

(1979) 01 MAD CK 0058

In the Madras High Court

Case No : Transfer Civil Miscellaneous Petition No's. 8915 etc of 1978

Annamalai and Others

APPELLANT

Vs

R. Doraiswami Mudaliar and Others

RESPONDENT

Date of Decision : 11-01-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Motor Vehicles Act, 1939 — Section 110D

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 96

Citation : (1983) ILR (Mad) 145

Hon'ble Judges : Balasubrahmanyam, J

Bench : Single Bench

Advocate : S. Gangaram Prasad, for the Appellant; K. Ranganathan, R. Vedantham and K.S. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

Balasubrahmanyam, J.—The Petitioners in all the several cases, are claimants for compensation arising out of motor accident. They had

preferred their applications for compensation before the Motor Accidents Claims Tribunal, Chingleput, where they are even now pending inquiry.

What the Petitioners now want this Court to do is to transfer these pending applications to the file of the Motor Accident Claims Tribunal, Madras.

It is quite likely that the reasons urged for the transfer are quite meritorious But since I had doubts about the jurisdiction of this Court to order the

transfer, as prayed for, I invited arguments from the bar on the point.

2. Mr. Gangaram Prasad argued the legal position on behalf of the claimants in one of the petitions. His arguments were more or less adopted by

the. learned Counsel having to argue similar petitions for their claimants.

3. Before examining learned Counsel's arguments it would be convenient to sum up the relevant statutory provisions in the Motor Vehicles Act,

1939. The Act has made provision for constitution of Motor Accidents Claims Tribunals as special Tribunals. They are charged with the duty of

adjudicating on claims for compensation in respect of accidents involving bodily injury or death to persons arising from the use of Motor vehicles.

Section 110 of the Act empowers the State Government to constitute claims Tribunals by public notification and define their respective territorial

jurisdiction again under Public notification. Each Tribunal has a well-defined jurisdiction over a given area marked out for it by the State

Government. There is thus no scope for the jurisdiction of one Tribunal to overlap the jurisdiction of another. Nor can one Tribunal usurp the

jurisdiction of another by exceeding its territorial limits. The normal rule as to territorial jurisdiction is one area, one Tribunal But the Act

contemplate the constitution of a plurality of Tribunals for one and the same area. Where under this provision more than one Tribunal is notified for

a given area, the requirement still is that all of them will have to function within that area. u/s 110(4) the state Government has to pass orders

concerning the distribution of, business as between the several Tribunals having jurisdiction over the same area. These in brief, are the statutory

provisions as respects the constitution and jurisdiction of Tribunals. As for claims and applications for compensation before them, the Act lays

down that the claimants must file their claims before the appropriate Tribunal having territorial jurisdiction. It is specifically provided by Section

110-A(2) that a claim arising from an accident occurring in a particular area must be filed before the particular Tribunal having jurisdiction over that

area as defined in the State Government, notification. The jurisdictions of Tribunals are thus wholly territorial and mutually exclusive. If an

accidence occurred, for instance, in area A, the claim for compensation can be made only to the Tribunal constituted for that area A. It follows that

all other Tribunals constituted for other different areas will have no jurisdiction to entertain and determine the claim.

4. Mr. Gangaram Prasad was unable to point to any express provision in the Act under which a Tribunal constituted for a given area can refuse to

adjudicate a claim for compensation in respect of an accident occurring within that area, or entertain an application for compensation arising out of

an accident which occurred outside the area for which the State Government constituted. Nor was learned Counsel able to refer to any provision

in the Act which enables any superior tribunal or Court to exercise overall powers of transfer of proceedings from a Tribunal constituted for one

area to a Tribunal constituted for a different area. But he placed reliance on Section 24 of the CPC and said that the High Court can very well

employ its jurisdiction under that section to order the transfer of proceedings from one Claims Tribunal to another, for justifiable reasons. Learned

Counsel's argument was that under the Motor Vehicles Act, 1939 this Court had a role to play as an appellate Court and play it as, a High Court

and not as a mere appellate Tribunal. Hence, he urged that it was well within this Court's jurisdiction as a High Court to exercise its powers of

transfer u/s 24 of the CPC as much in regard to accident claim proceedings pending before Claims Tribunals as in regard to regular civil suits and

civil appeals pending before ordinary Courts in the State.

5. The submissions made by learned Counsel are plausible up to point. I accept the view that accident claims under the Motor Vehicles Act filed

before Claims Tribunals are proceeding of a Civil nature. I must also accept the position that u/s 110-D(1) of the Act, this Court is enjoined to

hear appeals from awards passed by the Tribunals. I further grant that while sitting in appeal over the Tribunals' awards this Court sits as the High

Court and not as a mere appellate Tribunal, and this is in refreshing contrast to the Appellant jurisdiction conferred on the Court by certain other

statutes, such for instance, as Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act. 1948. Even so, I cannot accept learned

Counsel's argument that this Court can draw upon Section 24 of the CPC for assuming jurisdiction to transfer proceedings for accident

compensation from one claims Tribunal to another.

