**(1995) 12 AP CK 0012**

**Andhra Pradesh High Court**

**Case No:** L.P.A. No. 16 of 1994

| | | |
|---|---|---|
| Oriental Insurance Co. Ltd. | | APPELLANT |
| | Vs | |
| Mukku Bullemma and Others | | RESPONDENT |

**Date of Decision:** Dec. 20, 1995

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 109, 110
- General Clauses Act, 1897 - Section 6
- Motor Vehicles Act, 1988 - Section 10, 144, 15, 173, 217

**Citation:** (1996) ACJ 1213

**Hon'ble Judges:** Y. Bhaskar Rao, J; B.S. Raikote, J

**Bench:** Division Bench

**Advocate:** M. Srinivasa Rao, for the Appellant; M.V. Durga Prasad and A. Jayanthi, for the Respondent

**Judgement**

Y. Bhaskar Rao, J.
This batch of L.P.As. was filed by Oriental Insurance Co. Ltd. against the common judgment of the learned single Judge in dismissing the A.A.Os. filed by the insurance company on the ground that the appeals are not maintainable.

2. The facts of the case are that on 31.8.1987 there was an accident involving the lorry bearing No. ADB 1765 in which three persons died and 24 others received injuries. The injured persons filed claim petitions before 1.7.1989. The Claims Tribunal, by its common award dated 6.4.1990, held that the accident took place due to rash and negligent driving of the lorry by its driver and awarded compensation against the owner and driver of the lorry and also the insurance company ranging from Rs. 2,000/- to Rs. 7,500/-. Against the said order, the insurance company filed A.A.Os. in this court on 5.10.1990. When the appeals came up for hearing before the learned single Judge, a preliminary objection was

taken by the claimants that the appeals are not maintainable u/s 173(2) of the Motor Vehicles Act, 1988 (hereinafter called the "new Act") as the amounts in dispute in all the appeals are less than Rs. 10,000/-. The learned single Judge upheld their contention and dismissed the appeals. Aggrieved by the said order, the present L.P.As, were filed.

3. The learned Counsel for the appellant, Mr. M. Srinivasa Rao, contended that the accident took place on 31.8.1987 whereas the new Act came into force on 1.7.1989 and the award was passed by the Claims Tribunal on 6.4.1990. It is further contended by him that the appeal is a continuation of the suit and the original petitions filed before the Claims Tribunal are deemed to be suits and, therefore, the statutory appeal, which is provided, is a substantive right and the said right has to be exercised in accordance with the right of appeal conferred u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter called the "old Act"), and as per the above section if the amount of compensation awarded is Rs. 2,000/- or more than Rs. 2,000/- appeal can be filed. In other words, appeal is not maintainable where the compensation awarded is less than Rs. 2,000/-. Therefore, he contended that the bar imposed in Section 173(2) of the new Act that no appeal lies where the compensation awarded is less than Rs. 10,000/- is not there in Section 110-D of the old Act and as the right of appeal is a substantive right, it accrues on the date when the claim petitions were filed and, therefore, appellants have got a right of appeal under the old Act u/s 110-D in which there is no bar to file an appeal where the compensation awarded is Rs. 2,000/- or more than Rs. 2,000/-and there is a bar to file an appeal when the compensation awarded is less than Rs. 2,000/- and, therefore, the learned single Judge erred in dismissing the appeals on the ground that they are not maintainable, as the right of appeal is a statutory right conferred by the statute.

4. The learned Counsel for the claimants contended that the Motor Vehicles Act, particularly dealing with the award of compensation in case of death and injuries is a welfare legislation and, therefore, it has to be interpreted liberally to achieve the goals of the legislation. It is further contended that as per Section 217(2)(a), there is no right of appeal under the new Act and, therefore, the learned single Judge has rightly dismissed the appeals holding that there is a bar to file an appeal where the award of compensation is less than Rs. 10,000/-, and hence there are no merits in the L.P.As. and they are liable to be dismissed.

5. In view of the rival contentions raised by both the sides, the important question of law that arises for consideration is where a claim petition is filed prior to the commencement of the new Act, i.e., 1.7.1989 and judgment is delivered after the new Act came into force, whether appeal has to be filed under the new Act or the old Act.

6. To appreciate the above contention, it is necessary and relevant to extract Section 110-D of the old Act and Section 173(2) of the new Act.

Section 110-D: (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 the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees.

Section 173(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:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than ten thousand rupees.

Thus, it is manifest from the above provisions that there is a bar to file appeal (under the old Act) where the amount awarded is less than Rs. 2,000/-, in other words, where the amount awarded is Rs. 2,000/- or more than Rs. 2,000/-appeal can be filed whereas as per the provisions of the new Act there is a bar to file an appeal where the amount awarded is less than Rs. 10,000/-. Thus, there is substantial change regarding the bar for filing the appeals, i.e., the amount of less than Rs. 2,000/- is raised to the amount of less than Rs. 10,000/-. It is also relevant to extract Section 217(1),(2)(a) and (4) of the new Act.

