

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.457 of 2013

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1. Sushila Devi wife of late Sikandar Mandal.
2. Sweta Bharti.
3. Rani Raushan
4. Jyoti Kumari
5. Vijeta Kumari
6. Ravi Bhusan Kumar,
Minsor daughters and son of Late Sikandar Mandal under guardianship
of their mother, petitioner no.1. Residents of village and P.O. Aroma,
P.S.Kazara (Suryagarha), Lakhisarai, At present Mohalla Ram
Chandrapur, P.S.Laheri, District Nalanda.

.... Appellant/s

Versus

1. The Oriental Insurance Company, Munger .
2. Narayan Sa son of Late Sanki Sah, resident of village Urva, P.S. Kajar
District Lakhisarai, owner cum driver.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar, Adv.

For the Respondent/s : Mr. Barun Kumar Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

9 05-08-2015

Heard counsel for the appellants and the respondents.

In this appeal, the appellants are challenging the
order dated 21st July 2009 passed in M.A.C.T. Case No. 61 of
2006.

Short facts of the case is that the husband of appellant
no.1, namely, Sikandar Mandal met with an accident at Rampur Road P.S.
Suryagarha, Lakhisarai by a tractor bearing Regd. No. BR 08G / 0344 on
account of negligent and rash driving. Ultimately he succumbed to the
injuries. After his death, on the basis of FIR of Chaukidar, Gita Paswan,
Suryagarha P.S. Case No. 5 of 2005 was registered u/s 279 and 304B IPC.

In the claim case, the Insurance Company raised a preliminary
objection about maintainability of the case on the ground of territorial

jurisdiction of court as the accident had taken place in the district of Lakhisarai, the owner and the driver of vehicle are resident of Lakhisarai and on that score the Insurance Company prayed that in stead of filing the application before the Claims Tribunal, Bihar Sharif, it should have been filed before the Claims Tribunal, Lakhisarai and directed the Office to hand over the claim application to be filed before the appropriate court.

Counsel for the appellants submits that in terms of Section 166 of the M.V.Act, after amendment in 1994, the situation has changed and now claimant can file claim application at three places, i.e. where the accident has taken place, or where complainant resides or at a place where the defendant resides.

He further submits that though the claimant is permanent resident of Lakhisarai but at present she is residing in the district of Nalanda and, as such, the order passed by the Tribunal is completely misconceived, illegal and not sustainable in law.

Reliance has also been placed on 2011(2) PLJR 1010 and 2015(1) PLJR 616.

Counsel for the respondent submits, though after amendment of Section 166 of the M.V.Act in 1994, option has been given to the claimant to file the claim application at different places i.e. where defendant resides or where the deceased or the claimant is residing permanently and in support of his contention, he has relied on the judgment reported in 2010(4) PLJR 1034 (Divisional Manager v. State of Bihar).

Having considered the rival contention of the parties, for resolving the issue raised, it will be primary effort to understand the object and purpose of bringing amendment in Section 166 of the Motor Vehicles

Act. It will be appropriate to examine the provisions before 1994 and after 1994. It is relevant to quote Section 166 of the M.V.Act which is as follows:

Section 166 of the M.V.Act (Before amendment)

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

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

(d) by any agent duly authorized 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 to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed:

Provided that where any 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) no application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months. If it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks necessary so to do, treat the report as if it were an application for compensation under this Act.”

Section 166 of the M.V.Act (After amendment)

53. Amendment of section 166 of Act 59 of 1988.- In section 166 of the principal Act. –

(a) for sub-section(2), the following shall be substituted, namely: - “(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 .. incurred 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.”

(b) sub-section (3) shall be omitted;

© for sub-section (4), the following sub-section shall be substituted, namely :-

“(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.”

For understanding the object and purpose of amendment it has to be construed what was the mischief sought to be remedied. The provisions dealing with compensation to the victim family is beneficial piece of legislation, same should be given liberal construction with a view to advance justice to the sufferer family and not the literal or strict interpretation to be given. It will be relevant to rely on the judgment of Hon’ble Supreme Court Union of India v. Prabhakar Vijay Kumar 2008(4) PLJR 40 (SC) proper to quote Para-11, 12 and 13 of the judgment:

Para-11 : No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a



beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.

