



**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

**HON'BLE THE ACTING CHIEF JUSTICE,
SHRI JUSTICE MANOJ KUMAR TIWARI**

24th December, 2024

Writ Petition (M/S) No. 2869 of 2024

Shriram General Insurance Co. Ltd. --Petitioner
Versus

Naresh Kumar & others --Respondents

Presence:-
Mr. D.C.S. Rawat, learned counsel for the petitioner.

JUDGMENT

This is Insurer's petition filed under Article 227 of the Constitution, challenging order dated 19.07.2024, passed by learned Additional District Judge, Laksar, District Haridwar in MACT Case No. 01 of 2023. By the said order, petitioner's objection regarding maintainability of application under Section 166 (1) of Motor Vehicles Act, 1988 on the ground of delay was rejected and it was held that on the date of the accident, there was no limitation prescribed for filing such application.

2. Respondent nos. 1 & 2 are parents of the deceased Akshit, who died in a road accident. Respondent nos. 1 & 2 sought compensation by moving an application under Section 166 (1) of the Motor Vehicles Act, 1988.

3. As per the averments made in the application,



2024:UHC:9918

the deceased was a pillion rider on a motorcycle, which was driven by his cousin Subodh Tyagi; a Tempo (*Chhota Hathi*) bearing registration no. UK07CC0788, which was being driven in a rash and negligent manner, hit the motorcycle, and due to impact of the accident, son of the claimants sustained fatal injuries and died on the spot; while, his cousin was badly injured in the said accident. The application reveals that age of Akshit (deceased) was a little more than 18 years on the date of accident.

4. It is not in dispute that the Tempo (*Chhota Hathi*) bearing registration no. UK07CC0788 was insured by the petitioner on the date of accident, i.e. 11.04.2016.

5. Petitioner filed objection questioning maintainability of the application for compensation made by respondent nos. 1 & 2 and contended that the application is barred by limitation. He relied on provision contained in sub-section 3 of Section 166 of Motor Vehicles Act, 1988, inserted by Act No. 32 of 2019, made effective from 01.04.2022.

6. Learned Additional District Judge, Laksar, Haridwar rejected the objection raised by petitioner and held that since there was no limitation for filing application under Section 166 (1) on the date of accident, therefore provision regarding limitation inserted by an amendment which was effective from 01.04.2022 will not take away the right of claimants to seek compensation, under Section 166(1) of the Act.

7. Section 166 of the Motor Vehicles Act, 1988, as it existed before 01.04.2022, is reproduced below:-

“166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made—

(a) by the person who has sustained the injury; or



(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) [* * *]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

8. It is not in dispute that Motor Vehicles Act, 1988, as originally enacted, provided limitation period of six months for filing an application for compensation, which was to be reckoned from the date of the accident; however, the Claims Tribunal could have entertained an application even after expiry of six months, but, not later than twelve months, if it was satisfied that applicant was prevented by sufficient cause from making the application in time. Sub-section (3) to Section 166, dealing with limitation, was however omitted by Act No. 54 of 1994 w.e.f. 14.11.1994; sub-section (3) prescribing limitation of six months was re-introduced w.e.f. 01.04.2022. During the interregnum i.e., between 14.11.1994 to 01.04.2022, there was no provision prescribing limitation for filing application for compensation. Thus learned Tribunal was right in holding that there was no limitation for filing application on the date when accident occurred.



9. 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.

10. Section 6 of the General Clauses Act, 1897 deals with repeal of an enactment, which reads as under:

"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."

11. Clause (c) of Section 6 of the General Clauses Act provides that repeal of an enactment shall not affect any right, privilege, obligation or liability acquired,



accrued or incurred under any enactment so repealed. Thus Section 6 of the General Clauses Act saves a right accrued and/or a liability incurred. It does not create a right. When Section 6 applies, only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect, when it comes into force, unless expressly stated otherwise.

