

(1996) 02 AP CK 0014

Andhra Pradesh High Court

Case No: None

New India Assurance Co. Ltd.
and Others

APPELLANT

Vs

Salapuriappa and Others

RESPONDENT

Date of Decision: Feb. 23, 1996**Acts Referred:**

- General Clauses Act, 1897 - Section 6
- Motor Vehicles Act, 1988 - Section 140, 144, 217

Citation: (1997) 1 ACC 167**Hon'ble Judges:** S. Parvatha Rao, J; C.V.N. Sastri, J**Bench:** Division Bench

Judgement

S. Parvatha Rao, J.

The appellants in this Letters Patent Appeal question the enhancement of the compensation of Rs. 15,000/- awarded by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Madanapalle u/s 92-A of the Motor Vehicles Act, 1939 ("the Old Act" for short) to Rs. 25,000/- by the learned Single Judge by his order dated 29.11.1989 in A.A.O. No. 93 of 1988. Relying on the decision of a Division Bench of this Court in [T. Srinivasulu Reddy Vs. C. Govardana Naidu and another](#), the learned Single Judge held that the appellants herein (respondents in the A.A.O) where "liable to pay Rs. 25,000/- instead of Rs. 15,000/- in view of the amendment". It is obvious that the learned Single Judge was referring to the change brought about by Section 140 of the Motor Vehicles Act, 1988 ("the New Act" for short) which came into effect from 1.7.1989 repealing the old Act.

2. In T. Srinivasulu Reddy's case, the Division Bench held that Section 92-A, which was introduced in the Old Act on 1.10.1982 by Amendment Act No. 47 of 1982 had retrospective effect and had to be given effect in all pending claim proceedings including appeals as they were continuation of the claim petitions even to cases

where the accident took place prior to 1.10.1982. The question that arises in the present Letters Patent Appeal is therefore whether Section 140 of the New Act has also to be given retrospective effect in the sense that it has to be given effect in the case of claims arising from accidents occurring prior to 1.7.1989.

3. The learned Counsel for the appellants submits that the question is no longer reintegrate in view of the decision of the Supreme Court in [R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others](#) . In that case, the Supreme Court was considering the contention for enhancement of compensation of Rs. 8,000/- each awarded by the Tribunal in regard to death of two persons in a motor accident. That contention was neither raised nor examined in the High Court, and on behalf of the insurer, it was contended that in the absence of a specific claim laid in the High Court about the low compensation, the said contention should not be allowed to be raised in an appeal by special leave before the Supreme Court. The Supreme Court held as follows:

Ordinarily, the legal position is what Counsel contends, But in the peculiar facts of the case we do not think technicality of law should be permitted to stand in the way and a fair compensation should be paid in respect of the two deaths. We assess compensation for each of them at Rs.20,000/- in the absence of any specific evidence. This is keeping in view the quantum of no fault liability now provided by the Statute prospectively.

That decision of the Supreme Court was rendered on 15.11.1989 by which date the New Act was in force. Though there was no discussion, it is obvious that if the Supreme Court took the view that the New Act had retrospective effect and applied to claim for compensation for death in accidents occurring prior to 1.7.1989, the Supreme Court would have referred to Section 140 of the New Act and on that basis itself it would have awarded Rs. 25,000/- each instead of Rs. 20,000/-. Therefore, the decision of the Supreme Court that the quantum of no fault liability provided by the New Act was prospective cannot be held to be obiter. Even otherwise, we are bound by the dicta of the Supreme Court even though they may be obiter.

