

Court No. - 78

Case :- FIRST APPEAL FROM ORDER No. - 1710 of 2023

Appellant :- Icici Lombard General Insurance Co. Ltd.

Respondent :- Suresh And 2 Others

Counsel for Appellant :- Rahul Sahai

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Rahul Sahai, along with Sri Aditya Singh Parihar, learned counsel for the appellant. Sri Satya Deo Ojha, learned counsel has also been heard.
2. A question has arisen with regard to the maintainability of the instant appeal under Section 173(2) of the Motor Vehicles Act, 1988, in view of the report submitted by the Stamp Reporter.
3. It is pointed out that the aforesaid objection of the Stamp Reporter is based on the amended provision contained under sub-section (2) of Section 173, in terms of which the pecuniary limit for filing of an appeal against an award of a Claims Tribunal, has been raised to 'one lakh rupees' from the earlier limit of 'ten thousand rupees'.
4. Contention of the counsel for the appellant is that the right to file an appeal being a vested right and having accrued on the institution of the claim petition before the Tribunal, the said right cannot be taken away or curtailed by means of a subsequent amendment, particularly, when the said amendment does not have a retrospective effect.
5. For a proper appreciation of the controversy at hand, the provisions of Section 173 of the Motor Vehicles Act, 1988, as it

stood prior to the amendment of the year 2019, and as it now stands subsequent to coming into force the Motor Vehicles (Amendment) Act, 2019 [Act 32 of 2019], are being reproduced in a tabular form so as to facilitate comparison.

Pre Amendment	Post Amendment
<p>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:</p> <p>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:</p> <p>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.</p> <p>(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.</p>	<p>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:</p> <p>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:</p> <p>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.</p> <p>(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than one lakh rupees.</p>

6. A comparative reading of provisions of Section 173, pre and post the amendment would indicate that except for substituting the amount 'one lakh' for the amount 'ten thousand', the provision remains the same as it was earlier.

7. The Amending Act 32 of 2019 provides that the various

provisions of the Act would come into force on the dates to be notified by the Central Government. Section 57 of the Amendment Act 2019, which is with regard to the amendment made to Section 173, was notified on 25.02.2022, to come into force w.e.f. 01.04.2022.

8. The question as to whether an appeal under an earlier statute would lie under a new enactment which comes into operation consequent to repeal of the earlier enactment and as to whether such appeal would be subject to the same conditions as were applicable to it under the repealed Act, was considered by a Division Bench of this Court in **Oriental Insurance Company Ltd. Haldwani Vs. Dhanram Singh alias Dhan Singh and Others**¹, and placing reliance on an earlier Constitution Bench judgment of the Supreme Court in **Garikapati Veeraya Vs. N. Subbiah Choudhary**², reiterated that the right of an appeal is a vested right which accrues to the litigant from the date the *lis* commences and this vested right in the appeal can be taken away by a subsequent enactment, if it is so provided expressly or by necessary intendment and not otherwise.

9. It was accordingly held that an appeal from a proceeding initiated under Section 110A of the Motor Vehicles Act, 1939, would be maintainable under Section 173 of the Act 59 of 1988 and that the provisions of the Old Act would continue to apply to all appeals which arise from proceedings initiated prior to the enforcement of the New Act. It was made clear that such appeals would not require to comply with the provisions as laid down under Section 173 of the New Act.

1 1990 AWC 67

2 AIR 1957 SC 540

10. The question as to whether a right of an appeal under the Old Act survives even after it is repealed by a New Act, fell for consideration before the Supreme Court in **Ramesh Singh and Another Vs. Cinta Devi and Others**³ and particularly the question that was addressed, was as to whether a right of appeal would accrue to a claimant under the Motor Vehicles Act, 1939 (Old Act), on the institution of a claim application in the Motor Accident Claims Tribunal notwithstanding with its repeal by the Motor Vehicles Act, 1988 (New Act).

11. The order passed by the High Court dismissing 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, was subjected to challenge. The Supreme Court took notice of the decisions of the High Court of Allahabad and the High Court of Madhya Pradesh in **Oriental Insurance Company Ltd., Haldwani Vs. Dhanram Singh and Others**⁴, **Jaswant Rao Vs. Kamalabai and Another**⁵, wherein it has been held that the appellant's right to appeal without being required to make the deposit under first proviso to Section 173 of the New Act, remained unaffected.

12. Further, noticing the earlier decisions of the Supreme Court in **Messrs. Hoosein Kasam Dada (India) Ltd. Vs. The State of M.P. And Others**⁶, **State of Bombay Vs. M/s. Supreme General Films Exchange Ltd., (In C.A. No. 86 of '56)** and **Arati Cotton Mills Ltd.**⁷ and **Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur**⁸, it was concluded that unless the

3 AIR 1996 SC 1560

4 AIR 1990 All 104

5 AIR 1990 MP 354

6 AIR 1953 SC 221

7 AIR 1960 SC 980

8 AIR 1967 SC 344

New Act expressly or by necessary implication, makes the provisions applicable retrospectively, the right to appeal would crystallize 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. It was accordingly held that 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.

