

(1989) 10 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1152 of 1989 (R)

Anirudh Prasad Ambasta and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 236
General Clauses Act, 1897 — Section 15
Motor Vehicles Act, 1939 — Section 110, 110(3)
Motor Vehicles Act, 1988 — Section 165, 25

Citation : (1990) ACJ 238 : AIR 1990 Patna 49 : (1990) 38 BLJR 622 : (1991) 72 CompCas 107 : (1990) 1 PLJR 1

Hon'ble Judges : Satyeshwar Roy, J;S.N. Jha, J;S.B. Sinha, J

Bench : Full Bench

Advocate : M.Y. Eqbal, Arbind Kumar Lal, G.P. Agarwal and Alok Lal, for the Appellant; S.B. Gadodia, Government Advocate and K.P. Mitra, Jr. Counsel to Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—One Shila Ambasta while travelling on a scooter on 15-4-1989 from Kutcheri Road to Kokar in the town of Ranchi was hit by a lorry bearing registration No. DEL 1810. Shila fell down and was crushed by the lorry. She died, the petitioners being the legal representatives of Shila Ambasta made ready and affidavited an application u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter to be referred to as "the Act") for filing before the Motor Accident Claims Tribunal-Judicial Commissioner, Ranchi (Respondent No. 2, the Claims Tribunal). A copy of the application is Annexure-1 to the writ petition. When the lawyer went on 28-6-1989 in the office of Claims Tribunal to file the application, it was not accepted. The petitioners moved the Claims Tribunal and prayed for accepting the same but it refused to accept the same by observing that it had no jurisdiction to entertain it. The petitioners learnt that Claims Tribunal was not entertaining any application filed u/s 92-A or Section 110-A of the Act and all

pending cases were being transferred to the different Civil Courts subordinate to Judicial Commissioner. In these circumstances, the petitioners filed this writ petition praying for issuing appropriate writ directing Claims Tribunal to accept claim petitions. It may be noticed that Sections 92-A and 110-A of 1939 Act correspond to Sections 140 and 165 respectively of the Motor Vehicles Act, 1988 (herein to be referred to as "the Act of 1988").

2. The case was adjourned to enable the learned Government Advocate to seek instructions in the matter. On 29-8-1989 when the case was listed for admission, a copy of the judgment passed in C.W.J.C. No. 7492 of 1988 on 10th March, 1989 : (reported in 1989 BLT 398) was produced for our perusal. From the judgment it appeared that Bench of this Court at Patna held that the judicial officers, who have been conferred with the power of the Claims Tribunal have no jurisdiction to entertain claims and if "any claim case has been entertained by any such judicial officer, that will be deemed to be in a Civil Court and accordingly transferred to the Court of competent jurisdiction". It restrained the courts conferred with the power of the Claims Tribunal from proceeding with the hearing of any claims case and directed for transferring all such cases to the Civil Court of competent jurisdiction.

3. A Bench at Ranchi after hearing the counsel appearing on behalf of the parties was of the opinion that the correctness of the judgment required reconsideration. The writ petition was admitted and it was ordered that it shall be heard by a larger Bench. This is how this case been listed before the Full Bench.

4. C.W.J.C.No. 7492 of 1988 (reported in) was filed at Patna as a public interest litigation in which 1989 BLT 398 the jurisdiction of the Claims Tribunal to entertain and decide claim application was challenged. On 3-10-1988 that case was taken up for hearing at the admission stage when the learned Government Advocate prayed for time for obtaining instructions. The case was adjourned. On 3-11-1988 when the case was listed, the petitioner who appeared in person and the learned Government Advocate at Patna were heard. The learned Government Advocate had not received any instruction as to whether notification as contemplated u/s 110 of the Act has been issued or not. The Bench ordered for listing the case after one month so that meanwhile if no notification had been issued, necessary notification may be issued. No notification issued by the State Government u/s 110 was brought on record. The Bench after noticing the various sections of the Act observed as follows:--

"It has clearly contemplated constitution of a Tribunal of special jurisdiction. Such constitution has to be by a notification of the State Government. A person appointed to the Tribunal as a member or the Chairman shall be a member or the Chairman of the Tribunal and nothing else. The law available in the language of Section 110 of the Act itself, does not permit conferring powers upon the judicial officers of the State, who are otherwise subordinate to this Court's judicial as well as administrative control. They, for obvious reasons, cannot be the Tribunals of special jurisdiction for the claims cases. No claims Tribunal can

be constituted by ignoring the qualifications. A person who is qualified for appointment as a judge of the High Court or a person who has been a judge of the High Court or who has been a District Judge and not a sitting Judge or Judge of the High Court can also be appointed as Chairman or member of the Claims Tribunal."

It further observed:

"Having considered, thus, the language of Section 110 and other provisions related thereto in the Motor Vehicles Act, our conclusions are that the Claims Tribunal has to be an independent authority to discharge such functions which are exclusively given to its jurisdiction by the various provisions of the Motor Vehicles Act and it has to be so ordained by a notification of the State Government that a Claims Tribunal has been constituted having a specified territorial jurisdiction. Unless these two conditions are fulfilled, no Claims Tribunal as required u/s 110 of the Motor Vehicles Act is constituted."