4. The learned Counsel for the appellants also relies on the decisions of this Court in *D. V. Seshachalpathi v. Vijayawada Co-op. Central Bank* 1990 (1) ALT 638:(1993) 1 ACC 559 *New Indian Assurance Co. Ltd. v. Kramtan Perianayagam* (1992 (2) ALT 654) and [Andhra Pradesh State Road Transport Corporation Vs. Smt. Azizunnisa Begum and Others](#) , in support of his contention that Section 140 of the New Act cannot be given retrospective effect. The decision in *D. V. Seshachalpathi* 1990(1) ALT 638 rendered by the same Division Bench which decided [R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others](#) . The question whether Section 140 had retrospective effect was not considered by the Division Bench. The learned Judges observed that the New Act had come into effect on 1.7.1989 and that the said fact was not brought to their notice when *T. Srinivasulu Reddy's* case (*Supra*) was heard. The learned Judges further observed that the Old Act was repealed as per

Section 217 of the New Act and that Section 92-A of the Old Act was in pan materia with Section 140 of the New Act and that in view of Section 6(c) of the General Clauses Act, 1897, unless a different intention appeared, the repeal would not affect any right, privilege, obligation or liability acquired or accrued or incurred under any enactment so repealed, and that inspite of the repeal of the Old Act, the liability arising u/s 92-A of that Act was saved. Thus, as we observed earlier, the question of retrospectivity of Section 140 of the New Act was not considered by the Division Bench in D.V. Seshachalpathi (Supra). However, G. Radhakrishna Rao, J., considered the said question in New India Assurance Co. Ltd. (Supra). The learned Judge referred to the Division Bench decisions in T. Srinivasulu Reddy (Supra) and D.V. Seshachalpathi (Supra) and held as follows:

The Supreme Court in L.R, Gupta v. Jupiter General Insurance Company made a passing observation saying that the New Act is prospective. The case in General Manager, Western Railway Bombay v. Lal Nanda 1985 ACJ 52 is a case where a table that has been given under the Workmen's Compensation Act has been considered and whether the new table has to be applied or the old -table has to be applied and ultimately, the Supreme Court held that the rates of compensation as found in the Schedule at the time when the accidental injury takes place alone has to be applied. The Act is only prospective so far as the claim u/s 92-A is concerned. The crucial date to be taken is the date of the accident. In these circumstances, this Court feels that prior to the commencement of the Act i.e., 1.7.1989, so far as Section 92-A is concerned, if the claim petitions are pending either before the Tribunal or in the High Court, the rate that was prescribed i.e., Rs. 15,000/- alone is applicable.

B. Subhashan Reddy, J., held in APSRTC v. Smt. Azizunnisa Begum (Supra) that the New Act was not procedural, that it was substantive and that, even by necessary implication, it could not be said that it was retrospective in operation. There was no discussion.

5. However, in [New India Assurance Co. Ltd. Vs. Jaddu Inna Reddy and Others](#) , another learned Single Judge of this court B.S. Raikote, J., elaborately considered the question and took the view that Section 140 of the New Act had retrospective application even regarding accidents that had occurred prior to the New Act. He relied on the judgment of a Division Bench of the Kerala High Court in [United India Insurance Co. Ltd. Vs. Padmavathy and Others](#), the judgment of a Division Bench of the Punjab & Haryana High Court in [Mosmi and Another Vs. Ram Kumar and Others](#), and the judgment of a learned Single Judge of the Madhya Pradesh High Court in [National Insurance Co. Ltd. Vs. Ram Kishore Soni and Others](#) . He referred to and was not persuaded by the view taken by G. Radhakrishna Rao, J., in New India Assurance Co. Ltd. (Supra) and held that that decision could not be accepted in view of the judgment of the Division Bench in D.V. Seshachalpathi (Supra) and that he was bound by the judgment of the Division Bench of this Court.

6. In National Insurance Co. Ltd. case, the Madhya Pradesh High Court took the view that in enacting any provision which provided for payment of compensation on the principle of no fault liability, the intention of the Legislature was to provide expeditious monetary help to the sufferer or his family and to promote social justice and viewed in this background, retrospective operation appeared to be clearly implicit in enacting Section 140 of the New Act. The decision of the Supreme Court in R.L. Gupta, (Supra) was obviously not noticed. The Division Bench of the Punjab and Haryana High Court in Mosmi, (Supra), without any discussion, agreed with the view taken by the Division Bench of the Kerala High Court in United India Insurance Co. Ltd., (Supra) that award for no fault liability in a motor accident which occurred prior to the coming into force of 1988 Act should be in tune with the amount fixed by the 1988 Act." In United India Insurance Co. Ltd. (Supra), a Division Bench of the Kerala High Court was persuaded by two considerations. One was erosion of value of currency intertwined with inflation of prices and costs. The learned Judges held: No doubt that Parliament, by enhancing the quantum of compensation was guided by the plummeting factor in currency value along with the rate of inflation grown during the interval between fixation of the amount in the repealed enactment and the date of fixation in the New Act.

