
(2003) 10 BOM CK 0019
In the Bombay High Court
Case No : First Appeal No. 815 of 2002

Divisional Controller, MSRTC

APPELLANT

Vs

Bapu Onkar Chaudhari

RESPONDENT

Date of Decision : 13-10-2003

Acts Referred:

Maharashtra Motor Vehicles Rules, 1989 — Rule 281
Motor Vehicles Act, 1988 — Section 140, 144, 173

Citation : (2004) ACJ 35 : (2004) 1 ALLMR 291 : (2004) 3 BomCR 186 : (2003) 4 MhLj 990

Hon'ble Judges : N.H. Patil, J;D.S. Zoting, J;B.B. Vagyani, J

Bench : Full Bench

Advocate : P.K. Joshi, for the Appellant; M.N. Nawandar, for the Respondent

Judgement

B. B. Vagyani, J.—Heard.

2. A passenger bus bearing No. MH-20/D-1831 belonging to the Maharashtra State Road Transport Corporation, Jalgaon met with an accident on 22-11-1997 near village Kekat Nimbhora. One Bapu Onkar Chaudhari, a passenger in the said bus, sustained several injuries resulting into permanent physical disability. He filed an application u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the Maharashtra State Road Transport Corporation, Jalgaon. The Motor Accident Claims Tribunal, Jalgaon allowed the application by order dated 2-3-2002 and directed the Maharashtra State Road Transport Corporation, Jalgaon to pay Rs. 25,000/-to the injured, within one month.

3. Feeling aggrieved by the award passed by the Motor Accident Claims Tribunal, Jaigaon, the Maharashtra State Road Transport Corporation filed First Appeal No. 815 of 2002 u/s 173 of the Act. When the said first appeal came up for admission before Single Judge, the Single Judge expressed doubt about maintainability of the appeal. Therefore, by order dated 28-8-2002, a reference was recommended to the Larger Bench on the point of maintainability of the first appeal. The Hon"ble the Chief Justice was pleased to direct the appeal to be

placed before Division Bench.

4. After hearing the elaborate submissions of the learned counsel for the respective parties, the Division Bench failed to persuade itself to the view taken by Bench of five Hon"ble Judges of Madhya Pradesh High Court in the case of Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, , By unanimous decision, the Larger Bench of Madhya Pradesh High Court held that an order granting compensation u/s 140 of the Act amounts to an award within the meaning of Section 168 of the Act and, therefore, an appeal would lie u/s 173 of the Act.

5. The Division Bench took into consideration the relevant provisions of the Act and the Maharashtra Motor Vehicles Rules, 1989 (hereinafter referred to as the Rules) and thought it fit to refer the matter for consideration by a Larger Bench. This is how, the matter is referred to the Full Bench to determine the following questions:

(1) Whether an order passed in an application u/s 140 of the Act can be termed as an award u/s 166 of the Act so as to enable the aggrieved party to challenge it in an appeal u/s 173 and

(2) Whether against the order passed by the MACT in an application u/s 140 of the Act granting compensation on no fault liability, an appeal would lie to the High Court?

6. Shri P. K. Joshi, learned counsel for the Maharashtra State Road Transport Corporation, Jalgaon submitted that in view of Rule 281 of the Rules, the order passed u/s 140 of the Act is an award and, therefore, appeal would lie u/s 173 of the Act. Whereas the learned counsel Shri Nawandar for the original claimant submitted that an order passed u/s 140 of the Act directing the payment of compensation cannot be termed as an award, within the meaning of Section 168 of the Act and, therefore, an appeal u/s 173 of the Act is not maintainable.