After recording this finding, it held that the judicial officers, who have been conferred with the power of the Claims Tribunal, have no jurisdiction to entertain claims. If any claims case has been entertained by any such judicial officer, that will be deemed, therefore, to be in a Civil Court and accordingly transferred to the court of competent jurisdiction. It noticed *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, wherein it was held that once Claims Tribunal is constituted, the jurisdiction of Civil Court is ousted and observed that :--

"It is obvious that the functions and duties of the Tribunal are very much like other bodies to discharge judicial function, yet it is not a Court, it is Tribunal of limited jurisdiction."

5. The questions which are to be answered in this case are:

- (i) Whether Claims Tribunals which are now functioning were constituted in accordance with Section 110 of the Act;
- (ii) Whether persons who have been appointed as members i.e. District Judge Judicial Commissioner and also seniormost Additional District Judges at some places could be appointed such members;
- (iii) When appointment of District Judge and Additional District Judge is made as members, whether the appointment should be by name or by office;
- (iv) Whether the Claims Tribunals so constituted are Courts and subordinate to the High Court both under the administrative as well as revisional jurisdiction.

6. Section 110(1) of the Act reads as under:--

"110(1). A State Government may, by notification in the official Gazette, constitute one or more Motor Accidents Claims Tribunal (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents

involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising or both ;

Provided that where such claim includes a claim for Compensation in respect of damage to property exceeding rupees two thousand, the claimant may, at his option, refer the claim to a Civil Court for adjudications, and where a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claims.

Explanation:

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he --

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a Judge of the High Court.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them."

The section empowers the State Government by notification in the official gazette to constitute one or more Claims Tribunals with specified area for adjudicating claims for compensation and appoint such number of members as the State Government may think fit. The section, therefore, provides for constitution of Claims Tribunals and appointment of numbers of such Claims Tribunals.

The section further lays down the qualification of the person who may be appointed member of the Claims Tribunals Three categories of persons are eligible for such appointment :--

(a) a person who is, or has been, a Judge of a High Court,

(b) or is or has been a District Judge, or

(c) is qualified for appointment as a Judge of the High Court.

7. So far the constitution of the Claims Tribunals is concerned, notifications from time to time were issued by the State Government in the official gazette. It is unfortunate that neither the petitioner in that case at Patna nor the learned Government Advocate, Patna appearing in that case cared to find out whether such notification had been issued. As copies of notifications were not brought to the notice of that Bench, it proceeded on the assumption that no notification has been issued by the State Government constituting the Claims Tribunals.

8. In this case, copies of relevant notifications have been filed which have been marked as Annexures-1,2 and 3 to the supplementary-affidavit. Annexure-1 dated 28th May, 1960 was published in Bihar Gazette on 30th May 1960. It appears that a notification dated 17th August, 1959 had been made, but as it was not published in the official gazette as required u/s 110, notification dated 17th August, 1959 was superseded by the notification dated 28th May, 1960. Further, by this notification, the Governor of Bihar was pleased to constitute for each of the areas comprised within the limits of the jurisdiction of the Patna, Bhagalpur, Chotanagar and Tirhut divisions. Motor Accident Claims Tribunal consisting of the District Judge or the Judicial Commissioner, as the case may be, posted at the headquarters station of the Division for the "purpose of adjudicating claims cases. It will thus be noticed that the Claims Tribunals were constituted at the divisional headquarters of the then four divisions of Bihar and the District Judges and the Judicial Commissioner at the Divisional Head-quarters were appointed members. For the purpose of convenience of the claimants. State Government decided to constitute . Claims Tribunals at all District Head Quarters. By notification dated 19th July, 1963 which is Annexure-2 to the writ petition and published on that date, notification dated 28th May, 1960, as contained in Annexure-1 was superseded. By Annexure-2, the Governor of Bihar was pleased to constitute for each of the areas comprised within the limits of the jurisdiction of Patna, Gaya, Shahabad, Muzaffarpur. Saran, Champaran. Darbhanga, Bhagalpur. Saharsa, Monghyr. Purnea, Santhal Parganas. Ranchi, Hazaribagh,. Palamau, Singhbhum and Dhanbad districts, Claims Tribunals consisting of the District and Sessions Judge or the Judicial Commissioner, as the case may be, posted at the headquarters station of the districts aforesaid as members of the Claims Tribunal. By Annexure-2, therefore, the Claims Tribunals were constituted at the different district headquarters of the district noticed above and the District Judge" the Judicial Commissioner were appointed members of such Tribunals.

9. It was admitted at the Bar that with the creation of District Court in new districts, notifications were issued from time to time by State Government constituting Claims Tribunal at the headquarters of such districts and appointing the District Judges of such districts as members thereof.

