

Shila Devi and ors. Vs. Khadi and ors.

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Court : Madhya Pradesh

Decided On : Oct-11-2002

Reported in : 2004ACJ954; 2003(3)MPLJ247

Judge : S.K. Kulshreshtha and ;S.L. Jain, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166(2); Motor Vehicles (Amendment) Act, 1994

Appeal No. : M.A. Nos. 1392 and 1394 of 1998

Appellant : Shila Devi and ors.

Respondent : Khadi and ors.

Advocate for Def. : S.K. Rao, Adv.

Advocate for Pet/Ap. : Sheel Nagu, Adv.

Disposition : Appeal allowed

Judgement :

S.L. Jain, J.

1. Both of these appeals are directed against the common order dated 10.9.1998 passed by the Motor Accidents Claims Tribunal at Tikamgarh in Claim Case Nos. 46 and 47 of 1996 returning the claim petitions of the appellants for want of

territorial jurisdiction.

2. Since both the appeals involve common questions of law and facts, these are being disposed of together by this common judgment and order.

3. It will be appropriate to mention the facts of the case in brief as hereunder:

On 28.5.1998 deceased Mohanlal Lodhi and Malkhan died in an accident which took place near Khurecha Banda and the offending vehicle in that accident was tractor No. MP 15-D 1739 which was owned by respondent Nos. 1 and 2. Hariram who also died in the accident was the driver of the offending tractor. A trolley was attached with the tractor. The tractor along with trolley was going from Mahuranipur to Kudilaya. Deceased Mohanlal and Malkhan were also sitting in the tractor. Due to the mishap tractor-trolley overturned, which resulted in the death of Mohanlal, Malkhan and also of driver Hariram. The accident took place within the local limits of the Tribunal located at Jhansi (U.P.). The claimants, who are the legal representatives of the deceased and residents of Kudilaya, Tehsil Jatara, District Tikamgarh, filed their claims before the Motor Accidents Claims Tribunal, Tikamgarh, within whose jurisdiction they resided.

4. Two preliminary issues were framed by the learned Tribunal: one regarding limitation and other regarding territorial jurisdiction. As far as limitation was concerned, the Tribunal recorded a finding that the claim has been filed within the prescribed period of limitation but regarding territorial jurisdiction the Tribunal held that it had no jurisdiction, as the accident took place within the territorial jurisdiction of the Tribunal at Jhansi. The Tribunal directed that the claim petitions be returned to the appellants for filing the same before the Tribunal having jurisdiction.

5. From the impugned order passed by the learned Tribunal it is clear that technical ground of want of jurisdiction was accepted by it. The Tribunal observed that though Sub-section(2) of Section 166 of the Motor Vehicles Act has been amended w.e.f. 14.11.1994 vide the Motor Vehicles (Amendment) Act 54 of 1994 and after the amendment an option has been given to the claimant to make application either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose

jurisdiction the claimants reside or carry on business or within the local limits of whose jurisdiction the defendants reside, however, as the accident occurred prior to 14.11.1994 on which date the amendment came into force, the claim could not have been filed before the Tribunal within the local limits of whose jurisdiction claimants resided and could have been filed only in the Claims Tribunal having jurisdiction over an area in which the accident occurred. Since the accident occurred within the jurisdiction of Tribunal at Jhansi, the claim petition could not have been filed before the Tribunal at Tikamgarh, the Tribunal observed.

6. As the law was amended and the new law was substituted to cure an acknowledged evil for the benefit of the community as a whole, it was not necessary to make an express provision that it will apply to the accidents occurred prior to the date of amendment. If a new law required certain type of original proceedings to be instituted before special Tribunal, a particular forum constituted under the Act, all proceedings of that type whether based on old or new causes of action will have to be instituted before that Tribunal. Similarly, the option of forum given to a claimant will be applicable to old and new causes of action alike.

7. From the plain language of amendment it is clear that it provided additional venues, i.e., it only effected changes in adjective or procedural law and not in substantive law. Such a change does operate retrospectively. The person can go to a new forum made available by amendment even if cause of action or right of action accrued prior to the date of enforcement of the amendment. By virtue of the amendment, jurisdiction has also been conferred upon the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within whose local jurisdiction defendants reside. Therefore, the reasonable view to adopt would be that if the new forum is made available expressly to causes of action arising after creation of the forum, only then the retrospective effect of law is taken away, otherwise the general rule is to make it retrospective it being a procedural matter. The language of the amendment clearly shows that the change of forum meant to be operative retrospectively,

8. The underlying object of the change in law brought about by the amendment was to make available to claimant a cheap and convenient forum which they could

approach easily. It is legitimate to believe that the legislature intended this forum to be available as soon as the amendment comes into force irrespective of the date of the accident. In deciding the applicability of a particular provision to past events the language used is no doubt the most important factor to be taken into account, however, it cannot be laid down as an inflexible rule that the use of present tense or present indefinite tense conclusively determines the intention of the legislature that the statute was not intended to operate retrospectively. The real issue in each case is the dominant intention of the legislature to be gathered from language used, the object indicated, the nature of rights, and the circumstances under which the amendment is effected.

9. The statute providing new remedies for enforcement of existing rights will apply to future as well as past events the reason being that such statutes are classified as procedural. In the case of *State of U.P. v. Anand Swaroop*, AIR 1974 SC 125, a new law providing a new remedy to the Government to recover arrears of rent was held to be retrospective and applicable to all claims of that type whether arising before or after introduction of the new law. Similarly, in *Union of India v. Sukumar Pyne*, AIR 1966 SC 1207, a new law providing for alternative adjudication proceeding for punishment of certain offences was held applicable for adjudication of the offences committed prior to coming into force of the new law.

10. At the time when the application was filed, the amendment of Sub-section(2) of Section 166 had come into operation which afforded the claimants option to choose one of the three fora available to adjudicate their dispute and since Tikamgarh where the claimants reside was one of the fora recognized by law, the choice of Tikamgarh for filing the application was well within the rights of applicants. Question with regard to the territorial jurisdiction cannot be answered from the view point of the date of the accident. It ought to be answered from the view point of date of filing of the application and the law prevailing at that point of time.

11. A welfare legislation should be given a liberal construction and not a limited and parochial one. Legislative intent behind the amendment was to ensure convenience and accessibility to the claimant so that he may approach the closest

Tribunal among the three contemplated by the amendment.

12. By rejecting the claim of appellants, the Tribunal has acted against the basic intent, purpose and object of the amended provision. A procedural law relating to the welfare of the litigants can be given retrospective application and can be made applicable to the causes of action accrued prior to amendment so that the basic intent of the provision is not defeated. The learned Tribunal failed to acknowledge that the procedural law is always subservient to justice and not to defeat the object sought to be achieved.

13. Terminology used in Sub-section(2) of Section 166 does not indicate any intention on the part of the legislature for applying the provision prospectively, therefore, in the absence of any such provision and in view of the fact that the provision relate to procedural law and is a welfare legislation, the Tribunal was obligated to hold that it had jurisdiction. The words used in Section 166(2) of [Motor Vehicles Act, 1988](#) are '.. .or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides...'. After the words 'the claimant resides' we cannot read the words, 'on the date of accident.

14. In view of the above discussions both the appeals are allowed. Impugned order is hereby set aside and the case is remanded to Claims Tribunal, Tikamgarh, for further trial in accordance with law. Record be sent to the Tribunal post haste.

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