13. The effect of change in the condition of preferring an appeal was considered in the decision in **Messrs. Hoosein Kasam Dada (India) Ltd. Vs. The State of M.P. And Others**⁹, and it was held that the right of appeal from the decision of an inferior Tribunal to a superior Tribunal becomes vested in a party when the proceedings are first initiated before the inferior court, and such a vested right cannot be taken away except by express enactment or by necessary intendment. It was also observed that an intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention is clearly manifested by express words or necessary implication.

14. The maintainability of appeal as of right subsequent to changes in law was subject matter of consideration in **Garikapati Veeraya Vs. N. Subbiah Choudhary and others**¹⁰ and after an analysis of the legal position in regard to the same, the following principles were laid down:-

“**23.** From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all

9 AIR 1953 SC 221

10 AIR 1957 SC 540

connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the *lis* commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.”

15. The effect of putting a new restriction or imposing a more onerous condition on the right of appeal was examined in **State of Bombay Vs. M/s. Supreme General Films Exchange Ltd. and Arati Cotton Mills Ltd.**¹¹ and following the judicial precedents on the point, it was observed that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition would not be a matter of procedure only, and an enactment having the said effect would not be retrospective unless it says so expressly or by necessary intendment.

16. The effect of amendment of law relating to appeal after commencement of *lis* was again subject matter of consideration before a Constitution Bench in **Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur**¹², and the view taken in **Messrs. Hoosein Kasam Dada (India) Ltd. Vs. The State of M.P. and others**¹³ case, was reiterated by stating that when a *lis*

11 AIR 1960 SC 980

12 AIR 1967 SC 344

13 AIR 1953 SC 221

commences, all rights get crystallized and no clog upon a likely appeal can be put, unless the law was made retrospective, expressly or by clear implication.

17. In a recent decision in **ECGC Limited Vs. Mokul Shriram EPC JV**¹⁴, in the context of an appeal arising out of complaints filed prior to commencement of the Consumer Protection Act, 2019, it was held that an appeal filed in such circumstances would be governed under the Consumer Protection Act, 1986, and not under the 2019 Act. The right of appeal, its nature and scope and the extent to which the such right may be modified by amendment or repeal of the applicable provisions of law, was examined and it was held that the pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment.

18. The foregoing discussion goes to show that the right of appeal is not a mere matter of procedure but is a substantive right. It is a vested right which accrues to the litigant on the date the *lis* commences and this vested right cannot be taken away by a subsequent enactment, unless it is so provided expressly or by necessary intendment.

19. The pursuit of a legal remedy, suit or appeal are steps in a series of proceedings all connected by an intrinsic unity. The institution of the suit carries with it the implication that the right of an appeal, as in force, is preserved during the progress of the proceedings. This right to enter the superior court accrues to the litigant and exists as on and from the date the *lis* commences, and although it may actually be exercised when the adverse judgment is pronounced by the first court, the vested right is to be governed

14 (2022) 6 SCC 704

by the law prevailing on the date of institution of the suit or proceeding and not by the law that prevails on the date of its decision or on the date of filing of the appeal.

20. There is a presumption that a statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation – *nova constitutio futuris formam imponere debet non praeteritis*, i.e. “a new law ought to regulate what is to follow, not the past”. Once vested, the rights cannot be taken away or retrospectively altered.

21. In the words of Lord Blanesburg, as stated in **Delhi Cloth and General Mills Co. Ltd. Vs. CIT**¹⁵, “provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment”.

22. In **Maxwell Vs. Murphy**¹⁶ it was observed by Dixon, C.J, as follows:-

“7. The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events.”

23. A similar view was expressed in **Secretary of State for Social Security Vs. Tunncliffe**¹⁷ by Staughton, L.J, in the following words:-

“...the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears.”

15 AIR 1927 PC 242

16 (1957) 96 CLR 261

17 (1991) 2 All ER 712

24. In **Sutherland on Statutory Construction**¹⁸, it has been stated as follows:-

“29. ...Effect on vested rights

Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceedings not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.”

25. Under English common law there is a presumption that a statute does not have "retrospective" effect. The statement in **Maxwell on The Interpretation of Statutes**¹⁹, which is often referred, is as follows:

"Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

26. The presumption against interference with vested rights rests on a very simple rationale – it is often unfair for a new legislation to intrude upon rights that have validly and legally been acquired in the past. This presumption has been stated with emphasis by **Wright J. in In re Athlumney**²⁰:

“Perhaps no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation...”