10. By notification, copy of which is Annexure-3, dated 17th December, 1982 published in Bihar Gazette on that date, in some of the district headquarters seniormost Additional District and Sessions Judges of respective districts including the seniormost Additional District and Sessions Judges of Jamshedpur within the judgeship of Singhbhum were appointed as members of the Claims Tribunals, to be known as Additional Motor Accident Claims Tribunals. It was ordered that all claim cases shall be filed before the Claims Tribunals who have power to transfer such cases to the Additional Motor Accidents Claims Tribunal except in respect of claims arising within the territorial limits of Dalbhum Subdivision within the judge-ship of Singhbhum in which case filing of claims shall be made before the Additional Motor Accident Claims Tribunal of Jamshedpur. It cannot, therefore, be disputed that Claims Tribunals at all the

district headquarters of the different judgeships and the Additional Claims Tribunals at certain district headquarters and in Datohum Subdivision were constituted by notifications published in the Bihar Gazette in accordance to Section 110 of the Act. That answers the first question.

11. With regard to appointment of members, it will be noticed from those notifications that the District Judges including the Judicial Commissioner for their respective areas were appointed members of the Claims Tribunal. In some of the districts and Dalbhum Subdivision, the seniormost Additional District and Sessions Judges posted there were also appointed members of the Claims Tribunals and such Claims Tribunals were designated as Additional Motor Accident Claims Tribunals. u/s 110(3) of the Act, a person who is or has been a District Judge is eligible for appointment as member of the Claims Tribunals.

12. Under Article 236 of the Constitution, District Judge includes Additional District Judge. The District Judges and the Additional District Judges belong to the same cadre. Section 110 provides for appointment of a person who is a District Judge or has been a District Judge. In C.W.J.C. No. 7492 of 1988 (reported in 1989 BLT 398) the observation of the Bench that sitting District Judge cannot be appointed member has been made as it missed to notice that a person who is a District Judge may also be appointed member of Claims Tribunal. It must be held that all persons who are District Judges and Additional District Judges are qualified for appointment as members of Claims Tribunals and their appointment is valid. This answers the second question.

13. The third question is whether the appointment of District Judge shall be by name i.e. *persona designata* or by office i.e. the District Judge and/or Additional District Judge.

Section 15 of the General Clauses Act, 1897, the Act being a Central Act, provides that where, by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, i.e. the General Clauses Act, may be made either by name or by virtue of office. Similar is the provision in Section 18 of the Bihar and Orissa General Clauses Act, 1917. It has nowhere been expressly provided in the Act that members of the Claims Tribunals shall be appointed by name and not by office. The appointment of the District Judges and the Additional District Judges by office is valid. The Act also does not provide that they shall be whole time members and shall not discharge any other function. We were informed at the Bar that in all States, the practice is to appoint District Judges/Additional District Judges as members and they also discharge their functions as District and Sessions Judges/Additional District and Sessions Judges and exercise jurisdiction vested on them under other Acts. Notifications of some States were brought to our notice and all those are in *pari materia* with the notifications of Bihar.

14-15. This brings us to the fourth question. The Act empowers the State

Government to appoint District Judges as members of the Claims Tribunals. Clearly the Act empowers the State Government to appoint Judicial Officers who are subordinate to the High Court and are within its administrative control. Section 110-B of the Act, inter-alia, provides that the Claims Tribunal shall make an award after giving the parties an opportunity of being heard and after holding an inquiry into the claim. Section 110-C of the Act lays down the procedure and powers of Claims Tribunals which reads as under:--

"110-C. Procedure and powers of Claims Tribunal:--

(1) In holding any inquiry u/s 110B, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(2 A) Where in the course of any inquiry, the Claims Tribunal is satisfied that:--

(i) There is collusion between the person making the claim and the person against whom the claim is made, or ,

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

Section 110-CC of the Act provides for payment of interest where any claim is allowed. Section 110-CCC of the Act provides for compensatory costs in certain cases. Section 110-D of the Act provides for filing an appeal by any person aggrieved by an award of a Claims Tribunal to the High Court. It further provides that no appeal shall lie against any award of Claims Tribunal if the amount of the appeal is less than two thousand rupees. Section 110-E of the Act provides for recovery of money awarded as arrear of land revenue. Section 110-F provides that where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. Section 111-A empowers the State Government to make rules with regard

to the forms of application for claims for compensation and the particulars it may contain, the fees, if any, to be paid in respect of such applications, the procedure to be followed by a Claims Tribunal in holding an inquiry, the powers vested in a Civil Court may be exercised by a Claims Tribunal, the forms and the manner in which the fees, if any, on payment of which, an appeal may be preferred against an award of a Claims Tribunal and any other matter which is to be, or may be, prescribed.