217. Repeal and Savings.-(1) The Motor Vehicles Act, 1939, and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereinafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments,-

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any other action taken under the repealed enactments, and in force immediately before such commencement

shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted,, done or taken under the corresponding provision of this Act:

xxx xxx xxx
xxx xxx xxx

(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, with regard to the effect of repeals.

Thus, by reading the above provisions, it is clear that the new Act repeals the old Act except in matters specified in Sub-section (1)(a). It also provides that irrespective of the matters saved in the repealing section, Section 6 of the General Clauses Act applies. Section 217 does not save the pending proceedings and it does no more specifically say that an appeal under the old Act is saved. The matters enumerated in Section 217(2) of the new Act do not refer to the pending legal proceedings or appeals. Therefore, we have to fall back on Section 217(4) which says that Section 6 of the General Clauses Act applies. It is relevant to extract here Section 6(d) and (e) of the General Clauses Act:

6. 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

xxx xxx xxx
xxx xxx xxx

(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;

Thus, it is manifest from the above provisions that any legal proceedings or remedy, as envisaged under the repealed Act, will apply notwithstanding such repeal, and it shall not affect such pending legal proceedings or remedy thereof under the old Act. Therefore, the right of appeal provided under the old Act is saved by Section 6 of the General Clauses Act. Therefore, the right of appeal under the old Act applies only where the claim petitions are filed earlier to the commencement of the new Act. It is relevant, in this context, to refer to some of the judgments of the Supreme Court. In Sadar Ali and Others Vs. Doliluddin Ostagar, , it was held that the date of presentation of the Second Appeal to the High Court is not the date which determines the applicability of the amended Clause 15, requiring permission of the deciding Judge, for further appeal, but the date of institution of the suit is, in each case, the determining factor. This decision has been rendered following the judgments rendered in Framje v. Hormasji (1866) 3 BHCR 49 and AIR 1927 242 (Privy Council) . The facts of the case in Sardar Ali (supra) are that the suit was

instituted on 7.10.1920 and after appeal to the District Court, Second Appeal was filed in the High Court by the appellants on 4.10.1926, and the appeal was dismissed by the learned single Judge refusing to grant permission to further appeal. Then, the question arose whether the appellants were having a right to file an appeal. Clause 15 of the Letters Patent of the High Court as amended on 14.1.1928 which changed the earlier law. It was contended therein that the new clause cannot be applied to this case, because to do so will be applying it retrospectively and so as to impair and indeed defeat the substantive right which was in existence prior to 14.1.1928. Considering the said question, the Full Bench held that the date of presentation of the Second Appeal to the High Court is not the date which determines the applicability of Section 15 requiring permission of the deciding Judge for further appeal, but the date of institution of the suit is, in each case, the determining factor. In this case, Rankin, C.J., delivering the judgment held that the institution of the suit is the determining factor for considering the right of appeal, as the right of appeal is a substantive right. In Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, , it was held that a right of appeal is not merely a matter of procedure and it is a matter of substantive right and this right of appeal from the decision of an inferior Tribunal to a superior Tribunal becomes vested in a party when proceedings are first initiated in and before a decision is given by the inferior court and such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication. This decision was rendered while considering the question whether the amendment to Section 32 proviso which has placed a substantial restriction on the assessee''s right of appeal applies or the old section applies. In this decision, Sardar Ali''s case (supra) was followed. In Garikapatti Veeraya Vs. N. Subbiah Choudhury, , it was held that the right of appeal is not a mere matter of procedure but is a substantive right and this vested right of appeal can be taken away only by a subsequent enactment, if so provides expressly or by necessary intendment and not otherwise. In this case the suit was filed before the Constitution came into force. At that time appeal was maintainable to Federal Court on the date of suit when the valuation was above Rs. 10,000/- and subsequently due to change in law and abolition of Federal Court and when appeal was provided to Supreme Court, the valuation was raised to Rs. 20,000/-. Then while considering the question whether the appeal is maintainable or not, the Supreme Court held that where the suit was instituted on 22.4.1949, the right of appeal vested in the parties thereto at the date and is to be governed by the law as it prevailed on that date, that is to say, on that date the parties acquired the right, if unsuccessful, to go up in appeal from the sub-court to the High Court and from the High Court to the Federal Court under the Federal Court (Enlargement of Jurisdiction) Act, 1947, read with Clause 39 of the Letters Patent (Mad) and Sections 109 and 110 of the CPC provided the conditions thereof were satisfied, unless that right had been taken away expressly or by necessary intendment by any subsequent enactment. In State of Bombay Vs. Supreme General Films Exchange Ltd., , while considering the question whether court fee has to be paid according to the amended provision as amended on 1.4.1954 or the court fee payable

earlier to amendment, the Supreme Court held that the amendment of the statute impairing the right of appeal is not merely procedural and not retrospective. It was further held that an impairment of the right of appeal putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only, it impairs and imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment. It was further held that the court fee payable on the memorandum of appeal filed after relevant date (1.4.1954) is payable according to the law in force at the date of filing of the suit (which was prior to the relevant date) and not according to the law in force at the date of filing of the Memorandum of Appeal (which was after the relevant date). The above judgments of the Supreme Court thus lay down the principle that where an enactment is repealed or amended, the right of appeal as provided under the repealed enactment or amended enactment will be available to all the proceedings or suits instituted prior to the repealment or amendment unless the same is expressly mentioned in the repealed/ amended enactment.

