

**(1996) 12 RAJ CK 0039**

**In the Rajasthan High Court**

**Case No : Civil Revision Petition No. 1001 of 1996**

Chatar Lal

APPELLANT

Vs

Motor Accident Claims Tribunal

RESPONDENT

**Date of Decision : 05-12-1996**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115, 132, 133, 144, 145  
Constitution of India, 1950 — Article 227, 300A  
Criminal Procedure Code, 1973 (CrPC) — Section 195  
Motor Vehicles Act, 1988 — Section 168, 169

**Citation : (1997) 1 RLW 169 : (1997) 1 WLC 560 : (1996) 2 WLN 322**

**Hon'ble Judges : R.R. Yadav, J**

**Bench : Single Bench**

**Final Decision : Allowed**

## **Judgement**

R.R. Yadav, J.—Heard.

2. Perused the order impugned dated 3.10.1996 passed by Motor Accident Claims Tribunal, Rajsamand rejecting the application of the petitioner for leave to withdraw Rs. 50,000/- deposited in his Fixed Deposits Account No. 19368 in the Bank of Baroda, Nathdwara District Rajsamand for purposes of solemnising marriage of his graduate daughter Miss Deepika aged about 22 years with Anil son of Shri Onkar Lal Chaplot resident of Fateh Nagar Sanward District Udaipur scheduled to be solemnised on 12.12.1996.

3. The impugned dated 3.10.96 has been challenged by the petitioner by way of filing the instant revision without disclosing the provisions either under the Motor Vehicles Act, 1988 or the Rules framed thereunder.

4. Learned Counsel for the revisionist urged before me that the District Judge who functions as a Claims Tribunal under the Motor Vehicles Act, 1988 is not only within the administrative control of the High Court but also subordinate to it u/s 115, C.P.C., therefore, the aforesaid impugned order passed by the Motor Accident Claims Tribunal is revisable u/s 115, C.P.C. In support of his aforesaid

contention, he placed reliance on a decision rendered by the Division Bench of this Court in case of Darshan Singh Vs. Ghewarchand and Others,

5. A close scrutiny of the decision rendered by the Division Bench of this Court in case of Darshan Singh (supra) reveals that the mandatory provision envisaged u/s 169 of the Motor Vehicles Act, 1988 was not brought to the notice of learned Judges constituting Division Bench, which clearly provides that in holding any inquiry u/s 168, the Claims Tribunal may subject to any rules that may be made in this behalf follow such summary procedure as it thinks fit. Sub-section (2) of Section 169 of the Motor Vehicles Act, 1988 (herein after referred to as the Act of 1988") further provides that 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 purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

6. It is further to be noticed that mandatory provisions in this regard envisaged under Rule 10.27 of the Rajasthan Motor Vehicles Rules, 1990 also escaped the notice of the learned Judges constituting Division Bench in case of Darshan Singh (supra) which clearly demarcates the limited powers of claims Tribunal as a Civil Court. The aforesaid Rule 10.27 reads thus:

10.27 Power vested in Civil Court which may be exercised by Claims Tribunal:

(1) Without prejudice to the provisions of Section 169:

(a) every Claims Tribunal may exercise all or any of the powers vested in a Civil Court under the following provisions of the Code of Civil Procedure, 1908 in so far as they may be applicable; namely, Sections 30, 32, 34, 35, 35(a), 75(a), 75(c), 76, 77, 94, 95, 132, 133, 144, 145, 147, 148, 149, 151, 152 and 153.

(b) and subject to the provisions of Section 174.

(2) For purpose other than those specified in Sub-rule (1), the Claims Tribunal may exercise all or any of the powers of Civil Court as may be necessary in any case for discharging its functions under the Act and these Rules.

7. In my considered opinion, the Claims Tribunal established under the Act of 1988 and Rules framed thereunder have a colour of Civil Courts for limited purposes as envisaged u/s 169 of the said Act read with Rule 10.27 of the Rules framed thereunder. It is pertinent to mention here that there is no ambiguity under statutory Rule 10.27 of the Rajasthan Motor Vehicles Rules, 1990 which clearly named various Sections of the Code of Civil Procedure, 1908 which may be exercised by a Claims Tribunal. There is no mention in the aforesaid Rule about applicability of either Section 3 or Section 115, C.P.C., hence, these Sections cannot be extended by taking recourse of construction holding District Judge who functions as a Claims Tribunal under the Act of 1988 to be sub-

ordinate to the High Court within the meaning of Section 3 C.P.C. for making his order revisable u/s 115. C.P.C.