16. In 1961, Bihar Motor Vehicles Accident Claims Tribunals Rules (the Rules) were framed. Rule 4 provides that on receipt of Claims application the Claims Tribunal may examine the applicant on oath. Rule 6 provides for issuance of notice to the parties involved. Rule 7 provides for filing the written statement and for examination of the parties. Rule 8 provides for summoning witnesses. Rule 10 provides for local inspection. Rule 16 provides for framing of issues and Rule 17 provides for recording evidence for determination of issues. Rule 20 provides for the applicability of Order V Rules 9 to 13, 15 to 30, Order IX, Order XIII Rules 3 to 10, Order XVI Rules 2 to 21, Order XVII and Order XXIII Rules 1 to 3 of the CPC (the Code). Rule 23 provides for depositing the records in the record room of the District Judge/Judicial Commissioner, as the case may be, and for preserving them for six years. It may be noticed that although by Sub-section (1) of Section 217 of the Motor Vehicles Act, 1988, the Act of 1939 has been repealed, by Sub-section (2) notification, rules etc., made and framed under Act of 1939 which are not inconsistent with the provisions of Act of 1988 shall be deemed to have been made and framed under Act of 1988. Sections of both the Acts which deal with Claims Tribunal are similar in all material particulars.

17. In *Brajnandan Sinha Vs. Jyoti Narain*, , the Supreme Court quoted from *Cooper v. Wilson* (1937) 2 KB 309 (F), the following passage:--

"A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites :--

(1) The presentation (nor necessarily orally) of their case by the parties to the dispute;

(2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of arguments by or on behalf of the parties on the evidence;

(3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law,"

It observed that:

"It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential consideration is that the Court should have, apart from having

some of the trappings of a judicial tribunal, how to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

18. I have already noticed that Rule 20 provides for the applicability of some of the Orders of the Code. Order V Rules 9 to 30 except Rule 14 provides procedure for service of summons on the defendant. Rule 14 which has been excluded provides for service of summons on agent in charge in suits for immovable property. In a proceeding before the claims Tribunal, the subject matter is never any immovable property and, therefore, Rule 14 has been excluded. Order IX provides for appearance of parties and consequence of non-appearance. Order XIII provides for production, impounding and return of documents. In this Order, Rules 1.2 and 11 have been excluded. Rule I provides for documentary evidence before the settlement of issues. Rule 2 makes provision about the effect of non-production of documents and Rule 11 is the provision as to documents applied to material objects. Order XVI provides for summoning and attendance of witnesses of which Rule I deals with list of the witnesses and summons to witnesses and Rule I-A for production of witnesses without summons have been excluded. Order XVII provides for adjournment and Order XXIII provides for withdrawal and adjustment of suits. In view of the applicability of Order XIII the Claims Tribunal has power to reject irrelevant or inadmissible documents. Whether document is irrelevant or inadmissible shall have to be decided keeping in view the provisions of the Evidence Act. In the Evidence Act "Court" includes all Judges and Magistrates and all persons except arbitrators legally authorised to take evidence. I have already noticed that the Claims Tribunal has been authorised not only to take evidence, but to take evidence on oath.

19. In State of Haryana Vs. Smt. Darshana Devi and Others, , the order of Claims Tribunal, the District Judge who held that Order XXXIII applied was upheld by the supreme Court as the Claims Tribunal has trappings of Civil Court. Following this judgment, the Supreme Court in Bhagwati Devi and Others Vs. I.S. Goel and Others, , held that the Claims Tribunal is a Civil Court for the purpose of Section 25 of the Code and transferred case pending before the Claims Tribunal Moradabad to the Claims Tribunal, Delhi. We could get notification of the Uttar Pradesh Government by which Claims Tribunals in all the District Headquarters were constituted and the District Judges were appointed single member of each such tribunal for their respective jurisdictions. Now, u/s 25 of the Code, any suit, appeal or other proceeding from the High Court or any other Civil Court may be transferred to " another High Court or to any other Civil Court in any other State. For all these reasons, the procedure to be followed by Claims Tribunal, the authoritative pronouncement of judgment both on issues of law and fact, the decisions of the Supreme Court, it can be held without fear of being contradicted that the Claims Tribunal is a Court.

20. I have noticed that in C.W.J.C. No. 7492 of 1988 : (reported in 1989 BLT 398) after noticing New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, , it

was observed that the Claims tribunal is not a Court. For this observation, no reason has been given. No authority in support of this has been noticed. There is nothing in *New India Insurance Co. Ltd.* on the basis of which this observation could have been made.

