(2006) 11 CAL CK 0055

Calcutta High Court

Case No: F.M.A. No. 1827 of 2003

Mira Devi and Others		APPELLANT
	Vs	
Oriental Insurance Co. Ltd. and Others		RESPONDENT

Date of Decision: Nov. 28, 2006

Acts Referred:

- Factories (Amendment) Act, 1948 - Section 120
- Factories (Amendment) Act, 1950 - Section 3
- General Clauses Act, 1897 - Section 6, 6A, 8
- Motor Vehicles (Amendment) Act, 2001 - Section 4
- Motor Vehicles Act, 1988 - Section 163A, 168, 170, 171

Citation: (2007) ACJ 1885 : (2007) 3 CALLT 16

Hon'ble Judges: Sankar Prasad Mitra, J; Pratap Kumar Ray, J

Bench: Division Bench

Advocate: Krishanu Banik, for the Appellant;Abhijit Gangopadhyay and Bannhi Roy, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.
Heard the learned advocates appearing for the parties.

2. This miscellaneous appeal has been preferred by the claimants assailing the judgment and order dated 11.7.2003 passed by the learned Judge, Motor Accidents Claims Tribunal at the City Civil Court at Calcutta in M.A.C. Case No. 164 of 2000 whereby and whereunder the application u/s 163-A of the Motor Vehicles Act, 1988 as was filed by the claimants claiming compensation due to the death of Bablu Das was dismissed on the ground that the provision of Section 163-A of the Motor Vehicles Act, 1988 which was inserted by the Motor Vehicles (Amendment) Act, 1994 (hereinafter referred for brevity as ''the Act 54 of 1994'') was repealed by the

Repealing and Amending Act, 2001 being Act 30 of 2001 and as such on the date of adjudication there was no provision like Section 163-A in the parent Act, that is, Motor Vehicles Act, 1988. However, from the judgment under appeal it appears that learned Tribunal below held that there was an accident, the offending vehicle was responsible for such and death of Bablu Das caused due to such accident and also further finding that the claimants are legally entitled as legal heirs to file the claim application. The learned Tribunal below did not quantify the compensation amount because as per its views the case was otherwise not maintainable because the provision of Section 163-A stood repealed by Act 30 of 2001 as aforesaid. The learned advocate for the appellants before this court has argued not only on the issue of the erroneous finding of the learned Tribunal below that Section 163-A of the Motor Vehicles Act, 1988 stood repealed by the said Repealing and Amending Act but also on the point of quantification of the compensation amount by placing the material evidence on record that is the oral evidence of the PW 1, the widow of the victim.

3. Learned advocate for the respondent insurance company very frankly has submitted that the learned Tribunal below was wrong in its finding that Section 163-A of the said Act stood repealed. But, however, on the question of quantum, the learned advocate for the respondent insurance company simply has opposed with reference to the prayer of imposition of interest on the compensation amount if it is quantified by this appeal court.

4. Since it is an old case of 2000 when the accident happened as well as the claim application was filed thereafter, we are of the view that not only the legal question about the existence of Section 163-A of the said Act but also the question for quantification of the compensation should be addressed by this court for a final remedy in the matter.

5. The issue as to whether the finding of the learned Tribunal below that in view of the Repealing and Amending Act 30 of 2001, the said Act 54 of 1994 since was repealed, there was no existence of Section 163-A of the Motor Vehicles Act, 1988 as the said provision was inserted by the Act 54 of 1994 stood repealed now is required to be dealt with.

