) Act (Act III of 1951), prima facie, the Indian Limitation Act, 1908 which was in force on the date of institution of the suit was the law of limitation applicable to the suit.'

In the said case, a mortgage was executed on December 13, 1934. The money thereunder became due on February 19, 1943. At that time, the Hyderabad Limitation Act was in force and by virtue of Art. 133 of Hyderabad Limitation Act, the period of limitation for a suit by a mortgagee for foreclosure was 30 years from the date when the money secured by the mortgage became due. But as from April 1, 1951, the Hyderabad Limitation Act was repealed and the Indian Limitation Act, 1908 was made applicable. The learned Judges clearly held that the suit having been filed after the coming into force of the Indian Limitation Act, 1908 the suit will be governed only by the provisions of the said Act, because the law of limitation which is existing on the date of filing of the suit is the law that is applicable. The suit was filed on February 10, 1954.

14. A case in S.C. Prashar v. Vasansen, : [1963]49ITR1(SC) is also to a similar effect. In the said case, the relevant assessment year was 1942-43 ending by March 31, 1943. The period of 8 years would end on March 31,1951. However, there was a change in the second proviso to Sub-section (3) of Section 34 which came into force with effect from April 1, 1952 giving powers to the Income-tax Officer to re-open an assessment which has become final even after the expiry of the period of 8 years. The argument in the said case was that the amendment is retrospective and therefore, even those assessments which have become final and for which 8 years' period was also expired, they can be re-opened after the commencement of the amendment. Dealing with the said contention, their Lordships of the Supreme Court stated as follows :

'Is there anything in the proviso in question which would give it a retrospective effect beyond April 1, 1952. In my opinion, there is none. The second proviso came into force on April 1, 1952 and before that date the period of eight years from March 31,1943 had already expired. The legislation which provided that from April 1, 1952 there would be no limitation in respect of certain cases could not revive a remedy which was already lost to the Income-tax Officer. It seems to me that the proposition of law is settled beyond any doubt that although limitation is a procedural law and although it is open to the legislature to extend the period of limitation, an important right accrues to a party when the remedy against him is barred by the existing law of limitation and a vested right cannot be affected except by express terms used by the statute or the clearest implication.'

15. In view of the above decisions, two well settled propositions of law arise. (1) The law of limitation is a procedural law and the provisions existing on the date of the suit will apply to the same and any subsequent amendment in the law of limitation will not apply to a proceeding already instituted. (2) Even though the 'aw of limitation is a procedural law, if a right accrued prior to the change of the law of limitation, that right is a vested right and cannot be taken away by a subsequent amendment. There- fore, in my opinion, the application for compensation which was instituted on 8-5-1987, in the present case, long before the coming into force of the new Act on 1-7-1989 is governed by the law of limitation as existing on 8-5-1987 viz., Section 110-A Clause 3 of the Motor Vehicles Act (Act 4 of 1939). In other words, the proviso with regard to law of limitation in Section 110-A Clause 3 of the Old Act applies to the proceeding initiated by the petitioner on 8-5-1987 and not Sub-section (3) of Section 166 of the new Act. Therefore, the order of the lower Court that the application is not maintainable on the ground that the provisions of law of limitation, viz., proviso in Sub-section (3) of Section 166 of Motor Vehicles Act incorporated in the new Act 59 of 1988 is applicable, is not sustainable.

16. In this connection, it is pertinent to note that no provision is made in the new Act to the effect that the new Act will apply to the pending proceedings. ' This is also a point to show that the provision in respect of the limitation contained in the new Act will not apply to the proceedings already initiated. The same can also be

tested from another angle. If an application is already filed with a petition to condone the delay of more than six months as in the present case, and due to laws delays, the petition is kept pending till the coming into force of the new Act, can it be said that 1he new Act applies? In my opinion, It will not apply and to hold otherwise will cause any amount of prejudice to the persons who have already instituted the claims for compensation along with petitions to condone the delay of more than six months. This is the second contention raised by the learned counsel for the petitioner and for the reasons mentioned above, I hold that the new Act will not apply to the pending proceedings even on this ground.

17. The third contention raised by the learned counsel for the petitioner is that the new Act specifically saved the application of Section 6 of the General Clauses Act and therefore, the right accrued prior to the coming into force of the new Act, for filing claim petition, which is a vested right, cannot be taken away by the new Act. Whether the claim for compensation is a substantive right recognised by the Motor Vehicles Act and when the right to file such an application is exercised by a party, it amounts to a right accrued within the meaning of Section 6 of the General Clauses Act or not, need not be gone into in this case It is well settled that a vested right cannot be taken away by any enactment unless the enactment is given retrospective effect expressly or by necessary implication. All these matters need not be gone into in this case. The simple question is whether the application filed for compensation along with a petition to condone the delay in filing the application for compensation prior to the coming into force of the new Act is governed by 'old Act' or 'new Act'. In view of the decisions mentioned above and in view of the discussion, I hold that the present proceeding is governed by the provision prescribing the limitation. in the 'old Act '

18. The learned counsel for the respondent contended that there is no change in the law of limitation in the new Act. Both under the old Act as well as under the new Act, the period of limitation for filing claim petition is six months. The only change that was effected was, under the old Act, the discretion for condoning any amount of delay is given to the Court provided the ingredients of the proviso are satisfied, while under the new Act, the period for which the Court has discretion to condone the delay was restricted to six months and nothing more. Therefore, it is

contended by the learned counsel for the respondent-that the provision under the new Act prescribing the law of limitation only applies. In my opinion, there is fallacy in this submission. The provision prescribing limitation is a composite one under both the Acts. The provision contained in Section 110-A Clause 3 includes the proviso. The proviso cannot be read in isolation. It is part of Sub-section (3) of Section 110-A of the 'old Act'. The entire provision may be taken as the provision prescribing the law of limitation. So construed, which is in my opinion, is the only reasonable and correct construction, the limitation as prescribed under the 'old Act' alone will apply. The contention raised on behalf of the respondent in this regard is without substance.

