

1

RAMESH SINGH AND ANR.

v.

CINTA DEVI AND ORS.

FEBRUARY 23, 1996

[A.M. AHMADI, C.J. AND SUJATA V. MANOHAR, J.]

*Motor Vehicles Act, 1939/Motor Vehicles Act, 1988 :*

*Right of appeal under the old Act—Whether survives even after its repeal by the new Act—Held, the claimant would be entitled to file an appeal without being required to make the deposit under the proviso to S.173 of the 1988 Act.*

*Oriental Insurance Company Ltd. Haldwani, v. Dhanram Singh and Others, AIR (1990) Allahabad 104 and Jaswant Rao v. Kamlabai & Anr., AIR (1990) MP 354, approved.*

*Husain Kasim Dada v. State of Madhya Pradesh & Others, [1953] SCR 987 at 991; State of Bombay v. Supreme General Films Exchange Limited, [1960] 3 SCR 640 and Vithal Bhai Narang Bhai Patel v. Commissioner of Sales Tax, M.P. & Nagpur, AIR (1967) SC 344, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4255 of 1996.

From the Judgment and Order dated 11.10.93 of the Patna High Court in M.A. No. 252 of 1992.

A.K. Pandey for R.P. Singh for the Appellants.

Vishnu Mehra for K.M.K. Nair for the Respondents.

The following Order of the Court was delivered :

Special leave granted.

The short question is : does a right of appeal accrued to a claimant under the Motor Vehicles Act, 1939, hereinafter called the 'Old Act', on the institution of a claim application in the Motor Accident claims Tribunal, notwithstanding its repeal by the Motor Vehicles Act, 1988, hereinafter called the 'New Act'? In other words, does the right of appeal

under the Old Act survive even after its repeal by the New Act? The brief facts are that an accident took place on 27.5.1988 which gave rise to a claim for a compensation under the Old Act. The claim application was filed on 23.12.1988. Thereafter the new Act came into force with effect from 1.7.1989. The claim application which was instituted under the Old Act was disposed of on 29.6.1992 after the new Act came into force. That gave rise to a right to file an appeal. The appeal was preferred under the Old Act on 25.9.1992. However, the Division Bench of the High Court by the impugned order dismissed the appeal on the ground that the appellant had not deposited the amount as required by the proviso to section 173 of the New Act. Section 173 of the New Act, insofar as is relevant for our purposes, reads as under :

"Section 173. Appeals (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court : Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court."

Admittedly, the appellant had not deposited the amount as required by the said proviso. The High Court, therefore, came to the conclusion that the appeal was not maintainable and dismissed the same. It is against the said order of the High Court that the present appeal is preferred.

We have heard learned counsel for the appellant and have perused the relevant provisions of the Old Act as well as the New Act bearing on the question whether or not the appellant was required to make the deposit and we may state that the repealing clause, namely sub-section (4) of section 217, preserves Section 6 of the General Clauses Act. We may at this stage reproduce Section 217 (4) of the New Act and Section 6 of the General clauses act.

"Section 217(4). The mention of particular matters in this Section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."

"Section 6. Effect of repeal. Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or;
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Suffice it to say that the New Act does not expressly or by necessary implication make the relevant provisions retrospective in character.

The High Court of Allahabad and Madhya Pradesh have, Vide *AIR 1990 Allahabad 104* and *AIR 1990 MP 354*, held that in such circumstances the appellants's right to appeal without being required to make the deposit under the first proviso to Section 173 of the New Act remains unaffected. However, the judgment impugned herein takes a different view. Hence there is a controversy which need to be resolved.

In our view the point at issue stands squarely covered by three decisions of this Court reported in *Hussain Kasim Dada v. State of Madhya Pradesh & Others*, [1953] SCR 987 at 991, *State of Bombay v. Supreme General Films Exchange Limited*, [1960] 3 SCR 640 and *Vithal Bhai Narang Bhai Patel v. Commissioner of Sales Tax, M.P. & Nagpur*, AIR (1967) SC

344. In all these decisions the view taken is that unless the New Act expressly or by necessary implication makes the provision applicable retrospectively, the right to appeal will crystallise 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. In other words, the appellant would be entitled to file the appeal without being required to make the deposit under the proviso to Section 173 of the New Act. The law, therefore, seems to be fairly well settled by the said three decisions of this Court.

In the result, the appeal succeeds. The impugned judgment of the High Court dismissing the appellant's appeal against the award made by the Tribunal is set aside. The matter will go back to the High Court for disposal of the appeal in accordance with law without insisting on deposit of the amount. There will, however, be no order as to costs.

Appeal allowed.