21. During the course of hearing, our attention was drawn to some of the judgments of different High Courts where contrary view has been taken. In *New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi and Others*, in which a Bench of Madhya Pradesh High Court, after noticing the notification that Additional District Judges in some of the district Headquarters were appointed members of the Claims Tribunal, held that notwithstanding the notification by office, the person presiding over the Claims Tribunal functions as a *persona designata* and not as a Court. Madhya Pradesh High Court for making this observation followed the judgment of Punjab High Court in *Harbans Singh v. Gurmeet Kaur* ILR (1966) P &h212, Our attention was also drawn to a Bench decision of the Orissa High Court in *Orissa Co-operative Insurance Company (now) New India Assurance Company Ltd. Vs. Subashini Pradhan and Others*, where it was observed that Claims Tribunal is a *persona designata* and not a Court. Therefore, the Claims Tribunal is not subordinate to the revisional jurisdiction of the High Court u/s 115 of the Code. In *Laxminarain Misra Vs. Kailash Narain Gupta and Others*, a learned single Judge held that Claims Tribunal is a mere Tribunal and not a Court and. therefore, the case pending before the Claims Tribunal, the District Judge, cannot be transferred from one Claims Tribunal, the District Judge, to another Claims Tribunal, another District Judge u/s 25 of the Code. In view of what has been held above, it must be held that the law has not been correctly laid down in these judgments. The Claims Tribunal is a Court although with limited jurisdiction and not a mere tribunal as held in C.W.J.C. No. 7492 of 1988.

22. District Courts are courts of record. Appeal against the order of the Claims Tribunal lies to the High Court. From *K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another*, *Mt. Dirji Vs. Smt. Goalin*, *Abdul Razak Vs. Kuldip Narain*, and *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, the following principles emerge :--

If it is a Court of Record then it is a Court in the hierarchy of Courts and where the District Judge or any Court in the hierarchy of Court is authorised to deal with particular matters not as a *persona designata*, it does not cease to be a Court in the hierarchy of Court. Such Court shall be subordinate to the High Court within the meaning of Section 115 of the Code. When a Commissioner, for instance. The Commissioner under the Workmen's Compensation Act, passes final order and there is a provision for filing an appeal before the High Court, then such Commissioner shall be a Court subordinate to the High Court within the meaning of Section 115 of the Code. If appeal against the order of a tribunal authority lies to the District Judge, Sessions Judge, such tribunal/authority is not a Court subordinate to the High Court in its revisional jurisdiction.

23. Apart from the principles noticed above, in view of the Judgments of the Supreme Court in State of Haryana Vs. Smt. Darshana Devi and Others, and Bhagwati Devi and Others Vs. I.S. Goel and Others, it must be held that the District Judge who functions as a Claims Tribunal is not only within the administrative control of the High Court but also subordinate to it u/s 115 of the Code. Observations and findings contrary to this recorded in C.W.J.C. No. 7492 of 1988 must be held to be incorrect.

24. In the result, this writ petition is allowed. It is held that the Claims Tribunals including the Additional Claims Tribunals functioning at different district headquarters and at Jamshedpur have been validly constituted and the appointment of the District Judges and the Additional District Judges as members is valid. They are Courts and are subordinate to High Court, both administrative and revisional. The judgment in C.W.J.C. No. 7492 of 1988 : 1989 BLT 398, is overruled. If according to the direction in that case, Claims Tribunal in any district and at Jamshedpur has transferred claim cases to civil Courts, it must forthwith recall such cases and dispose them in accordance with law. If ad valorem court-fee has been paid in any case by any claimant in view of the order in C.W.J.C. No. 7492 of 1988, the Court concerned shall issue certificate to the Collector of the district to refund the amount. There will be no order as to cost.

S.N. Jha, J.

24A. I agree entirely. I have nothing to add.

S.B. Sinha, J.

25. In view of the importance of the question involved, in this application, while agreeing with the conclusions arrived at by Brother S, Roy. I intend to state my views separately.

26. Shri K.P. Verma, an Advocate of the Patna High Court had filed several public interest litigations. "His anxiety to bring before this Court various matters which had hitherto before been unnoticed led this court to the pronouncement of various judgments from time to time in the said public interest litigations.

27. He filed a writ in the Patna High Court for constitution of Accidents Claims Tribunals in the State of Bihar under the Motor Vehicles Act, probably with a view to see that the defendants of the victims who died as a result of accidents by reason of use of a motor vehicle or the victim himself who has sustained injuries or the persons whose properties have been damaged as a result of such accidents may obtain the relief quickly. The said petition was marked as C.W.J.C. No. 7492 of 1988 : (reported in 1989 BLT 398). However, the judgment pronounced in that case by a Bench of this court retrograded the process.

28. Prior to insertion of Sections 110 and 110F of the Motor Vehicles Act 1939, a suit claiming damages for injuries arising out of an accident was maintainable. With a view to provide for a speedy and cheap remedy, the Parliament in its wisdom inserted Sections 110 and 110F in the Motor Vehicles Act, 1939 by

Section 80 of Act 100 of 1956 which came into force w.e.f. 16-2-1957. As noticed hereinbefore, the purport and object of the said legislation was to provide for not only a speedy but also a cheap remedy in respect of claims arising out of accidents involving the death of, or bodily injury to persons or damage to property of any third party, arising out of use of any motor vehicle.

Prior to the said amendment, in a civil suit for damages, ad valorem court-fees were required to be paid. However, by reason of the said amendment a self-contained code was provided and to provide a new forum, namely claims tribunal as also for lightening the financial burden of the claimant who can now seek compensation through an application without payment of ad valorem court-fees. Reference in this connection may be made to *Oriental Fire and General Insurance Co. Ltd. Vs. Mrs. Kamal Kamini Das and Others*, and in *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, .