6. The said issue before this court is not at all res Integra. This issue involves herein centres round in the field of statutory interpretation about the purpose and effect of any repealing Act. The purpose of repealing Act is to crush down the dead matter from the statute book so that unnecessary statutory amendments are not kept in the statute book. It is a legislative device that when a statute is required to be amended, by amending Act such amendment is incorporated in the parent Act. The purpose of amending Act is nothing but to replant the amended statutory provision and/or substitution and/ or incorporation of new provision in the parent Act. Once such purpose is over and its replantation is complete, practically the amendment Act has no value as the provision which is sought to be amended or sought to be

incorporated in parent Act was already over. It is a legislative mechanism to amend, modify and change the parent Act. After such application, it appears that amending Act as well as parent Act both remain in the statute book as a resultant effect huge number of such amended acts remain as old fossil in the statute book without any practical application and practical purpose. Hence, there is a legislative device further that such amended Act should be crushed down to leave it outside the pages of the compilation copy of the statute book wherein different statutes are printed. With that idea to crush down such dead matter that is the amending Act whose purpose is only to replant the amendment and/or incorporation and/or substitution of any provision in the parent Act is an age-old practice of English court wherein such is done by the Statute Revision Act. The same procedure is followed in India by the Repealing and Amending Act. Said concept has been detailed in the book Craies on Statute Law, 7th Edn., Indian Reprint, 1999 at page 361 as under:

Sometimes an Act of Parliament, instead of expressly repealing words of a section contained in a former Act, merely refers to it and by oral applies its provision to. The new state of things created by subsequent Act. In such a case, rule of construction is that whether a statute is incorporated by a reference into a second statute that repeal of the first statute by a third does not affect second.

7. Maxwell on Interpretation of Statute, 10th Edn., page 406 observed:

Where provision of one statute are by reference, incorporated in another and the earlier statute is afterwards repealed, the provision so incorporated obviously continue in force so far as they form part of the second enactment.

8. Under the Halsbury''s Laws of England it appears in the 2nd Edn., Vol. 31 at page 563 that:

Statute Law Revision Act does not alter the law, but simply strike out certain enactment which has become unnecessary. It invariably contains elaborate proviso.

9. The said issue as already discussed is not at all res Integra as going down the years, this court has noticed the judgment of Hon''ble Phani Bhusan Chakravartti, C.J., a judgment of Division Bench passed in the case of Khuda Bux Vs. Manager, Caledonian Press, . In this case by interpretation of the object of Repealing and Amending Act, 1950 on identical situation was answered with reference to the effect of provision of Factories Act, 1934 which subsequently after amendment by the Act 1948 got repealed by the Repealing and Amending Act, 1950. The question was dealt with by the court by discussing the purpose and meaning of the Repealing and Amending Act, 1950 in para 9, which reads to this effect:

(9) This contention was based, in my view, on a mistaken notice of the scope and effect of a repealing and amending Act. Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts,

because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts which in England are called Statute Law Revision Acts is legislative spring-cleaning and they are not intended to make any change in the law. Even so, elaborate care, of which Section 3 of the Repealing and Amending Act, 1950 is itself an apt illustration.

10. Besides providing for other savings, that section says that the Act shall not affect:

any principle or rule of law notwithstanding that the same may have been derived by, in, or from any enactment hereby repealed.

The principle of law derived from the repeal by Section 120, Factories Act of 1948 of the Act of 1934, namely, that references in other Acts to the Act of 1934 should be read as references to the Act of 1948, is thus not affected by the Repealing and Amending Act of 1950 which repealed the operative part of Section 120 of the Act of 1948. From another principle also the same result follows. The repeal of the repealing section of the 1948 Act could not have the effect of reviving the Act of 1934, repealed thereby and, consequently, since the repeal of the Act of 1934 continued to subsist, Section 8, General Clauses Act continued to apply. The Commissioner was, therefore, right in applying the definition of ''manufacturing process'' contained in the Factories Act of 1948 and also right in holding the basis of that definition that the appellant was a workman.

11. The Supreme Court in the judgment passed in the case of Jethanand Betab Vs. The State of Delhi (Now Delhi Administration), , on approving the view of Hon ''ble Chief Justice Chakravartti quoted it in para 6 of the said report. Subsequently, the Apex Court''s view was followed by the Division Bench of Kerala High Court in the case of Raman Sahadevan Vs. R. Kesavan Nair, wherein the court relied and referred the said judgment of Khuda Bux Vs. Manager, Caledonian Press, and the judgment of the Apex Court in Jethanand Betab (supra).