7. We gave anxious consideration to the rival submissions made at the Bar. Before advertng directly to the main issue, we would like to take into consideration the views expressed by different High Courts in this regard. Majority of the High Courts have taken a view that an order passed under no fault liability is an award and, therefore, an appeal u/s 173 of the Act is maintainable. Following High Courts have taken a view that an order passed u/s 140 of the Act is an award and, therefore, an appeal u/s 173 of the Act is maintainable :

1. Oriental Insurance Co. Ltd. Vs. Mohiuddin Kureshi alias Md. Moya and Others
2. United India Insurance Co. Ltd. Vs. Padmavathy and Others, 3. National Insurance Co. Ltd. Vs. Bilasini Naik and Another, 4. Indro Devi v. Hari Ram Malhotra and Ors. 1997 ACJ 716 (Division Bench of Himachal Pradesh High Court at Shimla) 5. The Oriental Insurance Co. Ltd. Vs. Mst. Hansi and Others, 6. Sant Ram and Another Vs. Surya Pal and Others, 7. Oriental Insurance Company

Limited, New Delhi Vs. Chitaman and Others, 8. Sulochna Vs. Gurbachan Singh

8. Following High Courts have held that in case of order passed u/s 140 of the Act, appeal u/s 173 of the Act is not maintainable : 1. State of Assam Vs. Pranesh Debnath and Others, 2. New India Insurance Co. Ltd. v. Motor Accident Claims Tribunal, AIR 1993 J & K 22 (Single Judge of J and K High Court) 3. Amita Baghi and others Vs. Tejwinder Singh alias Teji and another, 4. Deepak Diwan v. Shanti Diwan (Single Judge of Delhi High Court.

9. Chapter X of the Act consists of Sections 140 to 144 and it is titled as "Liability without fault in certain cases". In Chapter XI, the Parliament by Act No. 54 of 1994, incorporated Sections 163-A and 163-B w.e.f. 14-11-1994 and introduced a special provision as to payment of compensation on structured formula basis. Section 163B of the Act states that where a person is entitled to claim compensation under Sections 140 and 163A, he shall have the claim under either of the said sections and not under both.

10. Chapter XII is titled as "Claims Tribunals" and consists of Sections 165 to 176. Explanation to Sub-section (1) of Section 165 makes it clear that the expression "Claims for Compensation" includes claims for compensation under Sections 140 and 163A of the Act.

11. The Government of Maharashtra has framed rules under the Act i.e. Maharashtra Motor Vehicles Rules, 1989. Chapter IX of the said Rules is titled as "Claims Tribunal" and consists of Rules 252 to 283. Rule 254 sets out the procedure for making an application for compensation arising out of an accident of the nature specified under the Act and the Rules. Rule 255 is for an application for compensation u/s 140 of the Act. Rule 255-A provides for an application for compensation u/s 163-A of the Act. Reading the provisions of Rules 255 and 255-A coupled with Sections 140 and 163A of the Act, it may be stated that the applications are required to be decided by way of an enquiry, summary in nature and these two applications i.e. application u/s 140 of the Act and an application u/s 163A of the Act are exclusive of each other and to be decided within the time limit prescribed under the Act as well as the Rules.

12. The liability without fault in certain cases is a special provision made by the Legislation in order to meet out the urgent needs of the heirs of deceased or a person who has suffered permanent disability on account of accident. This is a beneficial provision. The amount of compensation liable to be paid u/s 140 of the Act in respect of death of any person is a fixed sum of Rs. 50,000/- and the amount of compensation payable for permanent disability is a fixed sum of Rs. 25,000/-. Taking into consideration the nature of no fault liability, the claimant making an application u/s 140 of the Act for grant of immediate relief, is not required to plead and establish that the death or permanent disablement in respect of which the claim has been preferred, was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or any other person. It is also made clear by Sub-section (4) of Section 140 of the

Act that the claim under no fault liability shall not be defeated by reason of any wrongful act, neglect or defect of a person in respect of whose death or permanent disablement, the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

13. It is made clear by virtue of Sub-section (2) of Section 141 of the Act that a claim for compensation preferred u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible. It is also made clear that in case of claims filed under no fault and under fault liability are simultaneously preferred, the claim for compensation u/s 140 is required to be disposed of in the first place. Sub-section (3) of Section 140 of the Act provides that the person liable to pay compensation under no fault liability as well as under fault liability, the person so liable shall pay the first mentioned compensation i.e. compensation arising out of no fault liability. Under sub-rule (3) of Rule 255 of the Rules, the Claims Tribunal is directed to dispose of the application under no fault liability within a period of 45 days from its receipt and if there is any delay in its disposal, reasons are required to be given.