12. In the case of *State of Punjab and others v. Bhajan Kaur and others*, (2008) 12 SCC 112, Hon'ble Supreme Court was dealing with a case where the amount payable as compensation for no fault liability which originally was fixed as Rs. 15,000/- by Motor Vehicles Act, 1939 was raised to Rs. 25,000/- by Section 140 of 1988 Act. Subsequently, the quantum of amount payable was raised to Rs. 50,000/- by amending Act No. 54 of 1994 effective from 14.11.1994. The question, which fell for consideration was whether the amount raised by Amending Act No. 54 of 1994 will have retrospective effect or not. Hon'ble Supreme Court held that a statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. It was further held that a substantive law is presumed to be prospective and it is one of the facets of the rule of law. Relevant extract of the judgment rendered in the case of *State of Punjab and others v. Bhajan Kaur and others (supra)* are extracted below:-

"13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1-7-1989.



14. Reference to Section 6 of the General Clauses Act, in our opinion, is misplaced. Section 217 of the 1988 Act contains the repeal and saving clause. Section 140 of the 1988 Act does not find place in various clauses contained in sub-section (2) of Section 217 of the 1988 Act. Sub-section (4) of Section 217 of the 1988 Act reads thus:

“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.”

What is, therefore, otherwise saved in Section 6 of the General Clauses Act, inter alia, is the right. It reads as under:

“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)-(b)***

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;”

Section 6 of the General Clauses Act, therefore, inter alia, saves a right accrued and/or a liability incurred. It does not create a right. When Section 6 applies, only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise.

15. Section 140 of the 1988 Act does not contain any procedural provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood viz. before the new Act came into force.

16. It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication.”

13. In the case of *Garikapati Veeraya v. N. Subbiah Choudhary & Others*, reported in AIR 1957 SC 540, Hon’ble Supreme Court held that right of appeal is not mere matter of procedure but is a substantive right.

14. In the case of *Nahar Industrial Enterprises Limited v. Hong Kong and Shanghai Banking Corporation*, reported a (2009) 8 SCC 646, Hon’ble Supreme Court held that right of appeal is a substantive right.

15. In the case of *State of Bombay v. Supreme General Films Exchange Ltd.*, reported in AIR 1960 SC 980, the question which arose for consideration was whether court fee payable on the memorandum of appeal would be as on the date of filing of the suit or as per the amendment in the Court Fees Act, 1870. Hon’ble Supreme Court held that the court fee as was applicable



prior to the amendment of the Act would be payable.

Para 12 of the said judgment is extracted below:

“12. It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.”

16. Similarly, in the case of *ECGC Limited v. Mokul Shriram EPC JV*, reported in (2022) 6 SCC 704, it was held that onerous condition of payment of 50 per cent of the amount as pre-deposit for filing an appeal will not be applicable to the complaints filed before commencement of Consumer Protection Act, 2019 and further that pre-existing right of an appeal is not destroyed by the amendment, if the amendment is not made retrospective by express words or necessary intendment. Para 11, 12, 13 and 14 of the said judgment is extracted below:

“11. This Court held as under: (Hoosein Kasam Dada case [Hoosein Kasam Dada (India) Ltd. v. State of M.P., (1953) 1 SCC 299 : 1953 SCR 987 : AIR 1953 SC 221] , SCC pp. 309-11, paras 24-25, 28-29 & 32-33)

“24. The above decisions quite firmly establish and our decisions in Janardan Reddy v. State [Janardan Reddy v. State, 1950 SCC 898 : 1950 SCR 940] and in Ganpat Rai Hira Lal v. Aggarwal Chamber of Commerce Ltd. [Ganpat Rai Hira Lal v. Aggarwal Chamber of Commerce Ltd., (1952) 2 SCC 214 : AIR 1952 SC 409] uphold the principle that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. 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.