18 Sutherland on Statutory Construction, (3rd Ed.) Volume 1

19 Maxwell on The Interpretation of Statutes, 12th Ed. (1969), p.215

20 (1898) 2 QB 547, 551-552

27. In the case at hand, the effect of the Amending Act 32 of 2019, in respect of Section 173 of the Motor Vehicles Act, 1988, is that in sub-section (2) thereof the amount which was earlier specified as 'ten thousand rupees', has been substituted by an amount of 'one lakh rupees'. The effect of the amendment thus is to raise the pecuniary limit for filing of an appeal against an award of a Claims Tribunal, from 'ten thousand rupees' to 'one lakh rupees'.

28. Section 57 of the Amending Act 2019, which is with regard to the amendment made to Section 173, was notified on 25.02.2022, to come into force w.e.f. 01.04.2022.

29. The fact that the pre-existing right of appeal continues to exist, must in its turn, necessarily imply that the earlier law which created the right of appeal must also exist to support the continuation of that right. As the earlier law continues to exist for the purpose of supporting the pre-existing right of appeal, that law must govern the exercise and enforcement of that right of appeal and there would be no question of the amended provision preventing the exercise of that right or acting as a clog upon the right which had crystallized earlier.

30. An amending statute cannot be read in a manner so as to take away, alter, abrogate, impair or extinguish vested rights acquired under existing laws, or create a new obligation, impose a new duty or attach a new disability, in respect of transactions already past.

31. The right of appeal having been conferred by statute and, therefore, being a vested right, the effect of the amendment would have to be seen in the context as to whether it keeps alive

the old rights or whether it manifests an intention to destroy them. It would be required to see as to whether the effect of the amendment is to obliterate the earlier statute and to destroy its operation in future, or on the other hand the amendment does not contemplate alteration of the substantive right conferred by the statute, but merely seeks to alter or modify the procedure.

32. The right of appeal under the unamended provision was a substantive right, and it continues to be so under the amended provision also; the only change being with regard to enhancement of the pecuniary limit for filing an appeal. It is seen that the effect of the amendment is in no manner to destroy or even to alter the pre-existing rights. It would, therefore, follow that the substantive right of appeal which is in the nature of a vested right would continue to be enforced as per the pre-existing law without in any manner being effected by Amending Act.

33. In construing a statutory provision, the cardinal rule of construction which is to be borne in mind by the courts is that statutes should be interpreted, if possible in a manner, so as to respect vested rights. In the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be construed so as to have the effect of altering the pre-existing law applicable to a claim in litigation.

34. The claim petition, in the present case, was filed sometime in the year 2016, and was registered as M.A.C.P. No. 479 of 2016, and related to an accident stated to have occurred on 08.06.2016. The claim petition was decided in terms of an award dated 03.08.2023, of the Motor Accident Claims Tribunal, Jhansi against which the instant appeal has been preferred.

35. The Amending Act of 2019 does not take away the right of appeal. It also does not substantially alter the pre-existing provision of an appeal under Section 173; the only modification being that the pecuniary limit of filing of an appeal has been raised from 'ten thousand rupees' to 'one lakh rupees'. The Amending Act of 2019 which was published in the gazette dated 09.08.2019, was not given retrospective effect; rather in terms of sub-section (2) of Section 1 of the Amending Act, its provisions were to come into force on different dates to be appointed by the Central Government, by notification in the official gazette. The legislative intent was clearly to apply the provisions of the Amending Act prospectively. Section 27 of the Amending Act, which relates to the amendment to the pecuniary limit of filing an appeal under Section 173, was also prospectively applied in terms of the notification dated 25.02.2022, which came into force w.e.f. 01.04.2022.

36. The Amending Act neither expressly nor by implication seeks to apply the provision retrospectively; accordingly, the right to appeal crystallized in the appellant on the institution of the claim petition before the Tribunal of first instance, cannot be held to have been dislodged by the Amending Act. The appellant would, therefore, have to be held entitled to file the appeal, as per the unamended provision, without in any manner being effected by the enhancement of the pecuniary limit for filing of the appeal in terms of the amended provision.

37. Accordingly, it is held that an appeal against an award of the Claims Tribunal, even if the amount in dispute in the appeal is less than 'one lakh rupees' would be entertainable provided that the amount in dispute is not less than 'ten thousand rupees', and it

relates to a claim petition filed prior to 01.04.2022.

38. The objection of the Stamp Reporter with regard to maintainability of the appeal under Section 173(2) of the Motor Vehicles Act, 1988, is therefore held unsustainable.

39. Let the appeal be listed for admission as fresh on 22.01.2024 before the appropriate Bench.

Order Date :- 11.01.2024

Arun K. Singh/Shahroz

[Dr. Y.K. Srivastava, J.]