14. If we carefully perused the relevant provisions of the Act and Rules, we can find that different procedure is prescribed for disposal of application under no fault liability i.e. u/s 140 of the Act and application filed under fault liability i.e. u/s 166 of the Act. Somewhat lengthy procedure is prescribed for application filed u/s 166 of the Act. In both the cases, certain documents are required to be appended to every such application. For application filed under Rule 254, the applicant is required to be examined on oath. For the purpose of disposal of application under no fault and under fault liability, summary procedure is prescribed. By virtue of Rule 275, every Claims Tribunal is empowered to exercise the rights vested in Civil Court under the provisions of CPC insofar as they may be applicable namely Sections 30, 32, 34, 35, 35(A), 75(A), 75(C), 76, 77, 94, 95, 132, 133, 134, 145, 147, 148, 149, 151, 152 and 153. By virtue of Rule 276, some of the provisions of the CPC are made applicable to the proceedings before the Claims Tribunal. It is made clear by Rule 277 that notwithstanding anything contained in the Rules, in the case of minor accidents and claims u/s 140, the Claims Tribunal may follow such summary procedure, as it thinks fit.

15. The Claims Tribunal, while dealing with application u/s 140 of the Act, is expected to proceed with the application if all the documents to be appended to such application are placed on record. The Claims Tribunal is expected to go through the genuineness of the documents appended to the application and expected to proceed with the application immediately thereafter and required to dispose of such application within 45 days.

16. There is a Proviso to Section 168 of the Act. After holding an enquiry into the claim preferred u/s 166 of the Act, the Claims Tribunal is expected to make an

award determining the amount of just compensation. However, by Proviso to Section 168 of the Act, it is made clear that the claim u/s 140 of the Act, in case of death or permanent disablement of any person, such a claim is required to be disposed of in accordance with the provisions of Chapter X.

17. The procedure and powers of Claims Tribunal are given in Section 169 of the Act. For the purpose of holding an enquiry u/s 168, the Claims Tribunal shall have all powers of Civil Court for the purpose of taking evidence on oath and for 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, The procedure and powers of the Claims Tribunal highlighted in Section 169 of the Act are in respect of a claim u/s 166 of the Act.

18. Under the Act, the State Government is authorized to make rules u/s 176 of the Act. The State Government may make rules for Chapter XII of the Act i.e. Sections 165 to 174. u/s 176(b) of the Act, the State Government may make rules for procedure to be followed by Claims Tribunal in holding an enquiry of a claim falling under Chapter XII and Section 176(d) speaks about fees on payment of which an appeal may be preferred against the award of a Claims Tribunal. It is material to note that the State Government, in exercise of powers conferred by the provisions of the Act, framed rules which are known as Maharashtra Motor Vehicles Rules, 1989 and prescribed different procedures for different claims. This is required to be taken into consideration while deciding the main issue involved under reference.

19. A different phraseology is used in Rules 273 and 281. The Claims Tribunal, in passing orders, is required to record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurers and the owners of the vehicle, who may be found vicariously responsible for causing the accident and also the person or persons to whom compensation shall be paid.

20. So far as the judgment in case of claim under Sections 140 and 163-A of the Act is concerned, the Claims Tribunal is expected to proceed to award the claim of the compensation on the basis of Rule 281(i) to (ix). u/s 168 of the Act, the Claims Tribunal is expected to determine the amount of compensation which appears to be just and thereafter required to make an award specifying the amount of compensation. But under Rule 281 of the Rules of 1989, where word "Award" is used, the Claims Tribunal is empowered to proceed to award the claim of compensation on the basis of documents mentioned in sub-rules (i) to (ix) of Rule 281. Under sub-rule (ii) of Rule 281, the Claims Tribunal, in passing order, shall make an award of compensation to be paid by insurer or owner of the vehicle involved in the accident.