6. It is, in my opinion, necessary to keep clear two kinds of jurisdiction of superior Courts. One is the appellate jurisdiction. The other is the

supervisory jurisdiction. u/s 110-D of the Motor Vehicles Act, this Court is constituted as the appellate Court to hear and determine appeals from

the awards of the Claims Tribunals. Thereby the jurisdiction granted to this Court is an appellate jurisdiction. This Court cannot on that account

proceed further and seek to exercise supervisory or superintending jurisdiction

over the Claims Tribunals excepting to the extent that the exercise of appellate powers might have that incidental effect. This is because of the essential distinction between appellate jurisdiction, on the one hand, and supervisory jurisdiction on the other. Appellate jurisdiction is exercisable only as respects an appeal on hand. If there is no appeal, the appellate jurisdiction is not brought into play. Secondly, the jurisdiction of the appellate Court to interfere and to pass orders does not commence until after the termination of the proceedings which give rise to the appeal. Not so in the case of exercise of supervisory jurisdiction. The power to transfer cases, for instance, which is one of the attributes of supervisory jurisdiction, is, in its very nature, exercisable only when the cases are pending in the subordinate Courts or tribunals. We cannot therefore regard the power to transfer pending cases as an attribute of appellate jurisdiction. The only jurisdiction conferred by the Motor Vehicles Act on the High Court is an appellate jurisdiction. The Court is not conferred with any supervisory jurisdiction. The Court cannot arrogate to itself the power of transfer as though it were an implied or ancillary power incidental to the exercise of appellate jurisdiction.

7. There is yet another consideration. u/s 110 of the Motor Vehicles Act the Claims Tribunals have no existence apart from the area which is notified by the Government as their territorial jurisdiction. Even to the State Government the Act does not confer any power to transfer cases from a Tribunal of one area to a Tribunal of another area. The State Government no doubt has power to appoint for a single area several Tribunals and also make appropriate provision for the distribution of business inter se between them, but even in such a case, the State Government is not conferred with any power of transfer of pending cases as between two Tribunals in the same area. The policy of the statute thus seems to be against the transfer of cases from one area to another and from one Tribunal to another. The lines are inexorably drawn hard and fast between the different territorial jurisdictions.

8. Section 24 of the Code on which learned Counsel placed reliance does not help. The section, in terms, applies only where the High Court wishes to transfer cases as between Courts subordinate to it. The Claims Tribunals specially constituted under the Motor Vehicles Act are only

pseudo Courts and not Courts in the strict sense in which Section 24 refers to them, much less Courts subordinate to the High Court.

9. Learned Counsel, however, relied on certain provision in the Motor Vehicles Act and the Rules made there under in an effort to urge that the

claims Tribunals must be regarded as regular Courts. Section 110-C(2) was one such provision. This section lays down that Claims Tribunals shall

have all the powers which civil Courts have for taking evidence, for enforcing the attendance of witness, for discovery, for production of

documents and the like. But the section only re-emphasises the position that Claims Tribunals are not Courts. If they were, a provision of this kind

would be unnecessary to clothe them with the powers mentioned there in. Even the Rules made under the Act only highlight the basic distinction

between the Courts and these special Tribunals. The Rules relates summoning and examination of witnesses on oath, recording of evidence,

appearance and examination of parties appearance of legal practitioners, local inspection, framing of issues or points for consideration, summary

dismissal of applications maintenance of a diary of the proceedings, delivery of the order, at the conclusion of the inquiry and such like matters.

These Rules again, only tend to show how necessary it was for the rulemaking authority to lay down by express rules the appropriate, procedure

for the inquiry by the Tribunals into accident claims. In the absence, of these rules, the Tribunals would be masters of their own procedure, subject

only, perhaps, to rules of natural justice. The statutory rules were apparently prescribed for the sake" of definiteness, uniformity, and other

considerations relevant for the claimants, for the witnesses, and others concerned in the proceedings. The Rules do not make out the Claims

Tribunals to be regular Courts of law. They only clothe them with the trappings of Courts.