29. However, the power to constitute a claim tribunal is optional. See *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, .

30. It is now well known that the word "area" may be representing a panchayat, a village, a sub-division or a district, as a unit depending upon the nature and context of the statute. See *Eastern Bihar Chamber of Commerce and Ind. v. State of Bihar* (reported in 1988 Pat LJR (HC) 153).

31. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, it was held that the provisions of Sections 110 and I IOF of the Motor Vehicles Act contained provisions regarding procedural matters and as soon as a tribunal is constituted, the jurisdiction of the Civil Court becomes barred u/s 110F of the said Act.

32. The aforementioned C.W.J.C. No. 7492 of 1988 : (reported in 1989 BU 398) appears to have been disposed of at the admission stage itself without due assistance to the court to which it was entitled to.

In the said case, as noticed by my learned brother, the judgment was pronounced although the notifications issued by the State of Bihar from time to time u/s 110 of the Act were not produced before it.

33. The Division Bench not only did not have the advantage of perusing the notifications whereby the tribunals were constituted and the members in respect thereof were appointed but was also not informed that the State of Bihar in exercise of its power conferred upon it u/s 111-A of the Act has made rules for the purpose of carrying into effect the provision under Sections 110 and 100F of the Act, viz. *Bihar Motor Accident Claims Tribunals Rules, 1961*.

34. As noticed by my learned brother, proper tribunals were constituted and District Judges of all the districts and Sr. Additional District Judges of some of the districts were appointed as sole members of the respective tribunals. In terms of the notifications, the area of their respective jurisdiction were coextensive with the area of the district at the time when the said notifications were issued.

In this connection reference may be made to Orissa Road Transport Co. Ltd. Vs. Sibananda Patnaik and Others, .

35. Notifications which are in pari materia with the notifications contained in Annexures 1 to 3, have been issued by various States.

36. Similar notifications had been the subject matter of various decisions of different High Courts including this Court. Reference in this connection may be made to J.B. Mangharam and Co. and Another Vs. E.S.I. Corporation, , A.P. Dorairaj Vs. The State of Madras, and in Ram Narayan Yadav Vs. Garib Yadava and Others, .

37. It is true that the decision in Ram Narayan Yadav Vs. Garib Yadava and Others, on a different point has been held to be obiter in New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, but therein a Division Bench of this Court took into consideration the notifications issued by the State of Bihar and construed the same.

38. It, therefore, appears surprising as to how the said notifications escaped the notice of the State of Bihar as also this court who were being represented by the Government Advocate.

39. From a perusal of the said notifications, there cannot be any doubt that Motor Vehicles Accident Claims Tribunals were duly constituted.

40. It is not one of such cases where a person is to be nominated by the High Court to occupy a particular office as is the case u/s 13 of the Code of Criminal Procedure inasmuch as the right to appoint a member upon constitution of the Tribunal is also vested only in the State of Bihar.

41. From a plain reading of Section 110 of the Act it is evident that the State has not only been empowered to constitute the tribunals but also to appoint such person as its members as it may think fit keeping in view the provisions of Sub-section 3 of the Section 110 of the said Act.

42. A plain reading of Sub-section (3) of the Section 110 of the said Act discloses that a sitting High Court Judge or a sitting District Judge as also a retired High Court Judge or a retired District Judge or a person who is qualified to be appointed as a High Court Judge may be appointed as a member of the tribunal.

43. In view of the aforementioned provision, it was within the province of the State to constitute a tribunal comprising of only one member and appoint the District Judges of their respective areas for exercising their powers as a Motor Accident Claims Tribunal within the territorial jurisdiction of their respective districts.

44. It is not uncommon and we can also take judicial notice of the fact that District Judges have been assigned with various other duties and powers under various statutes to act as an appellate court or even as an original court.

45. Under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, Coking Coal Mines (Nationalisation) Act 1972, Coal Mines (Nationalisation) Act, 1973 Payment of Wages Act etc., the District Judge has been appointed as an appellate authority to hear appeals from the orders passed by the authorities under the said Acts.

District Judges had also been earlier appointed by the appellate authorities under Bihar Public Land Encroachment Act 1956 as also u/s 6(c) of the Essential Commodities Act 1955. However, at present the District Judges do not function as the appellate authorities under the aforementioned two Acts.

46. In terms of Section 74 of the Employees' State Insurance Act a Court is to be constituted thereunder. At least in some of the Districts, the District Judges have been appointed to function as Employees State Insurance Court.

Similarly, in terms of Section 14 of the Coal Bearing Areas (Acquisition and Development) Act a claim tribunal is to be constituted and in any States as also in Bihar, District Judges are appointed as member constituting such tribunal.

47. Similarly, the High Court also acts as an appellate authority under several statutes e.g. Workmen Compensation Act, Trade Marks Act, Motor Vehicles Act, Bihar Land Reforms Act etc.