21. The award is not defined in the Act. However, the word "Award" is used in the Act as well as the Rules. As per P. Ramanatha Aiyar's The Law Lexicon - the encyclopedic law Dictionary 1977 Edition, Award means to adjudge to be due,

give by judicial determination or deliberate judgment. As per Black's Law Dictionary, Sixth Edition, Award means to grant / to give Judicial determination or after careful weighing of evidence. In the Award u/s 168 of the Act, the element of adjudication or determination after careful weighing of evidence is necessary. However, such element of adjudication or determination is absent in the award under Rule 281. The Award under Rule 281 implies grant of compensation. u/s 268, the Tribunal is required to hold enquiry and after completion of enquiry, adjudicate or determine the quantum of compensation and then to make an award. However, under Rule 281, the Tribunal, on the basis of certain documents, can proceed to award fixed compensation to the claimant.

22. In an award to be passed in pursuance to Section 168 of the Act, after completion of enquiry, the Claims Tribunal is required to :

- (1) determine the quantum of just compensation;
- (2) specify the person or persons to whom the compensation shall be paid;
- (3) specify the amount which shall be paid and
- (4) specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or by anyone of them, as the case may be.

23. In an award to be passed under Rule 281, there is no question of fixing quantum of compensation. A fixed compensation of Rs. 50,000/- in case of death and of Rs. 25,000/- in case of permanent disablement is statutorily required to be paid. The only order directing the insurer or owner of the vehicle to pay the amount of compensation to the claimant within two weeks from the date of order is expected. Therefore, for the purpose of award, in strict sense, what is contemplated u/s 168 of the Act, must be present.

24. In case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , the Supreme Court has discussed the nature and object of beneficial legislation with regard to no fault claim. It is said that the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules. It is observed that:

"The object underlying the enactment of Section 92A (old Act) is to make available to the claimant compensation amount to the extent of Rs. 15,000/- in case of death and Rs. 7,500/- in case of permanent disablement as expeditiously as possible and the said award is to be made before adjudication of a claim u/s 110A of the Act (old Act). With a view to give effect to the directive contained in Section 92B, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims u/s 92A in Rules 291A, 291B, 297(2), 306A, 306B, 306C and 306D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/s 92A of the Act."

The Supreme Court observed that:

"The said object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition u/s 110A of the Act. Rules 291 A, 306A and 306B contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation u/s 92A of the Act and in view of these special provisions, the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of a claim u/s 110A for the purpose of making an order on a claim petition u/s 92A."

25. The Apex Court has made it clear that the Tribunal is required to satisfy itself in respect of the matters necessary for awarding compensation u/s 92A of the Act and in order to achieve satisfaction, adequate provisions are made under the Act and Rules.

26. This Court, in the case of Oriental Fire and General Insurance Co. Ltd. Goa Vs. Aleixo Fernandes and others, , has held that Section 92A postulates peremptory award and the object behind it is to give immediate benefit to the relatives of the victim in case of death or disabled victim of the accident. This is a social welfare legislation.

27. In case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , it is held that a claim arising out of no fault liability is distinguishable from the rule of strict liability, as contemplated u/s 166 of the Act. It is also held that the amount of compensation to be paid u/s 140 of the Act can be deducted from the final amount awarded by the Tribunal.

28. For deciding application u/s 140 of the Act, the Tribunal is expected to consider only the following documents :

1. Ownership of vehicle involved in accident. Registration certificate of vehicle or certificate regarding ownership from R.T.O./ Police.
2. Insurance Certificate or policy relating to insurance of vehicle or certificate regarding insurance, particulars of vehicle from R.T.O./Police.
3. Panchanama/F.I.R.
4. Post mortem report.
5. Nature of treatment given by Medical Officer who has examined the victim.
6. Other documents produced by the parties or obtained by the Tribunal under Rule 280.