13. In Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others 1995(6) SCC 326 (vide para 42) this Court observed:

"In this connection, we may usefully turn to the

decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court* we had occasion to say:

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not

to make Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely

literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

As per the old provision, the court whose jurisdiction, accident took place, had jurisdiction to deal with case, which used to create great difficulty for the victim family to file claim case at miles away and pursue the case. In order to suppress this mischief and to advance the justice, legislature brought wholesome amendment to Section 166 of Motor Vehicles Act. It is clear from the amended provision, the victim family would feel easy to file the case at arms length and pursue the remedy while interpreting any statutory provision, intention of Legislature plays vital role in arriving to right conclusion. The Hon'ble Supreme Court has laid emphasis in this regard while interpreting statutory provision.

It will be relevant to rely on AIR 1992 SC 1277 (State of H.P. v. Kailash Chand Mahajan), Para77 of the judgment is as follows:

“Para 77: “Thus there is a great distinction between the two. While the object of legislation is to provide a remedy for the malady. On the contrary, the legislative intention relates to the meaning from the exposition of the remedy as enacted. For



determining the purpose of object of legislation, indeed, it is permissible to look into the circumstances which were prevalent at that time when the law was enacted and which necessitated the passing of that enactment. For the limited purpose of appreciating the background and the antecedents factual matrix leading to the legislation it is open to the Court to look in to the statement of 'Objects and Reasons' of the Bill which accentuated the statement to provide a remedy for the then existing malady. In the case of State of West Bengal v. Union of India, (1964) 1 SCR 371: (AIR 1963 S C 124 1), this Court ruled that the statement of 'Objects and Reasons' accompanied a Bill when introduced in Parliament can be used for the limited purpose of understanding, the background and state of affairs leading up to the legislation. Therefore, we now look into the statement of 'Objects and Reasons'. That clearly brings out the object of the desirability of introducing an age of superannuation as the same is entrenched in our administrative and constitutional systems. With this object in view, Section 3 intends that no one has a right to continue as a member of the Board after attaining the age of 65. Thus, the only conclusion possible is, by reason of appointment if the incumbent is enabled to continue after the attaining the age of 65 years such continuing is rendered void.”

The Hon’ble Supreme Court in State of West Bengal v. Union of India 1963 SC 1241 in Para 68 held as follows:

Para-68 “Re. (7): In Director of Rationing and Distribution

v. Corporation of Calcutta (1961) 1 SCR 158: (AIR 1960 SC 1355) it was held by this Court by a majority:

"The law applicable to India before the Constitution was an authoritatively laid down by the Privy Council in Province of Bombay v. Municipal Corporation of the City of Bombay, 73 Ind App 271: (AIR 1947 PC 34). The Constitution has not made any change in the legal position. On the other hand it has clearly indicated that the laws in force before January 26, 1960, shall continue to have validity even in the new set-up except in so far as they were in conflict with the express provisions of the Constitution. The rule of interpretation of statutes that the State is not bound by a statute unless it is so provided in express terms or by necessary implication, is still good law".

It was observed at p. 172 (of SCR): (at p. 1360 of AIR):

"The immunity of Government from the operation of certain statutes, and particularly statutes creating offences, is based upon the fundamental concept that the Government or its Officers cannot be a party to committing a crime -analogous to the prerogative of perfection' that the king can do no wrong. Whatever may have been the historical reason of the rule, it has been adopted in our country on grounds of public policy as a rule of interpretation of statutes. That this rule is not peculiar or confined to a monarchical form of Government".

The Court thereby approved the principle of exemption of the sovereign from the general words of a Statute enunciated by the Judicial Committee in 73 Ind App 271: (AIR 1947 PC 34)

in the following terms:

"The general principle to be applied in considering whether or not the Crown is bound by general words in a statute is not in doubt. The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein, "Royn estlie per ascun statute si il ne soit expressment nosme". But the rule so laid down is subject to at least one exception. The Crown may be bound, as has often been said, "by necessary implication". If that is to say, it is manifest from the very terms of the statute, that it was the intention of the Legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions".