10. There are two provisions, one in the Act and the other in the rules, which definitely go against the idea of treating the Claims Tribunals as

Courts. Section 110-c(3) read with Rule 14(1) provides for a special procedure whereby any Claims Tribunal may, in its discretion, co-opt an

expert or experts to render assistance to it in the holding of the inquiry and in the making of the award. In my judgment, resort to expert advice for

the resolution of the issues in controversy in a legal proceeding is opposed to the very conception of a civil judiciary. A Court depending on

experts for decision-making is unthinkable, Expert evidence at the trial a Court can certainly act on. But the institution of expert adviser to participate in the judicial process does not accord with the notion that the Tribunal is a civil Court. Under the rules, the expert adviser cannot sit as a regular member of the Tribunal. But this only makes it difficult for others to know how and to what extent they have influenced the Tribunal's judgment.

11. Section 110-F of the Act also indicates very strongly that the Claims Tribunals are not intended to be looked upon as Courts. This section has a history behind it. Time was when motor accident cases (running down actions they were called) were only a species of suits or actions on negligence. The party injured, or the next of kind, as the case may be, had to institute a civil suit in a Court of law to claim damages from the owner of the vehicle. Even after the decision was taken to create a special forum for motor accident cases, Parliament did not think fit to make a clean sweep of the regular judicial forum, oust the jurisdiction of the civil Courts and substitute in their place specified Tribunals, On the contrary, the scheme of the statutory change was only to empower the State Governments to appoint claims Tribunals, leaving the decision to effect the change-over in the forum wholly in the State Government's discretion. The result was that as long as the State Governments did not think fit to notify the constitution of the Tribunals, and, even after the Governments so decided, in so far as there remained pockets or areas for which they had not chosen to appoint such Tribunals, the old system continued to subsist and the civil Courts continued to exercise their jurisdiction undeterred in the matter of hearing and determining running down actions. The Act itself thus envisaged a Mixed legal system with Courts and Tribunals functioning side by side in different areas for adjudicating on motor accident claims. The continued retention even today of the expression Court in some of the operative provisions in the Motor Vehicles Act is a statutory necessity. It also highlights the vital distinction between Courts and Claims Tribunals.

Section 96, for instance, refers to Courts. There is no reference in it to Claims Tribunals even now. This omission created a problem of statutory construction some time ago. But the difficulty was resolved by a judicial pronouncement to the effect that the expression Courts must be read as

referring to Tribunal wherever they had been constituted under the Act. A literal construction would have rendered it difficult to apply the several

generic and commonly applicable provisions of the Act to both Courts and Tribunals within their respective jurisdictions. With this legislative

background, it is not difficult to see the need for a provision in the Act such as Section 110-F. It relates to bar of jurisdiction of Courts.

Understandably enough, the section does not lay down a universal bar of suits. It only insists that where any Claims Tribunals has been constituted

for any area,, no civil Court shall have jurisdiction to decide any question relating to any claim for compensation which may be adjudicated upon by

that Tribunal. This section is a clear reiteration of the position that the Tribunals are not to be equated with Courts-Not only are the two distinct

and separate, but the very constitution of the Tribunals with allotted areas tends to oust the civil Court's jurisdiction in those areas. I am, therefore,

satisfied that by no stretch of imagination can the Claims Tribunals be treated as Courts subordinate to the High Court so as to bring them within

the ambit of the High Court's transfer power u/s 24 of the CPC Code.

12. Learned Counsel granted, during argument, that there is no direct authority on the point. But that did not deter him from citing a decision or

two. One was that of a learned single Judge of this Court Gokulakrishnam J. briefly reported in *The Hindustan Ideal Insurance Co., v. Rajammal*

(1973) T.L.N.J. 153. In that case a revision was sought to be taken to this Court from an award of compensation passed by a Claims Tribunal for

less than Rs. 2,000. On an objection that such a revision does not lie under the Motor Vehicles Act., a contention was put forward to the effect

that this Court can exercise the requisite revisional powers under Article 227 of the Constitution. This contention was upheld on the footing that the

Claims Tribunals must be equated to Courts. There is little or no discussion in the judgment about the significance of Section 110-F and other

related provisions in the Act. The learned Judge merely relied on the prevalence of a longstanding practice of this Court under which such revisions

were being entertained, without question, under Article 227. This Article in the Constitution, it may be pointed out, has undergone some significant

changes over the years. To start with, the High Court's supervisory jurisdiction, under the article extended not only over Courts, but also over

Tribunals. The 42nd amendment which amended the article, restricted the supervisory jurisdiction to subordinate Courts alone. By a subsequent amendment of the article, however, the old position stands restored. The result is that if today it becomes necessary to invoke Article 227 in any given case, the High Court would be under no particular strain to have to treat tribunals as Court. It might, therefore, be possible now to support the decision of Gokulakrishnan J., on the basis of the present Article 227, since the jurisdiction of the High Court extends to tribunals also. And though the disposal of a disputed claim for compensation for less than Rs. 2,000 is not amenable to revision by the High Court under the Motor Vehicles Act, the award of the Tribunal in such a case might well be regarded as amenable to the revisional jurisdiction of the High Court under Article 227, on the principle that a statutory ouster, whether express or implied, of the High Court's jurisdiction cannot prevail against an overriding constitutional provision such as Article 227.