29. After considering the above referred documents, the Tribunal is required to proceed to award claim compensation to the claimant. At this juncture, one has to take into consideration Rule 280. The Tribunal, in order to award claim of compensation, if required, is empowered to collect information and documents for awarding compensation and after receipt of such information or documents, the Tribunal has to award the claim compensation. This is the special

requirement made for the claim u/s 140 of the Act, taking into consideration its beneficial nature. Rule 280 is one of the adequate provisions made for enabling the Tribunal to achieve satisfaction to award compensation under no fault liability. Taking into consideration the nature of enquiry, the nature of the documents, the intention of the legislation in introducing the beneficial legislation in the form of no fault liability and the time limit prescribed for disposal of such application, the Tribunal, on satisfying itself on the basis of documents which are required to be appended to the application u/s 140 of the Act, coupled with relevant rules, shall award claim compensation to the claimant. The element of elaborate adjudication or determination, as is required u/s 166 of the Act, is deliberately avoided.

30. Section 144 of the Act also speaks volume with regard to remedy of appeal. Sections 140 to 144 are clubbed together under Chapter X of the Act. Fault claims contemplated u/s 166 of the Act fall under Chapter XII of the Act. The claim with regard to payment of compensation on structured formula basis falls in Chapter XI. Section 173 of the Act, which speaks about appeals, falls in Chapter XII of the Act. If Sections 165 to 176 are considered together, it prima facie appears that the award passed after elaborate adjudication u/s 168 of the Act, in case of fault claim u/s 166 of the Act, is only made appealable u/s 173 of the Act. So far as claims decided under no fault liability are concerned, the express remedy of appeal is not provided either in the Act or Rules. It is made beyond doubt clear by Section 144 of the Act that the provisions of Chapter X shall have overriding effect notwithstanding anything contained in any other provision of the Act or of any other law for the time being in force. The conjoint reading of all the provisions of the Act and the Rules would clearly indicate that the provisions of appeal made u/s 173 of the Act falling in Chapter XII of the Act is not made applicable to the claims arising out of Chapter X.

31. At this juncture, we would also like to point out that the Act does not contemplate appeals in certain cases. Sub-section (2) of Section 173 of the Act specifically bars remedy of appeal against any award of the Claims Tribunal if the amount in dispute in appeal is less than Rs. 10,000/-. Under the circumstance, we find it extremely difficult to digest that an appeal would lie u/s 173 of the Act against the peremptory award passed in no fault claims.

32. There is another circumstance which would indicate absence of right of appeal. For Insurance Company, only set defences are permissible in law. These defences are specifically enumerated in Sub-section (2) of Section 149 of the Act. The quantum of compensation and the question with regard to fault or negligence are not open for the Insurance Company by way of defences pursuant to Section 149(2) of the Act. By Statute only, a fixed compensation is to be paid in case of death and permanent disablement. Moreover, there is no scope left of whatever nature in raising dispute with regard to fault or negligence. The quantum and issue with regard to fault or negligence are kept outside the claim preferred u/s 140 of the Act. Under the circumstance, we do not find any

difficulty in arriving at the conclusion that the award passed u/s 140 of the Act is not made appealable u/s 173 of the Act. If appeal is allowed, entire beneficial purpose of introduction of no fault claim would be frustrated.

33. In this behalf, we would like to refer to the case of Ravi Kumar and Another Vs. Ram Parkash and Others, , it is held that though no doubt various defences as provided under Sub-section (2) of Section 96 of the Act are available to the Insurance Company but these defences and, in fact, none at all, would be available to the Insurance Company in respect of its liability to pay compensation u/s 92A, in view of the overriding effect by virtue of Section 92-E of the Act. It is further observed that perhaps the only defence that would be available would be that the offending vehicle was not insured with the insurance company in question. The provisions of Section 92A of the Act are peremptory and do not admit of any exception or defence. These provisions provide for immediate relief and that would appear to be the intention of the legislation as well. It is further observed that the proceedings u/s 92A of the Act brook no delay. It is further observed that the only thing that is required to be seen is that the policy of insurance requirement has laid down in the Act and it is immaterial if ultimately the petition fails either on the principle of fault or even of any of the defences permissible to the Insurance Company, as laid down under Sub-section (2) of Section 96 of the Act. The liability of the Insurance Company u/s 92A of the Act to the extent mentioned therein would, therefore, appear to be absolute.