48. From a plain reading of Section 10 of the said Act it does not appear that the statute mandates creation of a whole time tribunal.

49. Under the provision of Public Premises (Eviction of Unauthorised Occupants) Act. even an employee of a Public Sector Undertaking may be appointed as an Estate Officer. While discharging his function, as an estate officer he still retains his character of an employee of the said undertaking.

50. Under the Bihar Land Reforms Act, 1950 District Magistrates and/or Dy. Commissioners are appointed as claim tribunals. It is needless to point out that such officers also discharge their other functions while acting as a member of the tribunal. Similarly the Commissioners of Divisions also act as chairmen of the transport authorities under the Motor Vehicles Act, which are also statutory bodies.

In the very nature of the office held by a District Judge, it is evident that the incumbent thereof exercises adjudicator)" functions not only in civil and criminal matters but also under various Acts as per example Indian Succession Act, Hindu Marriage Act. Hindu Adoptions and Maintenance Act, Hindu Minority and Guardianship Act etc.

51. While exercising his powers under the said statutes, a District Judge exercises jurisdiction conferred upon him only by reason of such statutes.

52. The purpose of constituting a tribunal consisting of a member having the requisite qualification i.e., present or past holder of the post of District Judge is not far to seek.

53. u/s 110A(c) the Claims Tribunals may be vested with the power which are exercisable by a civil court, under the rules to be framed by the State Government. As indicated hereinbefore the State of Bihar in exercise of its aforementioned power has made a rule known as Bihar Motor Vehicles Accidents Claims Tribunals Rules 1961.

54. Rules 20, 21 and 23 provide for the application of some of the provisions of Code of Civil Procedure, the forum of an appeal against the decision of the tribunal as also relating to custody and preservation of records.

55. Rule 5 empowers a claim tribunal to dismiss the application summarily. Rule 8 empowers the tribunals to summon witnesses, Rule 10 provides for a local inspection of the place of occurrence and Rule 11 provides for the power of tribunal to inspect the vehicle. Rule 13 provides for the method of recording evidence.

56. The object of the Act is to provide for a speedy remedy is also evident from Rule 14 which provides that an adjournment can be granted only upon recording of the reasons with regard to the necessity thereof in the event the tribunal finds that such an application cannot be disposed of at one hearing.

Rules 16 and 17 provide for framing and determining of issues involved in the claim case. Rule 19 provides for pronouncement of judgment and preparation of award.

57. In State of Haryana Vs. Smt. Darshana Devi and Others, it has been held that Order 33, Rule 1 of the CPC is applicable to a proceeding under the said Act.

58. In Bhagwati Devi and Others Vs. I.S. Goel and Others, the Supreme Court held that Section 25 of the CPC is applicable in such a case.

59. In some of the decisions namely in Atlas Cycles Ltd. v. Haryana State (reported in AIR 1972 P & H 125) and in Shardaben Vs. M.I. Pandya and Another, it has been held that all the provisions of CPC are applicable to a tribunal. However, in my opinion, the question as to whether all the provisions of the CPC apply to a tribunal or not would depend upon the provisions contained in the relevant rules framed u/s 111 A(c) of the Act.

60. However, as noticed hereinbefore in some of the districts Senior-most Additional District Judges have also been appointed as members of the claims tribunals. In view of Articles 236 of the Constitution, a District Judge includes an Additional District Judge. In this view of the matter, even the Additional District Judges could also be appointed as members of the Claims Tribunals.

61. Taking into consideration all aspects of the matter, therefore, I am of the view that the notifications issued by the State of Bihar and as contained in Annexures I to 3 of supplementary affidavit are valid.

62. At this stage some of the observations made by the Division Bench in K.P. Verma's case 1989 BLT 398) (supra) may be noticed.

63. In the said judgment it has been held as follows:--

"The law available in the language of Section 110 of the Act itself does not permit conferring powers upon the judicial officers of the State, who are otherwise subordinate to this Court's judicial as well as administrative control. They, for obvious reasons, cannot be the Tribunals of Special jurisdiction for the claims cases."

64. As has been held by the Supreme Court in *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, by reason of Sections 110 and 110F of the Act merely a new forum has been created subject to the existing rights or liabilities. The same-view has also been taken by various courts of India as also the Supreme Court.

This aspect of the matter has recently been dealt with by me in *Md. Arshad v. Nasi-rulla Nasiruddin* (M.A. No. 68 of 1983 (R)). In that decision, inter alia, reliance has been placed on *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, and in : AIR 1979 SC 1862 (*Bishan Devi v. Sirbaksh Singh*) and various other decisions.

65. In *K.P. Verma's case* 1989 BLT 398) it has further been held as follows :--

"It is obvious that the function and duties of the tribunal are very much like other bodies to discharge judicial function, yet it is not a court. It is a tribunal of limited jurisdiction."