25. *In the language of Jenkins, C.J. in Nana Bin Aba v. Sheku Bin Andu [Nana Bin Aba v. Sheku Bin Andu, 1908 SCC OnLine Bom 66] to disturb an existing right of appeal is not a mere alteration in procedure. 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.*

* * *

28. *In our view the above observation is apposite and applies to the case before us. The true implication of the above observation as of the decisions in the other cases referred to above is 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. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right.*

29. *The argument that the authority has no option or jurisdiction to admit the appeal unless it be accompanied by the deposit of the assessed tax as required by the amended proviso to Section 22(1) of the Act overlooks the fact of existence of the old law for the purpose of supporting the pre-existing right and really amounts to begging the question. The new proviso is wholly inapplicable in such a situation and the jurisdiction of the authority has to be exercised under the old law which so continues to exist. The argument of Shri Ganapathy Iyer on this point, therefore, cannot be accepted.*

* * *

32. *Finally, Shri Ganapathy Iyer faintly urges that until actual assessment there can*



be no “lis” and, therefore, no right of appeal can accrue before that event. There are two answers to this plea. Whenever there is a proposition by one party and an opposition to that proposition by another a “lis” arises. It may be conceded, though not deciding it, that when the assessee files his return a “lis” may not immediately arise, for under Section 11(1) the authority may accept the return as correct and complete. But if the authority is not satisfied as to the correctness of the return and calls for evidence, surely a controversy arises involving a proposition by the assessee and an opposition by the State. The circumstance that the authority who raises the dispute is himself the Judge can make no difference, for the authority raises the dispute in the interest of the State and in so acting only represents the State.

33. It will appear from the dates given above that in this case the “lis” in the sense explained above arose before the date of amendment of the section. Further, even if the “lis” is to be taken as arising only on the date of assessment, there was a possibility of such a “lis” arising as soon as proceedings started with the filing of the return or, at any rate, when the authority called for evidence and started the hearing and the right of appeal must be taken to have been in existence even at those dates. For the purposes of the accrual of the right of appeal the critical and relevant date is the date of initiation of the proceedings and not the decision itself.”

12. Subsequently, the Constitution Bench in a judgment in *Garikapati Veeraya v. N. Subbiah Choudhry* [*Garikapati Veeraya v. N. Subbiah Choudhry*, AIR 1957 SC 540] approved the judgment in *Hoosein Kasam Dada* [*Hoosein Kasam Dada (India) Ltd. v. State of M.P.*, (1953) 1 SCC 299 : 1953 SCR 987 : AIR 1953 SC 221] , though the issue was in respect of right of appeal to the Federal Court under the Government of India Act, 1935. The argument was that the appellant had a right to file an appeal as the suit, out of which the proceedings arose before this Court, was filed on 22-4-1949. Hence, he had acquired a vested right to appeal to the Federal Court



which has since been replaced by the Supreme Court. It was the said argument which was accepted by the Constitution Bench when the following principles were delineated : (Garikapati Veeraya case [Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540] , AIR p. 553, paras 23-24)

“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 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.

24. In the case before us the suit was instituted on 22-4-1949, and on the principle established by the decisions referred to above the right of appeal vested in the parties thereto at that 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 and Sections 109 and 110 of the Code of Civil Procedure provided the conditions thereof were



satisfied. The question for our consideration is whether that right has been taken away expressly or by necessary intendment by any subsequent enactment. The respondents to the application maintain that it has been so taken away by the provisions of our Constitution.”

13. In a three-Judge Bench judgment in *State of Bombay v. Supreme General Films Exchange Ltd.* [*State of Bombay v. Supreme General Films Exchange Ltd.*, AIR 1960 SC 980] , the argument which arose for consideration was that the court fees payable on the memorandum of appeal would be as on the date of filing of the suit and not as per the amendment in the Court Fees Act, 1870 by Bombay Act 12 of 1954. The court fee on the memorandum of appeal was thus held to be payable as was applicable prior to the amendment of the Act. This Court held as under : (AIR pp. 984-85, para 12)

“12. It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.”

14. The Constitution Bench in *Vitthalbhai Naranbhai Patel v. CST* [*Vitthalbhai Naranbhai Patel v. CST*, AIR 1967 SC 344] was considering a matter where the date on which sales tax returns were filed was not disclosed. In the absence of the date of filing of the return, this Court held as under : (AIR p. 345, para 9)

“9. The decision in *Hoosein Kasam Dada case* [*Hoosein Kasam Dada (India) Ltd. v. State of M.P.*, (1953) 1 SCC 299 : 1953 SCR 987 : AIR 1953 SC 221] , proceeded on the ground that when a *lis* commences, all rights get crystallised and no clog upon a likely appeal can be put, unless the law was made retrospective, expressly or by clear implication. From the record of this case, we cannot say when the *lis* commenced, and unless it can be



proved conclusively that it was before the amendment of the law, the rule in Hoosein Kasam Dada case [Hoosein Kasam Dada (India) Ltd. v. State of M.P., (1953) 1 SCC 299 : 1953 SCR 987 : AIR 1953 SC 221] , cannot apply. There is no averment that right of appeal had vested, and has been wrongly taken away.”