19. It is further contended by Sri K. Harnath, learned counsel for the respondent that the law of limitation is procedural and it applies retrospectively and the right for condonation of any delay is not a vested right, much less a right and therefore, pending proceedings are also governed by the law of limitation as prescribed in the 'new Act'. I have already answered this point while dealing with first contention raised by the petitioner. The question of restrospectivity of the 'new Act' does not arise. The simple and straight question is what is the law of limitation that is applicable for a proceeding already initiated. Now, in view of the decisions referred to above, it is clear that the law of limitation existing as on the date of initiation of the proceedings alone applies to the said proceedings.

20. The learned counsel, in support of his contention that the Act is retrospective, relied upon a decision in Mithilesh Kumari v. Prem Behari Khare, : [1989]177ITR97(SC) . The said case dealt with the provisions of Benami Transaction (Prohibition) Act (45 of 1988). In the said case, it was held that the Act applies even to pending suits. In my view the said case has no application to the facts of the present case. The said Act, viz., Act 45 of 1988 was held to be a declaratory in nature and the presumption against retrospectivity is not applicable. The learned Judges further held that the presumption against taking away vested right will not apply in the said case inasmuch as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him. As stated by me earlier, the above said decision has no application to the facts of the present case. The question whether the new

Limitation Act is prospective or retrospective has no relevance in view of the law laid down by the decisions that the law of limitation as existing on the date of initiation of the proceedings alone will apply to the said proceedings.

21. The learned counsel for the respondent also relied upon a decision in New India Insurance Co. v. Shanti Misra, : [1976]2SCR266 for the proposition that on the plain language of Sections 110-A and 110-F the change in law was merely a change of forum i.e., a change of adjectival or (procedural law and not of substantive law. Such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of the forum. The said decision also, in my opinion, has no application. Originally, in the said case, a suit was filed claiming compensation. In view of the provisions of Motor Vehicles Act, a Claims Tribunal was constituted. The learned Judges held that the constitution of the Claims Tribunal has the effect of change of forum and every proceeding for compensation under the Motor Vehicles Act will have to be initiated before the Claims Tribunal. By virtue of the provisions, the forum alone is changed and the learned Judges held that it is retrospective, that means, even the proceedings which are pending will have to be again presented before the Claims Tribunal. The present case is not connected with any change of forum. It is settled law that the law of limitation is procedural. In spite of that the decisions have held that the law of limitation as existing an on the date of institution of the proceedings is applicable. Therefore, the contention of the learned counsel for the respondent in this regard has no application to the facts of the present case.

22. For all the reasons mentioned in the foregoing paragraphs, I hold that the application in I.A.No. 1182 of 1987 filed for condoning the delay of 1283 days in filing the claim petition is maintainable and it is governed by Section 110-A Clause 3 proviso of the old Motor Vehicles Act.

23. It is next contended by the learned counsel for the petitioner that the petitioner was prevented by sufficient cause from filing the application for compensation within time and therefore, there is sufficient cause for condoning the delay of 1283 days in filing the claim petition. The other allegations made by the petitioner in

support of the application for condoning the delay I have already referred to in the earlier paragraphs. The learned counsel for the petitioner pleads that another opportunity may be given to the petitioner to adduce evidence in support of his contention that he was prevented by sufficient cause from filing the application for compensation. On the other hand, the learned counsel for the respondent contended that there was inordinate delay in filing the application and the same was not explained properly and the petitioner has not adduced any evidence in support of his plea. I have gone through the averments made in the affidavit and in the counter filed by the respondent. The petitioner, it is stated, is an illiterate person and he underwent medical treatment for a very long time. He sufferred, according to the allegations, multiple fractures which left a permanent disability. In a case like this, technicalities should not weigh with Court. Substantial and real justice must be made between the parties. The petitioner who was involved in an accident and suffered, according to him, multiple fractures which made him permanently disabled, should be given another opportunity for adducing evidence in support of his plea that he was prevented by sufficient cause from filing the claim petition. In view of the above, while holding that the application is maintainable, I set aside the order of the lower Court and remit back the matter to the learned District Judge-cum-Motor Accidents Claims Tribunal, Nalgonda for fresh consideration. Both the parties shall be given opportunity to adduce evidence in support of their respective cases and the lower Court will dispose of the matter in accordance with law. In view of the fact that the matter is an old one, I hope and trust that the lower Court will dispose of the matter at the earliest, preferably within a period of two months from the date of receipt of a copy of this order.

24. Accordingly, (Revision petition) C.M.A. is allowed and the matter is remitted back to the lower Court for fresh consideration as indicated above, No costs. As stated in the first paragraph, the petitioner is permitted to convert the Revision petition into CM.A.