66. Again with utmost respect to the learned Judges, I am unable to subscribe to the aforementioned view. In *K.P. Verma v. State of Bihar* (reported in 1988 Pat LJR 1036 (1038): (1989 Lab 1C 2047)) a Division Bench of this Court after taking into consideration various decisions held that Bihar State Administrative Tribunal is a court. Again in *Ram Sigashan Pathak Vs. K.P. Sinha, Deputy Director, Consolidation and Others*, it has been held that the consolidation authorities while adjudicating upon the disputes under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act 1956 is a Court. In *Municipal Corporation of Delhi Vs. Kuldeep Lal Bhandari and Others*, a Full Bench of the Delhi High Court held that a claims tribunal constituted under the Act is a Court. Similar view has been taken by the Punjab High Court in *Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others*, .

67. Recently question arose as to whether a letters patent appeal is maintainable against a judgment of a learned single Judge of this court in terms of clause 10 of letters patent of the Patna High Court and a Division Bench of the Patna High Court inter alia, relying upon the decisions of *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, , and in *Shyamaraju Hegde Vs. U. Venkatesha Bhat and Ors*, held that even the High Court while hearing an appeal in exercise of its power u/s 110D of the Act, acts as a court and, therefore, letters patent appeal under clause 10 of the letters patent of the Patna High Court will be maintainable.

68. The Bench in *K.P. Verma's case* 1989 BLT 398) also held as follows :--

"If any claims case has been entertained by any such judicial officer, that will be deemed, therefore, to be in a civil court and accordingly transferred to the court of competent jurisdiction."

69. Again with utmost respect, in my opinion, these observations are not correct in view of the fact that in the event it was held that the claims tribunals were illegally constituted, the District Judges could not have entertained such suits at all.

In terms of Section 15 of the Code of Civil Procedure, a Civil suit shall be instituted in the Court of lowest stage competent to try a suit. The jurisdiction of a court to entertain a suit will thus be subject to its pecuniary jurisdiction as contemplated u/s 6 of the Code of Civil Procedure. Further a tribunal having inherent lack of jurisdiction cannot transfer a case from his court to the Civil Court in absence of a provision of the statute.

Further it is well known that legal fiction can be created only by the statute and not by judicial pronouncement.

70. Unfortunately, in view of the aforementioned decisions in K.P. Verma's case (supra) the claims tribunals have stopped functioning and which has led to aggravating the miseries of the litigants.

71. It is all the more regrettable that such a situation has arisen owing to non-rendering of proper assistance by the counsel which in turn must be because of the lethargic attitude on the part of the State officials in giving proper instructions to its counsel and placing the notifications issued by it before the Division Bench.

72. Thus the efforts of Shri K.P. Verma in that case has become counter-productive.

73. In A.R. Antulay Vs. R.S. Nayak and Another, a constitution bench of the Supreme Court held that if a judgment which has been rendered by the Supreme Court, ignoring provisions of law, the same must be held to have been rendered per incuriam and is not binding upon another bench.

74. In Municipal Corporation of Delhi Vs. Gurnam Kaur, the Supreme Court held as follows :--

"Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided; statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so the direction made by this Court in Jamna Das case could not be treated to be a precedent. The High Court failed to realise that the

direction in Jamna Das case was made not only with the consent of the parties but there was an interplay of various factors and the court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. The court no doubt made incidental observation to the Directive Principles of State Policy enshrined in Article 38(2) of the Constitution and said:

Article 38(2) of the Constitution mandates the State to strive to minimise, amongst others, the inequalities in facilities and opportunities amongst individuals. One who tries to survive by one's own labour has to be encouraged because for want of opportunity destitution may disturb the conscience of the society. Here are persons carrying on some paltry trade in an open space in the scorching heat of Delhi sun freezing cold or torrential rain. They are being denied continuance at that place under the specious plea that they constitute an obstruction to easy access to the hospitals may be welcomed but not at the cost of someone being deprived of his very source of livelihood so as to swell the rank of the fast growing unemployed. As far as possible this should be avoided which we propose to do by this short order.

This indeed was a very noble sentiment but incapable of being implemented in a fast growing city like the Metropolitan City of Delhi where public streets are overcrowded and the pavement squatters create a hazard to the vehicular traffic and cause obstruction to the pedestrians on the pavement.

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P. J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words :

A decision passed sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not

have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point is said to pass sub silentio.

12. In *Gerard v. Worth of Paris Ltd. (k)* (1936 (2) All ER 905), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremuth Ltd.* (1941 (I) KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M. R. said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the Chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

75. Recently again in *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, after exhaustive study with regard to law of precedent and tracing the history thereof, the Supreme Court laid down the law relating to value of precedent but stated in no uncertain terms that in appropriate cases, particularly when the earlier decisions of the court or the relevant provisions of the law were not brought to the notice of the Court, the judgment rendered therein shall not be binding upon a subsequent bench.

76. In this view of the matter, the division bench decision of this court in *K.P. Verma v. State of Bihar* in CWJC No. 7492 of 1988 disposed of on 10th of March, 1989 (reported in 1989 BLT 398). must be held to have been rendered by this court per incurium and does not lay down the correct law.