7. The learned single Judge has just referred to the decision in Garikapatti Veeraya Vs. N. Subbiah Choudhury, , but has not elaborately discussed the ratio laid down by the Supreme Court in the decision and how it is not applicable to the facts of the present case. There is no dispute about the principle laid down in the judgment of the Supreme Court in Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, , stating that the right of appeal is neither an absolute nor an ingredient of natural justice, but only statutory right which can be circumscribed by the conditions in the grant and accordingly it cannot be said that right of appeal is whittled down by a condition that certain amount has to be deposited along with the appeal. In this case the question of right of appeal arose earlier to amendment or repealing of the Act and the question is whether the appellants must have deposited the amount for filing the appeal as ordered or not. Answering the said questions, the Supreme Court held as above. Therefore, the said decision is not applicable to the proposition which we are now considering. In H. Shiva Rao and Another Vs. Cecilia Pereira and Others, , the Supreme Court has laid down the scope of beneficial legislation and hence the facts of the said case are not applicable to the present case on hand. In Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, , the question was whether the petition was maintainable as per the old Act which did not restrict any period of delay, or not maintainable under the new Act which restricts condonation of delay to six months only. The Supreme Court held that the new Act applies and Section 6 of General Clauses Act is not attracted. The facts of the said case are not applicable to the present situation on hand. In Gaya Prasad and Another Vs. Suresh Kumar, , the applicability of proviso to Section 173(1) was interpreted and it was held that all appeals filed after 1.7.1989 have to satisfy the condition of deposit required under the proviso to Section 173(1) but the question of applicability of Section 173(2) did not arise for consideration in that case. In Laxmi Narain alias Kaka and another Vs. Balbir Kaur and others, , the question of applicability of proviso to Section 173 of the new Act was considered and it was held that the liability of the insurance company has to be decided with reference to the law in force on the date of the accident.

Thus, it is manifest from the decisions of the Supreme Court supra, that where a claim petition is filed prior to the commencement of the new Act and award was passed by the Claims Tribunal, appeal has to be filed only u/s 110-D of the old Act and not u/s 173 of the new Act.

8. It is contended that the compensation under "no fault liability" was enhanced from Rs. 7,500/- to Rs. 12,000/- in case of permanent disability and from Rs. 15,000 to Rs. 25,000/- in the case of death by repealing the provisions concerned in the old Act and when the question arose whether enhanced compensation has to be paid irrespective of the date of accident, the courts held that even if the accident took place earlier to the commencement of the new Act, the claimants are entitled to enhanced compensation. Section 144 of the new Act gives overriding effect to the Chapter, i.e., Chapter X of the Motor Vehicles Act, 1988, which says that the provisions of this Chapter X shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. Therefore, this has got a specific overriding effect which is not there in the provision of appeal or such proceedings as provided in Section 217 of the Act. Taking this into consideration, the courts have held that where the accident has taken place earlier to the commencement of the new Act and claims for payment of compensation were filed subsequently for "no fault liability", the provisions of Section 10 of the new Act apply and the claimants are entitled to enhanced compensation under the new Act. The learned single Judge, following the proposition laid down in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, and Gaya Prasad and Another Vs. Suresh Kumar, , came to the conclusion that the bar imposed for filing an appeal under the new Act applies but not the bar imposed u/s 110-D of the old Act on the ground that it is a beneficial legislation. We have already held that Section 144 of the new Act gives overriding effect to Chapter X of the Act notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. This principle applies regarding compensation payable under "no fault liability" and it does not apply to the question where the right of appeal is a substantive right prevailing on the date of the filing of the claim petition and hence the right of appeal as provided under the repealed Act applies. For the abovesaid reasons, the finding of the learned single Judge on this point is reversed. We hold that the appeals are maintainable.

9. The next question that arises for consideration is whether the compensation awarded is excessive. The learned Counsel for the appellant contended that compensation awarded ranging from Rs. 2,000/-to Rs. 10,000/- is highly excessive. It is further contended by him that the injured and some others were travelling in the goods vehicle as passengers and, therefore, the insurance company is not liable to pay the compensation as the vehicle is meant for transport of goods only. The Claims Tribunal after considering the evidence on record gave a finding of fact that the injured persons and some others were travelling with their goods as owners of the goods and they were not travelling as passengers only and, therefore, held that they are entitled for compensation. The same is a pure finding of fact. Apart from it, the amounts of compensation awarded are very

meagre ranging from Rs. 2,000/-to Rs. 10,000/- and, therefore, we do not want to interfere with the quantum of compensation awarded.

10. The L.P.As. are partly allowed as indicated above and dismissed regarding quantum of compensation. No order as to costs.