

or two partnership firms, that the next question arises; whether the turnover is assessable in the hands of the partnership firm as a taxable entity separate and distinct from the partners? There is first a decision under the law of partnership; thereafter the second question arises, the question as to assessment under the tax law. It is, clear, therefore, that reference must be made first to the partnership law."

(5) It would be apparent, therefore, that as a matter of law there can be a transaction of a sale or purchase by one firm to another where the partners of both the firms are the same, but whether or not the two entities are separate and distinct would of course depend upon the peculiar facts and circumstances of the particular case.

(6) Such thus being the situation as it now emerges, we reframe the question posed in the following terms

"Whether the Tribunal was right in holding that a partnership firm cannot make a transaction for sale to a partnership firm constituted by the same partners though with different shares therein."

(7) This question is answered in the negative in favour of the assessee and against revenue, but with the further observation that whether or not the sale by Messers. Punjab Oil Mills, Sarna to Messers. Oil Mills, Damtal (H.P.) be deemed to be a sale by one distinct firm to another be determined afresh by the assessing authority, keeping in view the observations and the principles laid down by the Supreme Court in K. Kalukutty's case (supra).

(8) This reference is disposed of accordingly. There will, however, be no order as to costs.

J.S.T.

Before : G. R. Majithia & Harmohinder Kaur Sandhu, JJ.

LAXMI NARAIN KAKA AND ANOTHER,—*Appellants.*

versus

BALBIR KAUR AND OTHERS.—*Respondents.*

Civil Misc. No. 5805-CII of 1991.

24th February, 1992.

Motor Vehicles Act (59 of 1988)—S. 173—First proviso—Deposit as mentioned before filing appeal—Date of accident should be taken

as date of application of the state of Law—S. 173(1) first proviso will be inapplicable to accidents occurring before the commencement of amended Act.

Held, that there is no escape from the conclusion that the date of accident should, therefore, be taken as the date of application of the state of law existing then. S. 173 of the amended Act will be inapplicable and the appellants will not be enjoined to comply with the first proviso to S. 173(1) before filing the appeal against the award of the Motor Accidents Claims Tribunal.

(Para 6)

Application under Section 151 C.P.C. praying that this application may kindly be allowed and the appellants may kindly be exempted from depositing Rs. 25,000 as the petition has been filed under the old Act and the Amended Act came into force later on in 1988.

K. S. Sidhu, Advocate, for the appellants.

Arun Jindal, Advocate, for the respondents.

JUDGMENT

Whether the provisions of Section 173 of the Motor Vehicles Act, 1988 providing for a right of appeal to any person aggrieved by an award of a Motor Accident Claims Tribunal subject to the provisions mentioned therein are retrospective or prospective, is the cardinal question arising for determination in this miscellaneous application.

(2) Parliament enacted the Motor Vehicles Act, 1988 (for short, the amended Act), to consolidate and amend the law relating to motor vehicles and the amended Act came into force with effect from July 1, 1989. The provision for granting compensation on the principle of "no fault liability" was inserted in Chapter X of the Act under the heading. "Liability without fault in certain cases" and the Sections covered are identical to the provisions of Sections 92-A to 92-E of the 1939 Act save and except one important departure contained in sub-section (2) of Section 140, the amount of compensation payable on the principle of "no fault liability" in respect of death of a person was increased to Rs. 25,000; while in case of permanent disablement to a sum of Rs. 12,000. Section 217 of the amended Act provides for repeal and savings and sub-section (1) thereof sets out that the Motor Vehicles Act, 1939 (4 of 1949) and any law corresponding to that Act in any State immediately before the commencement of the amended Act in that State stands repealed. Section 173 of the amended Act enables a person aggrieved by an award of a

Claims Tribunal to prefer an appeal to the High Court and the first proviso to sub-section (1) thereof enjoins that no appeal will be entertained, unless the person, who is required to pay any amount in terms of such award, deposits with the appeal a sum of Rs. 25,000 or fifty per cent of the amount awarded, whichever is less. Under the second proviso to sub-section (1) of Section 113, the High Court can extend the time for making the deposit mentioned in the first proviso.

(3) Counsel for the appellants urged that the accident giving rise to the claim petition took place on March 12, 1989, i.e. before the amended Act came into force. The amended Act came into force with effect from July 1, 1989. He further submitted that the right of appeal would be governed by the law applicable on the date when the accident took place. On the date when the accident took place, the unamended law was applicable and under Section 110-D, of the unamended law relating to appeal, no condition was imposed for making the deposit. The question, reproduced supra, has arisen under these circumstances.

(4) In *Parkash Chandumal Khatri and another v. Suresh Pahilajrai and another* (1), the Division Bench of the High Court of Bombay held thus:—

“The right to receive compensation on the principle of ‘no fault liability’ and the corresponding liability accrues on the date of the accident and is not made dependent on the legislative changes that may take place during the pendency of the application seeking compensation. In our judgment, on the first principle, it is not possible to accede to the submission of Shri Aggarwal that the provisions of sub-section (2) of section 140 of the Act are retrospective in operation and would cover all the cases which are pending before the Tribunal on the date of coming into operation of 1988 Act.”

Similar view was taken by a Full Bench of the Madhya Pradesh High Court in the case reported as *New India Assurance Co. Ltd. Gwalior v. Nafis Begam and others* (2), wherein it was held thus:—

“The object of the enactment is obviously to provide quicker relief to the victims of the motor accidents irrespective of the fact whether there is negligence or not on the part of any of the parties to the accident. The right of compensation based on principle of no fault liability to the victims

(1) 1991 Mh.L.J. 1034.

(2) A.I.R. 1991 Madhya Pradesh 302.

and the corresponding liability of the owner and insurer of the vehicle arises on the occurrence of the accident. The accident is the cause of giving rise to the rights and liabilities of the parties involved in it. The state of law existing on the date of the accident should govern the rights and liabilities of the parties."

(5) The object of Chapter X as contained in the amended enactment is obviously to provide quicker relief to the victims of the motor accidents irrespective of the fact whether there is negligence or not on the part of any of the parties to the accident. The accident is the cause of giving rise to the rights and liabilities of the parties involved in it. The State of law existing on the date of the accident should govern the rights and liabilities of the parties. We derive support from the decision of the apex Court in *Padma Srinivasan v. Premier Insurance Company Ltd.* (3) and particularly the following passage contained in paragraph 5 thereof:—

"Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In this behalf the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy."

(6) In the light of this, there is no escape from the conclusion that the date of accident should, therefore, be taken as the date of application of the state of law existing then. Section 173 of the amended Act will be in-applicable and the appellants will not be enjoined to comply with the first proviso to Section 173(1) before filing the appeal against the award of the Motor Accidents Claims Tribunal.

(7) For the reason stated above, the application for exemption from depositing the amount mentioned in Section 173 of the amended Act was unnecessary and is dismissed as infructuous.

(8) The appeal be numbered and enlisted for motion hearing.

J.S.T.