17. In the case of *Neena Aneja & Another v. Jai Prakash Associates Limited*, reported in (2022) 2 SCC 161, it was held that a litigant’s vested rights (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. Para 72, 73, 84, 85, 86 and 87 of the said judgment are extracted below:

“72. *In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity—a clear position of law has emerged : a change in forum lies in the realm of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute. This position emerges from the decisions in New India Assurance [New India Assurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840] , Maria Cristina [Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92] , Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , Ramesh Kumar Soni [Ramesh Kumar Soni v. State of M.P., (2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340] and Sudhir G. Angur [Sudhir G. Angur v. M. Sanjeev, (2006) 1 SCC 141] . More recently, this position has been noted in a three-Judge Bench decision of this Court in Manish Kumar v. Union of India [Manish Kumar v. Union of India, (2021) 5 SCC 1 : (2021) 3 SCC (Civ) 50] . However, there was a deviation by a two-Judge Bench decision of this*



Court in Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257] , which overlooked the decision of a larger three-Judge Bench in New India Assurance [New India Assurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840] and of a coordinate two-Judge Bench in Maria Cristina [Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92] . The decision in Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257] propounded a position that : (Dhadi Sahu case [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257] , SCC p. 262, para 21)

“21. ... no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal.”

(emphasis supplied)

In taking this view, the two-Judge Bench did not consider binding decisions. Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257] failed to consider that the saving of pending proceedings in Mohd. Idris [Mohd. Idris v. Sat Narain, (1966) 3 SCR 15 : AIR 1966 SC 1499] and Manujendra Dutt [Manujendra Dutt v. Purnedu Prosad Roy Chowdhury, (1967) 1 SCR 475 : AIR 1967 SC 1419] was a saving of vested rights of the litigants that were being impacted by the repealing Acts therein, and not because a right to forum is accrued once proceedings have been initiated. Thereafter, a line of decisions followed Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257] , to hold that a litigant has a crystallised right to a forum once proceedings have been initiated. A litigant's vested rights (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. This protection does not extend to pure matters of procedure. Repeals or amendments that effect changes in forum would ordinarily affect pending proceedings,



unless a contrary intention appears from the repealing or amending statute.

73. It is relevant to note in this context that the decision in *Ambalal Sarabhai [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397]* saved proceedings in relation to a benefit which although not vested, accrued to the landlord to evict the tenant by virtue of a proviso to a section which accorded protection to the tenant from ejectment. This Court reasoned that since the right of the landlord flows from a Section which protects the tenant, it cannot be enlarged into a vested right. However, *Ambalal Sarabhai [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397]* did not enunciate an absolute proposition that the right to institute proceedings at a particular forum is an accrued right, let alone a vested right. The dictum that a change of forum is a procedural matter is not altered by the decision of this Court in *Ambalal Sarabhai [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397]* which sought to differentiate between vested rights and accrued rights, the latter being protected under Section 6(c) of the General Clauses Act, the proceedings in relation to which are protected under Section 6(e).

84. Now, in considering the expression of intent in the repealing enactment in the present case, it is apparent that there is no express language indicating that all pending cases would stand transferred to the fora created by the 2019 Act by applying its newly prescribed pecuniary limits. In deducing whether there is a contrary intent, the legislative scheme and procedural history may provide a relevant insight into the intention of the legislature.