12. It is a basic principle of rule of construction of a statute that whenever a statute is incorporated by reference to a second statute that repeal of the first statute does not affect the second and under such situation despite the death of the parent Act its offspring survives in the incorporating Act. Reliance may be placed to the judgment of the Privy Council to this effect in the case of AIR 1931 149 (Privy Council) Despite the basic principle aforesaid and contextual purpose of the repealing Act as discussed above, for abundant caution in such type of amending and repealing Act, a saving clause is stipulated to avoid any future complication. In the instant case, in Section 4 of the Repealing and Amending Act, 2001, a saving clause is stipulated which reads to this effect:

4. Savings.--The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

On a bare reading of the said provision it appears that the enactment which was already applied, incorporated and/or referred to in any other enactment, the repeal of the subsequent enactment will not disturb the provision as already enacted in the earlier enactment by such incorporation or reference.

13. Section 6A of the General Clauses Act, 1897 also has provided a protective umbrella which reads to this effect:

6-A. Repeal of Act making textual amendment in the Act or Regulation.--Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

14. The meaning of the word ''text'' of the Act and/or Regulation came up for judicial adjudication before the Apex Court in the said case Jethanand Betab Vs. The State of Delhi (Now Delhi Administration), and as the views of the court is profitable for our discussion is quoted in extenso hereinafter:

(8) ...The text of an enactment, the argument proceeds, is the phraseology or the terminology used in the Act, but not the content of that Act. This argument, if we may say so, is more subtle than sound. The word ''text'', in its dictionary meaning, means ''subject or theme''. When an enactment amends the text of another, it amends the subject or theme of it, though sometimes it may expunge unnecessary words without altering the subject. We must, therefore, hold that the word ''text'' is

comprehensive enough to take in the subject as well as the terminology used in a statute.

15. Furthermore, from the factual matrix of this case it appears which also has been accepted by the learned Tribunal below in its finding that the accident happened when the Amendment Act, being Act 54 of 1994 was not repealed by the Repealing and Amending Act, 30 of 2001 and the claim application was also filed prior to that and exactly to identify the date it was filed on 27.11.2000 whereas the said Repealing and Amending Act 30 of 2001 was gazetted on 3.9.2001 in the Gazette. Hence, even it is assumed for arguendo that by the Repealing and Amending Act 30 of 2001 since the Amendment Act, 54 of 1994 as referred to stood repealed though it is not in view of our finding and observation and purpose of repealing to act as discussed, still then the learned Tribunal below ought not to have dismissed the application as before such repeal by the Repealing and Amending Act, 2001 the claim application was filed and as such, the Repealing and Amending Act of 2001 shall have no effect on application of Clause (e) of Section 6 of the General Clauses Act, 1897. Section 6 of the General Clauses Act in extenso is quoted hereinbelow:

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.

16. Having regard to the aforesaid discussions and our finding as made on the principle of statutory construction, we are accordingly of the view that by Repealing and Amending Act, 2001 though Motor Vehicles (Amendment) Act, 1994 being Act 54 of 1994 was repealed but such repeal had not taken away the provisions which were incorporated and/or substituted and/or amended in the parent Act namely, Motor Vehicles Act, 1988 by the said Amendment Act, 54 of 1994. In view of the

aforesaid law of construction of statute as discussed we are of the view that those amended, substituted and modified provisions got planted in the parent Act and expanded its roots on being assimilated with the parent Act.

17. Having regard to the aforesaid finding and observation, we are of the view that finding of the learned Tribunal below that the claim application was not maintainable u/s 163-A of the Motor Vehicles Act, 1988 as there was no existence of such provision, is completely an erroneous view and the same is set aside and quashed. We are holding accordingly that the claim application is maintainable u/s 163-A of the Motor Vehicles Act, 1988.