8. It is to be remembered that a District Judge has dual capacity. When he functions as a District Judge, he is sub-ordinate to the High Court u/s 3, CPC, hence, the revision is maintainable u/s 115, CPC but when he functions as a Claims Tribunal he is sub-ordinate to the High Court under Article 227 of the Constitution and his orders are amenable to writ jurisdiction under the aforesaid Article.

9. I am of the view that if the provisions enshrined under Article 227 of the Constitution of India would have been brought to the notice of learned Judges constituting Division Bench in case of Darshan Singh (supra), the ratio of that case would have been otherwise. For this reason also, I hold the decision in case of Dharshan Singh (supra) to be per incuriam.

10. It must be taken to be settled law that this Court is repository of justice within its territorial jurisdiction in Rajasthan as enshrined under Article 227 of the Constitution of India. This Court is empowered with administrative and judicial superintendence under Article 227 of the Constitution over all Courts and Tribunals throughout the territory in relation to which this Court exercises its jurisdiction.

11. I am of the view that founding fathers of the Constitution having broad social vision empowered every High Court to be depository for the entire administration of justice in a State and vest it with judicial power which can be set into motion at any time if the High Court is satisfied that the order impugned passed by any Court or Tribunal is per se illegal, arbitrary, unreasonable, capricious or against the principles of natural justice or without jurisdiction or if allowed to stand it would occasion a failure of justice or would cause irreparable loss or injury to citizens or litigant public or it is satisfied about the abuse of process of the Court or Tribunal.

12. I have perused the order impugned passed by the Motor Accident Claims Tribunal, Rajsamand which is a classical illustration of travesty of justice and high handedness which deserves to be quashed. The order impugned is unconscionable and pricking my judicial accountability towards the petitioner in the present case, therefore, in such exceptional circumstances, I propose to convert this revision into a writ petition under Article 227 of the Constitution in exercise of my suo motu power with a view to see that justice is dispensed with fairly and properly by all Courts and Tribunals within the territory of the State of Rajasthan.

13. With the aforesaid circumpection, I would like to decide the controversy on merits.

14. Brief facts necessary for disposal of the instant writ petition under Article 227 of the Constitution of India, are that the petitioner met with an accident on

16.6.1990 while he was travelling in Bus No. GQE 8706 and his both the legs were fractured. His right leg was amputated upto knee.

15. The petitioner filed a Claim Petition No. 319 of 1991 under the Motor Vehicles Act, 1988 read with Rules framed thereunder and was awarded Rs. 1,70,000/- as compensation on various counts and Rs. 30,000/- as interest thereon. The aforesaid claim petition was decided on 13.12.1995 which has attained finality between the parties. The Award dated 13.12.95 reveals that the petitioner was held to be -entitled to receive Rs. 2,00,000/- in lump sum.

16. It appears that in pursuant to the Award dated 13.12.95, a sum of Rs. 1,78,556/- was deposited before the Tribunal. After deposit of the aforesaid amount before the Tribunal, the Tribunal passed an order directing the petitioner to deposit a lump sum amount of Rs. 1,00,000/- in the Bank of Baroda, Nathdwara District Rajsamand in Fixed Deposits Account for a period of 10 years and also directed him to deposit Rs. 78,556/- in his Current Account. I am of the view that upto this stage, direction of the Motor Accident Claims Tribunal, Rajsamand cannot said to be unreasonable. This Court takes judicial notice of the fact that sometime the amount awarded to a claimant by the Motor Accident Claims Tribunal, does not reach to the real claimant, therefore, now a days, the Motor Accident Claim Tribunals are taking extra ordinary precaution to ensure that this amount shall reach to the real claimant.

17. In the present case, the real controversy which this Court is called upon to decide as to whether the order impugned dated 3.10.96 passed by the Motor Accident Claims Tribunal, Rajsamand rejecting the application of the petitioner for leave to withdraw Rs. 50,000/- deposited in Fixed Deposits Account No. 19368 in Bank of Baroda, Nathdwara District Rajsamand for the purposes of solemnising the marriage of his graduate daughter, named-above, scheduled to be solemnised on 12.12.1996 amounts travesty of justice.

