C.M.A.Sr.Nos.56426 and 56429 of 2022

P.T.ASHA, J.,

An office note was placed before this Court, as the Registry has raised a doubt as to whether an appeal whose value is over a sum of Rs.1,00,000/- can be entertained by this Court in view of the amendment to the provisions of Section 173(2) in and by which the sum of Rs.10,000/- has been substituted by a sum Rs.1,00,000/- as per the Motor Vehicles Amendment Act, 2019 dated 09.08.2019 with effect from 01.04.2022.

2. The matter was directed to be listed under the caption "For Maintainability" and the Court had invited the arguments from the learned counsels. Despite the fact that the Court had sought participation of all learned counsels particularly those practising before the Motor Accident Claims Tribunal, it was only three learned counsels, Mr.K.Vinodh and Mr.Michael Visuvasam, who appear on behalf of the Insurance Companies, who made their elaborate submissions and assisted this Court. Mr.D.Bhaskar who also appears for the Insurance Company had also contributed his mite to the submissions.

3. Before proceeding to consider the query raised by the Registry, it is necessary to extract the provisions of Section 173 of the The Motor Vehicles Act, 1988 (1988 Act) as it stood prior to the amendment and as it now stands post the Motor Vehicles (Amendment) Act (Act 32 of 2019):-

The Motor Vehicles Act, 1988

173 Appeals:

> *Section 173 of MV Act 1988 :- 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 :*
> *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 percent of the amount so awarded, whichever is less, in the manner directed by the High Court :*
> *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.*

(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.

The Motor Vehicles (Amendment)Act, 2019

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:

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:

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.

(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.

4. A perusal of the above section **"pre and post amendment"** would show that except for substituting the sum of Rs.10,000/- with the sum of Rs.1,00,000/- in Section 173(2), the provisions of Section 173 remains intact. The Amending Act 32 of 2019 has provided that the various provisions of the Act that have been amended would come into force on the date as notified by the Central Government. With reference to amendment to the provisions of Section 173, Section 57 of the Amendment Act, 2019 was notified on 25.02.2022 to come into force with effect from 01.04.2022.

5. The doubt that has been raised by the Registry is whether the appeals that are filed post 01.04.2022 whose value is less than Rs.1,00,000/- can be entertained and registered by this Court.

6. Mr.D.Bhaskar, learned counsel had produced a Judgment of the Madhya Pradesh High Court dated 20.04.2022 made in ***M.A.No.317 of 2022 [Abdul Khair @ Abul Khair Vs. Shantilal]***, where the very same issue had arisen in that case. The impugned award therein was passed on 01.11.2021 and the appeal was filed on 21.01.2022. In the meanwhile, the Government of India had issued a notification amending the provisions on 25.02.2022. The learned

Judge had observed that since the Award has been passed even prior to the amendment, the provisions as it existed prior to the amendment would apply in respect of the appeals and that the provisions of the 1988 Act.

7. Mr.K.Vinodh, learned counsel, whose appeal has given rise to the query by the Registry, would state that the Amendment Act had no doubt come into effect with reference to Section 173 on 01.04.2022, however, the substantive right to appeal had arisen on the date of the filing of the claim petition itself. He would rely upon a judgment of the Madhya Pradesh High Court, Indore Bench reported in ***1991 ACJ 344 [Jaswant Rao Vs. Kamlabai and another].*** The issue before the Court was whether the pre-requisite of the deposit of the sum Rs.25,000/- for filing appeals, which was introduced under Section 173(1) of the Motor Vehicles Act, 1988 would apply to the case of the appellant therein as the claim petition had been filed under the earlier Act of 1939. The Bench, after hearing the arguments had held as follows:

"Under Section 110-D of the repealed Act a person aggrieved by an award of Claims Tribunal subject to amount in dispute in the appeal being not less than Rs. 2000/- had an unrestricted right of appeal without any condition as to pre-deposit of the awarded amount. In Lakhmichand v. Mitthu AIR 1984 MP 112, this Court was dealing with Section 96(4) of C.P.C. inserted by Section 33 of Code of Civil Procedure (Amendment Act, 1976). Newly inserted provision barred appeal except on question of law from a decree in any suit of the nature cognizable by Court of Small Causes when the amount or value of the subject-matter of the original suit did not exceed Rs. 3,000/-. Relying on four Division Bench cases of this Court in Chuluram v. Bhagatram, AIR 1980 MP 16; Shesh Kumar v. Kesheo Narayan, 1980 MPLJ 335; Sitaram v. Chaturao (1981 Jab LJ 171) and Dattatray v. Mangal, AIR 1983 MP 82 as also Kashibai v. Mahadu, AIR 1965 SC 703 Shri G. P. Singh, C.J. observed as follows :--

> *"It is well settled that the right of appeal accrues to the parties to the suit on the date of the institution of the suit."*

The Bench ultimately rejected the objection of the respondent seeking to reject the appeal on the ground that Section 173(1) had made the deposit of Rs.25,000/- a pre-requisite. The Bench took a view that the right of appeal accrues on the date of filing of the claim and it would only be the regime that was then in vogue as on that

date that would apply in respect of appeals.

8. The learned counsel would also refer to the judgment of the Orissa High Court in the case of ***Oriental Insurance Company Ltd Vs. Parbati Mohanta and another reported in 1993 ACJ 550***. This was also a case relating to the newly amended Section 173(1), which contemplated a pre-deposit of Rs.25,000/- for entertaining appeals. This Bench had also also held that the earlier regime would apply and after discussing the various case laws had framed its conclusions in paragraph 11 of the said judgment and ultimately, held that the pre-deposit for preferring an appeal cannot be sustained.

9 He would also refer to the judgment of the Patna High Court, Ranchi Bench reported in ***1993 ACJ 1157 [New India Assurance Company Ltd Vs. Bajrang Kumar Gupta and Others]***. Here again, the issue related to the pre-deposit of the sum of Rs.25,000/- for filing an appeal. The learned Judge had observed as follows:-

> ***"22.*** *From all the discussions made hereinabove including the law laid down by the Supreme Court, it is clear*

that by the old Act the right of appeal with regard to claims filed under the old Act has not in any way impaired or imperiled by giving retrospective effect either expressly or by necessary intendment, the first proviso to Section 173(1) of the new Act shall have no application to this case.

10. The Division Bench of the Kerala High Court in the case of ***Philip Vs Surendran 1994 ACJ 279***, which was also considering the same issue after hearing the arguments and perusing the records held as follows:

"We do not find anything in this section which expressly takes away the right of appeal which a party had under the 1939 Act nor anything which requires us necessarily to imply that such an appeal has to comply with the provisions of Section 173 of the 1988 Act. Counsel was not able to point out any express provision, or any other, which leads to an inference of necessary implication. In the absence of any such provision, it has to be held in line with the catena of decisions of the Supreme Court that the vested right of appeal under the 1939 Act has not been taken away or limited or made subject to the conditions as contended by counsel for the first respondent."

11. Mr.K.Vinodh, learned counsel would also rely on the judgment reported in ***2022 (2) TNMAC 1 (Ker.) [Sathy Vs.***

Dileep], where the Hon'ble Judge was considering the very same query now raised by the Registry. The learned Judge had relied upon the judgment of the Hon'ble Supreme Court reported in ***2008 (2) TNMAC 463 (SC) [State of Punjab and Others Vs. Bhajan Kaur and Others]*** where the Hon'ble Supreme Court relying upon Section 6 General Clauses Act had held that the 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. The learned Judge had summed up his finding in paragraph 10 of the order as follows:

> *"10. Since while introducing the Act of 2019 effective from 1.4.2022, Legislature did not cause any amendment in the repealing and savings clause specifying its applicability in respect of the accidents occurred prior to the introduction of the amendment, in view of the provisions of Section 6 and the observations of the Supreme Court in the judgment in* ***State of Punjab and others v. Bhajan Kaur and others*** *(supra), I am of the view that the applicability of the Act i.e., introduction of the old provisions of subsection (3) of Section 166, would have a prospective effect and the limitation period of six months would apply after introduction of the amendment i.e., post 1st April 2022. In other words, in any accident occurred after 1.4.2022, provisions of the amendment caused in the Act*

prescribing the limitation to entertain a claim petition, the parties would be governed by the same but not in respect of the persons whom a right had already accrued and was available if the amendment had not been caused."

12. Mr.Michael Visuvasam, learned counsel would rely upon the judgment reported in ***(1996) 3 SCC 142 [Ramesh Singh and Another Vs Cinta Devi and Others].*** The question that engaged the attention of the judges was whether the right of appeal would accrue to a party who had instituted the claim petition under the Motor Vehicles Act, 1939 upon its repeal by the Motor Vehicles Act, 1988. The learned Judges relying upon the judgment reported in (i) ***AIR 1953 SC 221 [Hoosein Kasam Dada (India) Ltd Vs. State of M.P,*** *(ii)* ***State of Bombay Vs. Supreme General Films Exchange Limited*** *reported in* ***(1960) 3 SCR 640 and*** *(iii)* ***Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P, Nagpur*** reported in ***AIR 1967 SC 344*** held that right to appeal would crystallise for the appellant on the institution of the application before the Tribunal of the first instance and this vested right of appeal does not get dislodged on account of an enactment of a new Act. The Bench had also held as follows:

"5.....The appellant, would be entitled to a file the appeal without being required to make the deposit under the proviso to Section 173 of the New Act. The law, therefore, seems to be fairly well settled by the said three decisions of this Court."

Even in this case, the issue was with reference to pre-deposit of Rs.25,000/- introduced by the 1988 Act.

13. The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court reported in ***(2022) 6 SCC 704 [ECGC Limited Vs. Mokul Shriram EPC JV***. The issue involved therein was whether the appeal filed by the appellant would be covered by the Consumer Protection Act, 1986 or by the provisions of the Consumer Protection Act, 2019. As per the amended Act a person preferring an appeal challenging the order of the Consumer Court was mandated to deposit 50% of the amount ordered to be paid. The learned Judges had considered the plethora of judgments regarding the repeal of an enactment or its substitution. The Bench had observed that the right to appeal accrues on the date of the institution of the complaint and therefore, the appeal could be treated as one filed under the earlier Act and held that the condition of pre-deposit would not apply. He had also relied upon the judgment reported in ***(2022) 2 SCC 161***

[Neena Aneja and Another Vs. Jai Prakash Associates Limited] where the question before the Court was whether the enhancement of pecuniary jurisdiction of Consumer Forum Bench would effect the appeal. The learned Judges discussed the Legislative intendment underlying Section 107 of the Act of 2019 and held that even in the case of repeal, the right which has already accrued cannot be taken away and therefore, it was his argument that in the light of the above quoted judgments, the right on appeal insofar as the matters now pending before the Court had arisen much prior to the amendment to Section 173(2) of the Act, therefore, the right of appeal under the earlier provision cannot be denied to the appellants. The learned counsel would also rely upon the following judgment:

(i) (2007) 1 CTC 186 (SC) [Kamla Devi Vs. Khushal Kanwar and another.

(ii) (2008) 12 SCC 112 [State of Punjab and Others Vs. Bhajan Kaur and Others]

14. Heard the learned counsels, who had appeared and placed their submissions before this Court and perused the materials available on record.

15. From the arguments and the judgments cited by them, the underlying principle with reference to the right of a person to continue the *lis* under the old regime when a new enactment had taken place remains unchanged since the right to appeal crystallises on the date of the filing of the first application before the Tribunal / lower Judiciary. There the provisions of the earlier Act would apply to an appeal. It is only if there is a express prohibition that the right would not so accrue.