18. Now the question comes, whether the matter should be remanded back for quantifying the compensation on the basis of the evidence on record? The learned advocates of both the parties submit that in remanding the matter back there will be a long legal proceeding further which could be avoided as this appeal court when can exercise the power of original court also, on the basis of the evidence on record, may pass appropriate order. We are accepting the submissions made and we are accordingly also of the view that on the basis of the evidence on record the compensation amount could be quantified.

19. From the judgment under appeal it appears that the age of the victim was identified by the learned Tribunal below properly by identifying the same as 35 years on comparison of the post-mortem report as exhibited and oral evidence of the widow of the victim. On income issue it appears that the widow deposed that victim husband was earning to the extent of Rs. 100 to Rs. 150 per day. But there is no cross-examination on this point by the insurance company. Hence, it appears that there is oral evidence about the income of the victim. Whether such oral evidence of the widow could be considered as the income of the victim to identify the compensation amount, the view of Supreme Court would help us. The Apex Court considered this aspect in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, by holding that in absence of any documentary evidence on income, the oral evidence of the wife of the victim should be accepted. Besides such applicability of legal principle it appears that there was no cross-examination even on this point by the insurance company who contested the matter by taking leave u/s 170 of the Motor Vehicles Act, 1988. Hence, the oral evidence of the widow about the income issue remains unchallenged. Hence, this court has no other alternative but to accept the same as the widow deposed that the income was Rs. 100 to Rs. 150 per day. This court is considering the lower level of the income, namely, Rs. 100 per day as just which comes to the figure as Rs. 3,000 per month and thereby the annual income goes to the figure Rs. 36,000. It is the case u/s 163-A, Motor Vehicles Act, 1988. In view of the note as made thereon in the Second Schedule that 1/3rd of the income should be considered as personal expenditure of the victim, had he been alive and the same to be deducted from total income as to be calculated, on deduction of 1/3rd from Rs. 36,000 the figure comes

to Rs. 24,000 per annum to identify the loss of income of the claimants, who in the instant case, are widow and four minor children.

20. Since the age of victim was 35 years as per the structured formula, the multiplier would be 17. Hence, the total quantum of compensation amount would be Rs. 24,000 x 17 = Rs. 4,08,000. With this figure general damages in case of death should be added which are, namely, funeral expenses Rs. 2,000 and loss to estate Rs. 2,500 and as such, total compensation amount would reach to the figure of Rs. 4,12,500. This compensation amount should be distributed to the claimants in equal share that is to be divided by five and each individual claimant will get the proportionate amount. In addition to that the widow/claimant being a spouse is entitled to get on account of loss of consortium--Rs. 5,000.

21. Before parting with the matter after fixing the compensation amount accordingly this court is of the view that the court is bound to address the statutory provision of Section 171, namely, award of interest where any claim is allowed. Section 171 reads to this effect:

171. Award of interest where any claim is allowed.--Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

22. Since the provision has given a direction for consideration of fixing simple interest, this court cannot be unmindful of the said statutory provision. The interest amount is payable from the date of application till realisation as it appears from the settled law by the Apex Court passed in the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others,

23. Having regard to the statutory provision and its effect, we are of the view that there should be an award of interest on the compensation amount as now determined. At the relevant year when the claim application was filed that is the year 2000, it is submitted by the learned advocates of the respective parties that the rate of interest on long term deposit scheme was 8 per cent per annum as per the circular of the Reserve Bank of India. This court is accordingly accepting the said rate of interest.

24. Hence, it is ordered that the insurance company would be liable to pay a simple interest at the rate of 8 per cent per annum on the total compensation amount as already worked out with effect from the date of application which in the instant case is dated 27.11.2000 till the date of realisation.