18. The decision of the aforesaid question depends on the question as to whether a lump sum "money" amounting to Rs. 1,00,000/-deposited in the Fixed Deposits Account of the petitioner in the Bank of Baroda, Nathdwara Dist. Rajsamand for a period of 10 years falls within the fold of "property". If so, whether the petitioner has absolute right to use it as he wishes and any restriction imposed upon its user making it valueless for him can said to be unreasonable, arbitrary and capricious.

19. It is true that the concept of property has been dethroned from the category of fundamental rights enshrined under Chapter III of the Constitution by Forty Fourth constitutional amendment and now, it has been made only a constitutional right within the meaning of Article 300A of the Constitution of India. It is further true that the expression "property" has not been defined either under the Constitution or under the Transfer of Property Act, therefore, its dictionary meaning has to be looked into. According to the New Lexicon Webster's Dictionary Encyclopedic Edition 1988 at page 801, the expression

"property" means "a thing or things owned real estate, a piece of real estate, abundant wealth, a man of property, ownership, the exclusive right to possess and use something". Since rest of the meaning is not relevant for just decision of the case, therefore, it is hereby omitted.

20. To my mind, the expression "property means corporeal or incorporeal rights including money, which is exchangeable in value capable to satisfy temporal needs of its owner. From the aforesaid definition of "property", I have no hesitation in holding that the lump sum amount of Rs. 1,00,000/- deposited in Fixed Deposits Account of the petitioner in Bank of Baroda, Nathdwara is his property and the Claims Tribunal has no legal justification whatsoever to impose unreasonable restriction in its withdrawal and its user by him as its management and its user by him is an essential incidence of holding property.

21. The next question would arise as to whether either State or any Court of Law or any Tribunal has authority in law to impose unreasonable arbitrary restriction" over the use of the property of a citizen or litigant public and if such thing is brought to the notice of the Court whether this Court will remain as a moot spectator of high handedness meted out to a citizen or a litigant public. My answer to the aforesaid question would be in negative.

22. There is a fundamental distinction between imposition of restriction on the use of property and deprivation of a person of; his property. There may be a situation where a person may not be deprived of his property arbitrarily and capriciously yet such unreasonable restriction may be imposed about its user or management which may make such property valueless for its owner, which would run counter to the concept of property in a civilized society.

23. It is true that a Court of law or a Tribunal can judiciously impose reasonable restrictions on the use of the property of a minor or a person of unsound mind but such restrictions may remain valid till he attained the age of majority and in case of a person of unsound mind till he attains his or her mental health. Here, in the present case, indisputably the petitioner is neither a minor nor a person of unsound mind, therefore, the Tribunal has no legal justification whatsoever to impose unreasonable restrictions on the use of the lump sum compensation of Rs. 1,00,000/- deposited in the Fixed Deposits Account of the petitioner in the Bank of Baroda, Nathdwara.

23. In the present case, although it was proper at the initial stage for the Claims Tribunal to direct the claimant-petitioner to deposit Rs. 78,556/- in his Current Account and Rs. 1,00,000/- in Fixed Deposits Account for a period of 10 years but at subsequent stage, refusal by the Claims Tribunal by impugned order to allow him to withdraw Rs. 50,000/- from his Fixed Deposits Account for marriage of his daughter is per se illegal and without jurisdiction. This Court takes judicial notice of the fact that sometimes the Award given by a Motor Accident Claims Tribunal does not reach to the real claimant, therefore, now a days, the Motor Accident Claims Tribunals are taking extra-ordinary precautions to see that the

amount of Award should reach to the real claimants which deserves appreciation. But this step by the Claims Tribunal should always be treated as a temporary phase and once the indentivity of a claimant is established, the Claims Tribunal should not impose any restriction on withdrawal of compensation from the Bank unless the claimant is proved to be either a minor or a person of unsound mind.

24. Consequently, the instant writ petition is allowed and the order impugned dated 3.10.1996 is hereby quashed. The Branch Manager of Bank of Baroda, Nathdwara District Rajsamand is hereby directed to ensure the withdrawal of Rs. 50,000/- to the petitioner positively by Monday i.e. 9.12.1996 so that, the marriage of the petitioner's daughter Miss Deepika aged about 22 years with Anil son of Shri Onkar Lal Chaplot resident of Fatech Nagar Sanward, District Udaipur scheduled to be solemnised on 12.12.96 may not be frustrated.