16. In the judgment of the Hon'ble Supreme Court in ***Ramesh Singh's*** case cited supra, the learned Judges, after discussing the earlier judgments of the Hon'ble Supreme Court, had held that the right of appeal would crystallise upon the appellant on the date of the institution of the application before the Tribunal of the first instance. Therefore, since the appeal is nothing but a continuation of the suit, it would only be the earlier enactment that would cover the *lis.*

17. In the judgment reported as ***Kamla Devi Vs. Khushal Kanwar and another*** cited supra, the Hon'ble Supreme Court was considering the maintainability of a Special Appeal before the Division

Bench of the Rajasthan High Court post the insertion of Section 100-A in the Code of Civil Procedure by Section 38 of Act 104 of 1976 which was substituted by Section 4 of Act No.22 of 2022 which came into effect from 01.07.2002. The learned Judges held as follows:-

> *"11. A right of appeal under the Code is statutory. Such right of appeal is also conferred under the Letters Patent of the High Court or the statutes creating the High Court.*
>
> *"12. An appeal, as is well known, is the right of entering a superior court invoking its aid and interposition to redress an error of the Court below. The central idea behind filing of an appeal revolves round the right as contra-distinguished from the procedure laid down therefor.*
>
> *13....*
>
> *14. Whether Section 100A takes away such a right is the question. In our opinion, it does not. An appeal, as is well known, is a continuation of the original proceedings."*

The learned Judges had also relied upon the judgment in ***Hoosein Kasam Dada (India) Ltd*** to arrive at the above conclusion.

18. In the judgment in the case of ***Bhajan Kaur*** supra the Hon'ble Supreme Court was considering the issue as to whether Section 140 introduced by the 1988 Act would have retrospective effect. That was a case where the claim petition in relation to the

accident had been filed under Section 110-A of the Motor Vehicles Act, 1939. The learned Judges observed as follows in Paragraphs 15 and 16 of the judgment.

> *"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 come 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."*

19. The Hon'ble Supreme Court in the case of ***ECGC Limited Vs. Mokul Shriram EPC JV,*** cited supra has relied on the judgment of ***Hoosein Kasam Dada (India) Ltd's*** *case,* where the learned Judges had held as follows:-

> ***"24 .*** *The above decisions quite firmly establish and our decisions in Janardan Reddy v. State and in Ganpat Rai v. Agarwal Chamber of Commerce Ltd. 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.....

26. 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 preexisting 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. 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 Sri Ganapathy Aiyer on this point, therefore, cannot be accepted."

They had also relied on the judgment of the Hon'ble Supreme Court in the case of ***Garikapati Veeraya Vs N.Subbiah Choudhry and Others*** reported in ***AIR 1957 SC 540,*** which had quoted with approval the judgment in ***Hoosein Kasam Dada (India) Ltd's*** case. The Bench therein had after discussing the various judgments set out the principles as follows:-

"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."

20. Ultimately, in the above referred case, the Bench had held that the onerous condition of paying 50% of the amount awarded will not be applicable to the complaints filed prior to the commencement of the 2019 Act.

21. Therefore, in the light of the above judicial pronouncements in the instant case now placed for my consideration, the right of appeal had crystallised on the appellant-Insurance Company even on the date of filing of the claim petition before the Tribunal. Therefore, considering the march of Law in this regard, the filing of an appeal against an Award of less than a sum of Rs.1,00,000/- can be entertained in respect of appeals arising out of claim petitions filed prior to 01.04.2022.

22. In view of the above, the Registry is directed to number the appeals and post the same for admission.

10.08.2022

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Index : Yes / No
Speaking Order / Non-Speaking Order

P.T.ASHA, J.,

srn

C.M.A.Sr.Nos.56426 and 56429 of 2022

10.08.2022