25. Having regard to such, the insurance company is accordingly directed to deposit the compensation amount as awarded along with interest thereon as directed above within 4 weeks from this date. The learned Tribunal below would be at liberty

to check up the calculation and in the event there is any shortfall in the deposit, the learned Tribunal below would be at liberty to direct the insurance company to deposit further amount.

26. Now another point is required to be answered by us, whether the entire amount to be paid to the claimants to deal with as per choice? This point has been considered by the Apex Court long back in the case of Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., by holding that since the payment of compensation amount is the outcome of social welfare legislation, the court of law should protect the interest of the illiterate claimants so that compensation amount is not mishandled by different agencies and persons and/or misappropriated by any other persons. In a nutshell, the court was in anxiety to protect the interest of claimants so that due to the death of the earning member of a family by an accident, they may not suffer any economic stringency. This object was highlighted in the famous Union Carbide''s case (supra). In the motor accident claim case this principle has been applied by the Apex Court also in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , which has been followed in the case, Nagappa Vs. Gurudayal Singh and Others, , a judgment of three-Judge Bench. In para 29, the judgment passed in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , was quoted which reads thus:
(17) In a case of compensation for death it is appropriate that the Tribunals do keep in mind the principles enunciated by this court in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., , in the matter of appropriate investments to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptibility to exploitation.

In that case approving the judgment of Gujarat High Court in Muljibhai Ajaram-bhai Harijan v. United India Insurance Co. Ltd. 1983 ACJ 57 (Gujarat), this court offered the following guidelines:

(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a rogue (sic ruse) to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in

writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so order;

(v) In the case of widows, the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary, the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one fixed deposit so that if need be one such F.D.R. can be liquidated.

Hence, learned Tribunal below is directed to take necessary measures to secure that 80 per cent of the compensation amount in respect of each individual claimant is deposited in a long term fixed deposit scheme in a nationalised bank and/or a post office nearer to the residence of the claimants with a rider that monthly interest should be paid to them directly and being satisfied with such deposit the balance amount of 20 per cent should be disbursed by the learned Tribunal below to the respective individual claimants by issuing individual cheque to that effect.

27. Since in this judgment we have discussed about applicability of Section 163-Aof the Motor Vehicles Act, 1988 despite repealing of Act 54 of 1994 by the Repealing and Amending Act, 30 of 2001 and since the learned Tribunal below came to an erroneous finding to interpret the statutory provision in right perspective and/or to apply the principle purpose of repealing Act, this court out of anxiety so that it may not occur in other cases accordingly directs the Registrar General, High Court, Calcutta to communicate a copy of this judgment to all the Motor Accidents Claims Tribunals within the State of West Bengal for their ready reference and awareness.

28. The compensation amount as fixed by us is ''just'' compensation u/s 168 of the Motor Vehicles Act, 1988. To interpret the word ''just'' of the said statutory provision the Apex Court held that even if in the claim application, the claim of compensation is not properly mentioned but if on taking the evidence on record whatever amount should be considered by the court of law as just and proper, the court of law should pass such compensation amount. Reliance may be placed to the judgment in Nagappa Vs. Gurudayal Singh and Others, , wherein the Supreme Court considered the earlier views of the meaning of the word ''just'' which means equitability, fairness and reasonableness in terms of the judgment passed in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, . Applying that concept of law, the statutory provision and on scanning the evidence on record and on placing the material factors in the structured formula, we have identified the compensation amount which is just in terms of Section 168 of Motor Vehicles Act, 1988.

29. Appeal accordingly stands allowed on the aforesaid findings and observations. The impugned judgment and order stand set aside and quashed.

30. Let lower court records be sent back forthwith to the learned Tribunal below by special messenger at the cost of the appellant, the cost of which be deposited within a week from this date.

31. Let xerox certified copy of this order, if applied for, be given to the learned advocates appearing for the parties expeditiously.

Sankar Prasad Mitra, J.

32. I agree.