But the rule that the State is not bound, unless it is expressly named or by necessary implication in the statute is one of interpretation. In considering the true meaning of words or expression used by the Legislature the Court have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. Again in interpreting a Constitutional document provisions conferring legislative power must normally be interpreted liberally and in their

widest amplitude. Vide Navinchandra Mafatlal v. Coomr. of Income-tax, Bombay City, (1955) 1 SCR 829: (S) AIR 1955 SC 58). Entry 42 in List III does not, prima facie, contain any indication that the expression "Property" therein is to be understood in any restricted sense : nor do the other provisions of the Act for reasons already stated suggest a restricted meaning. The ground of absolute sovereignty of the States which may not be interfered with by taking property vested in the State by Parliamentary legislation has no legal basis.

Again denial of power to the Union Parliament to legislate on allotted topics of legislation, in a manner affecting the property vested in a State, may render Parliamentary legislation virtually ineffective. No provision in the Constitution suggesting a restricted meaning of the word 'property' in the context of legislative power has been brought to our notice. Regard being had to the extensive powers which the Union Parliament and Executive have for using State property, in the larger public interest the restriction suggested that the power does not extend to the acquisition of property of the States does not seem to be contemplated. By making the requisite declarations under Entries 54 of List I, the Union Parliament assumes power to regulate mines and minerals and thereby to deny to all agencies not under the control of the Union, authority to work the mines. It could scarcely be imagined that the Constitution makers while intending to confer an exclusive power to work mines and minerals under



the control of the Union, still prevented effective exercise of that power by making it impossible compulsorily to acquire the land vested in the States containing minerals. The effective exercise of the power would depend if such an argument is accepted not upon the exercise of the power to undertake regulation and control by issuing a notification under Entry 54, but upon the will of the State in the territory of which mineral-bearing land is situate. Power to legislate for regulation and development of mines and minerals under the control of the Union, would by necessary implication include the power to acquire mines and minerals. Power to legislate for acquisition of property vested in the State cannot therefore be denied to the Parliament if it be exercised consistently with the protection afforded by Art. 31.”

The Court may refer with profit judgment of Hon’ble Supreme Court decision in Mantoo Sankar v. Oriental India Ltd. And others 2009 (1) PLJR 314 (SC) dealing with issue of territorial jurisdiction of Tribunal, better to quote Para 10 and 11 of the judgment:

“Para-10 “The said Act is a special statute. The jurisdiction of the Tribunal having regard to the terminologies used therein must be held to be wider than the civil court.

A claimant has a wide option. Residence of the claimant also determines jurisdiction of the Tribunal.

Para-11 What would be a residence of a person would, however, depend upon the fact situation obtaining in each case.”

Before 1994 such option was not available but after amendment it has been provided that claim application can be filed at both places.

As per the amended provisions, the claimant has been given liberty to file claim application at three places, i.e. where the accident has taken place, or where she resides or at a place where the defendant resides.

The judgment that has been cited dealt with, what would to treated the place of residence of corporate office, as question was raised, whether the Divisional Office of Insurance Company will be the place of residence which was rejected, on the ground that principal place of business will be the residence of corporate body, is not an issue of adjudication before this Court.

As this Court has stated above, in view of the idea behind the amendment it will be unnecessary harassment to ask the claimant to go at Lakhisarai and file application whereas she is residing at territorial jurisdiction of Bihar Sharif. The amended section does not make distinction in permanent residence and temporary residence, some times a temporary residence in course of time turns to be a permanent residence vice versa. If this distinction will be accepted, the distress earlier felt by claimant will not be remedied. The court below has fallen in error in rejecting the claim application. Accordingly, the impugned order is set aside and the matter is remitted back to the court below to pass order afresh in accordance with law.

Accordingly, this petition is allowed.

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(Shivaji Pandey, J)