The other consideration was the language of Section 144 which alongwith Section 140 occurs in Chapter X of the New Act, it provides as follows:

The provisions of this chapter shall have effect notwithstanding anything contained in any other provisions of this Act or of any other law for the time being in force.

The learned Judges observed that Section 6 of the General Clauses Act permitted - the switching over to the repealed Act (Old Act) only if a different intention did not appear in the new statute and that in view of the language of Section 144 a difference intention could be discerned from the New Act and that the provisions contained in Chapter X including Section 140 should be given effect notwithstanding any contrary provision in any other law including Section 6 of the General Clauses Act. However, we have to point out that in none of these three cases the dictum of the Supreme Court in R.L. Gupta, (Supra) was noticed.

7. We may also note that another Division Bench of the Kerala High Court took a contrary view in [Oriental Insurance Co. Ltd. Vs. Murugan](#), . Without much discussion, this Division Bench held that Section 140 provided for liability to pay compensation in certain cases on the principle of no fault and that as the accident in that case occurred before the commencement of the New Act, Section 140 of the New Act was not attracted.

8. We have also to notice that in [R. Rajagopal Reddy and Others \(deceased by legal representatives\) Vs. Padmini Chandrasekharan \(deceased by legal representatives\)](#), a three Judges Bench of the Supreme Court overruled the earlier view taken by a two Judges Bench of the Supreme Court in Mithilesh Kumari v. Prem Behari

Khare(1989)2SCC 95 which was relied by the Division Bench of this Court in T. Srinivasulu Reddy (Supra). There can be no doubt that the changes introduced by Section 92-A of the Old Act and Section 140 of the New Act are substantive in nature. That is the view of the Supreme Court as expressed in [Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another,](#) . The Supreme Court has held as follows in that case:

It is thus seen that to a limited extent relief has been granted u/s 92-A of the Act to the legal representatives of the victims who have died on account of motor vehicles accidents. Now they can claim Rs. 15,000/- without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified.

Therefore, in the absence of clear expression by the Parliament, it cannot be readily inferred that Section 140 has been intended to be given retrospective effect. We may also notice that Section 140 has been subsequently amended by Act 54 of 1994 substituting the figure Rs. 25,000/- with Rs. 50,000/-. If Section 140 has to be given retrospective effect as regards quantum of no fault compensation on the reasoning of the learned Single Judge of the Madhya Pradesh High Court in National Insurance Co. Ltd. (9 supra) and of the Division Bench of the Kerala High Court in United India Co. Ltd. case (Supra), then every time the amount of that compensation is enhanced by Parliament, it will have to be given retrospective effect. Moreover, such an interpretation would introduce an element of uncertainty. We find it difficult to take that view. Therefore, we have to hold that the decision of B.S. Raikote, J. in New India Assurance Co. Ltd. (Supra) is not correct and runs contra to the dictum of the Supreme Court in R.L. Gupta, (Supra).

9. In Padma Srinivasan v. Premier Insurance Co. Ltd. (1992) 1 SCC 613 the Supreme Court held:

Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the State of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy.

The law applicable as on the date of the accident in the present case is the old Act as per the declaration of the law by the Supreme Court in R.L. Gupta (supra). In view of the decision of the Supreme Court in R.L. Gupta (supra), it is not necessary for us to further dilate on this aspect of the matter as we are bound by the view expressed by the Supreme Court in that case.

10. In the result, this Letters Patent Appeal is allowed and the judgment of the learned Single Judge in A. AX). No. 93 of 1988 dated 29.11.1989 is set aside and the order of the Motor Vehicles Accident Claims Tribunal-cum-Additional District Judge, Madanapalle awarding Rs. 15,000/- u/s 92-A of the Old Act is upheld. No costs.