13. But the question still remains whether Article 227 can be invoked by the High Court to transfer a pending motor accident case from one Claims Tribunal to another. The supervisory jurisdiction of the High Court under this Article may, no doubt, be exercised over subordinate Courts and Tribunals. This jurisdiction, it may also be conceded, can be exercised by the High Court either administratively or judicially. But it is by no means certain that under colour of Article 227, the High Court can supervise the Legislature, as it were, to go against substantial provisions in legislative enactments. In other words, whatever powers Article 227 confers on the High Court, an amendatory legislative power cannot be one of them. It has already been noticed that by a substantive provision in the Motor Vehicles Act, the jurisdiction of a Claims Tribunal is severely confined to adjudication of claims arising out of accidents occurring strictly within the territorial limits of its jurisdiction. It follows that this statutory restriction on the Tribunal's jurisdiction can be altered only by legislative amendment, and not by any other mode. However, omniscient the High Court can be under Article 227, surely it cannot, by its fiat, alter the place of occurrence of a motor accident. The accident spot is an unalterable fact. It follows, therefore, that the High Court would be powerless, even under Article 227, to change the jurisdiction of Tribunals by

exercising the power of transfer. It can only do so if it has the power, which if has not, of pretending that the accident in question had occurred in

the area over which the transferee Tribunal presides and not in the area where it actually took place. I am satisfied that the High Court has no

jurisdiction under Article 227 of the Constitution to transfer any pending accident case from the Tribunal having territorial jurisdiction over it to any

other Tribunal having jurisdiction over any other area.

14. Learned Counsel then placed reliance on a decision of the Madhya Pradesh High Court in Krishan Gopal Devi Prasad and Others Vs.

Dattatraya Madho Lad, . The question for decision in that case was whether the High Court can invoke its revisional power u/s 115 of the Code to

interfere with interlocutory orders passed by Claims Tribunals. Of three learned Judges who happened to deal with the point a majority expressed

the view that the Claims Tribunals were Court amenable to the High Court's revisional jurisdiction u/s 115 of the Code. The other learned Judge

referred to Section 110-F of the Motor Vehicles Act and other related provision and held that the Claims Tribunals cannot, be equated to the

position of civil Courts functioning within the scheme of the CPC Code. With respect, I think the majority were wrong, and the dissenting opinion

is right.

15. One other decision cited in argument was that of a division Bench of this Court reported in The Union Co-op. Insurance Society Ltd., Madras

v. Lazarammal Raveh (1973)87 L.W. 322. In that case it was held that in an appeal filed before the High Court u/s 110 of the Motor Vehicles

Act, the Respondents has a right to file cross-objections even though the section, in terms,-does not provide for cross-objection. It is possible to

support this ruling on the score that a cross-objection is only an appeal by reflex action, and, apart from questions as to limitation, a cross-

objection is no way different from an appeal. The point decided in this case thus relates to the statutory appeal u/s 110 of the Act. It does not

assist the present contention that the High Court can transfer pending cases from one Claries Tribunal to another by exercising its jurisdiction u/s 24

of the Code. If anything, the trend of discussion in this judgment is to the effect that the CPC can be invoked as respects proceedings under the

Motor Vehicles Act only in limited circumstances. The following observation is in

point.

It is true that all the provision of the CPC are not applicable to the Tribunal, because, it is a creature of the statute but the appeal against the order

of the Tribunal is to the High Court and not to any other tribunal constituted under the statute.

16. The learned Judges were conscious that the High Court when it sits as an appellate Court to hear appeals from the award of claims Tribunal

under the Motor Vehicles Act, sits only a the High Court and not as an appellate Tribunal. Never less, they expressed the view that all the

provisions of the CPC art not thereby attracted to proceedings under the Motor Vehicles Act.

17. The discussion in the foregoing paragraphs leaves with the conviction that the High Court has no jurisdiction transfer the claim applications

either from one area to another or from one Claims Tribunal to another. This Court has no such power either u/s 24 of the CPC or under any other

legal provision. The Tribunal having territorial jurisdiction over the area in which the accident occurred has alone the exclusive jurisdiction to hear

and determine the application for compensation, subject to an appeal to the High Court. No other Tribunal can be conferred with such jurisdiction

either by the High Court or even by the State Government, either is the first instance or at any subsequent stage of the proceedings.

18. These petitions are accordingly dismissed. There will be no orders as to costs.