85. The 2019 Act, as indicated by its long title, is enacted to provide “for protection of the interests of consumers”. The Statement of Objects and Reasons took note of the tardy disposal of cases under the erstwhile legislation. Thus, the necessity of inducing speed in disposal was to protect the rights and interests of consumers. The 2019 Act has taken note of the evolution of consumer



markets by the proliferation of products and services in light of global supply chains, e-commerce and international trade. New markets have provided a wider range of access to consumers. But at the same time, consumers are vulnerable to exploitation through unfair and unethical business practices. The Act has sought to address “the myriad and constantly emerging vulnerabilities of the consumers”. The recurring theme in the new legislation is the protection of consumers which is sought to be strengthened by procedural interventions such as strengthening class actions and introducing mediation as an alternate forum of dispute resolution.

86. In this backdrop, something specific in terms of statutory language — either express words or words indicative of a necessary intendment would have been required for mandating the transfer of pending cases. One can imagine the serious hardship that would be caused to the consumers, if cases which have been already instituted before NCDRC were required to be transferred to SCDRCs as a result of the alteration of pecuniary limits by the 2019 Act. A consumer who has engaged legal counsel at the headquarters of NCDRC would have to undertake a fresh round of legal representation before SCDRC incurring expense and engendering uncertainty in obtaining access to justice. Likewise, where complaints have been instituted before SCDRC, a transfer of proceedings would require consumers to obtain legal representation before the District Commission if cases were to be transferred. Such a course of action would have a detrimental impact on the rights of consumers. Many consumers may not have the wherewithal or the resources to undertake a fresh burden of finding legal counsel to represent them in the new forum to which their cases would stand transferred.

87. It would be difficult to attribute to Parliament, whose purpose in enacting the 2019 Act was to protect and support consumers with an intent that would lead to financial hardship, uncertainty and expense in the conduct of consumer litigation. Ironically,



the objection which has been raised in the present case to the continued exercise of jurisdiction by NCDRC in regard to the consumer complaint filed by the appellant is by the developer who is the respondent herein. It is a developer who opposed the continuation of the proceedings before NCDRC on the ground that under the new consumer legislation the pecuniary limits of the jurisdiction exercisable by NCDRC have been enhanced and the complaint filed by the appellant which was validly instituted under the erstwhile law should be transferred to SCDRC. Such a course of action will result in thousands of cases being transferred across the country, from NCDRC to SCDRCs and from SCDRCs to the District Commission.”

18. Learned Counsel for the petitioner contended that sub-section (3) to Section 166 will have retrospective operation, however he fairly conceded that there is no express provision in the Motor Vehicles Act to support this contention. It is not in dispute that sub-section (3) to Section 166 was inserted by Section 53 of the Motor Vehicles (Amendment) Act, 2019 w.e.f. 1.4.2022 and the Amendment Act, 2019 also do not indicate that sub-section (3) is to apply retrospectively.

19. The right to claim compensation in respect of the accidents involving the death of or bodily injuries of persons arising out of the use of motor vehicles is a substantive right. Sub-section (5) to Section 166 was also inserted by the Motor Vehicles (Amendment) Act, 2019 w.e.f. 1.4.2022 and the said provision makes it clear that right to claim compensation is a vested right, which survives to the legal representatives upon death of the person injured in a road accident.

20. Now, coming back to the facts of the present case. The accident occurred before 1.4.2022, when sub-section (3) was added to Section 166 of the Motor



2024:UHC:9918

Vehicles Act. By the said amendment, limitation of six months was introduced, while earlier there was no limitation prescribed for filing an application seeking compensation. Section 166(1) of the Act confers right to seek compensation to a person injured in a road accident and, in case of death, upon the legal representatives of the deceased. The right to claim compensation is a substantive right, as is apparent from sub-section (5) to Section 166 of the Act. Whether such a right, which was without any fetters on the date of accident, can be taken away by a subsequent amendment, whereby limitation period is prescribed? Section 166 is a piece of beneficial legislation. In my humble opinion, the right to claim compensation cannot be denied to the legal representatives of the deceased on account of subsequent amendment in the legislation. Thus the view taken by the learned Tribunal cannot be faulted.

21. In such view of the matter, this Court does not find any reason to interfere with the order passed by the learned Additional District Judge, impugned in this writ petition. Accordingly, the writ petition fails and is dismissed.

(MANOJ KUMAR TIWARI, A.C.J.)

Navin