34. Chapter XI is titled as "Insurance of motor vehicles against third party risk". Section 149 of Chapter XI is titled as "Duty of insurer to satisfy judgments and awards against persons Insured in respect of third party risks". There is an explanation to Sub-section (7) of Section 149 of the Act which runs as under :

"For the purpose of this section, "Claims Tribunal" means a Claims Tribunal constituted u/s 165 and "award" means an award made by that Tribunal u/s 168."

35. The explanation is abundantly clear that the Claims Tribunal means a Tribunal constituted u/s 165 of the Act and award means an award made u/s 168 of the Act. Therefore, an award which is not passed u/s 168 of the Act, is not an appealable award in strict legal sense. By virtue of this explanation, we can safely conclude that the award passed u/s 140 of the Act is not an award for the purpose of appeal provided u/s 173 of the Act. In short, it is not appealable award.

36. Section 173 of the Act speaks about an award passed by a Claims tribunal by which right of appeal is provided to a person aggrieved by such an award. The award passed u/s 168 of the Act is an award in strict sense of the term and, therefore, naturally the person aggrieved by such an award can prefer an appeal u/s 173 of the Act. An award as contemplated under Rule 281 of the Rules does not become an appealable award. A mere nomenclature of Award as used in Rule 281 does not make the order passed by the Claims Tribunal u/s 140 of the Act an award giving rise to appeal u/s 173 of the Act. A person aggrieved by the award

passed u/s 168 of the Act can only prefer an appeal u/s 173 of the Act and none else.

37. This takes us to consider as to whether a person acquires a right of appeal without there being any specific provision providing a right of appeal. The word "Award" is used in Rule 281. This award under Rule 281 cannot be compared to an award passed u/s 168 of the Act. Explanation to subsection (7) of Section 149 of the Act makes it clear that the award passed u/s 168 of the Act is an award. Therefore, the aggrieved person by such an award can prefer an appeal u/s 173 of the Act. In the absence of any specific provision with regard to right of appeal, a person does not get a right of appeal simply on the basis of use of word "Award" in Rule 281. There is no specific provision given under the Act which empowers an aggrieved person to file an appeal against the order passed u/s 140 of the Act.

38. In the case of Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, , the Supreme Court has held that an appeal is a creature of Statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself.

39. In case of Smt. Ganga Bai Vs. Vijay Kumar and Others, , the Supreme Court has pointed out the distinction between right of suit and right of appeal. It is said that:

"There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute, one may at one's peril, bring a suit of one's choice. A suit, for its maintainability, requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and, therefore, an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

40. The learned counsel Shri Joshi raised a question with regard to remedy in case appeal is not provided. We are not called upon to answer this question. However, it is suffice to refer to the observations made by Apex Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, . It is held that the right of appeal is statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. It is further observed that where statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High, Court u/s 115 of the Code of Civil Procedure. It is further said that where remedy for filing a revision before the High Court u/s 115 of the CPC has been expressly

barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution.

41. In the case of *Oriental Insurance Co. Ltd. v. Chintaman* (cited supra), it is observed that the procedure for claim arising out of Chapter X is not provided for determination of quantum of compensation and Chapter X is not a self-contained code. It is further observed that Chapter XII has an impact on Chapter X.

42. The fault claim is required to be filed u/s 166 of the Act and the Tribunal, after adjudication, has to determine the quantum and required to make an award, giving full details as contemplated u/s 168 of the Act. The proviso to Section 168 of the Act specifically lays down that a claim for compensation u/s 140 of the Act shall be disposed of in accordance with the provisions of Chapter X. Rule 277 speaks about saving clause. Rule 277 suggests summary procedure in case of claim u/s 140 of the Act, other than procedure prescribed for fault claim. For application for claim u/s 140 of the Act, a separate procedure is prescribed under Rule 255. The application u/s 140 of the Act is required to be disposed of in accordance with the provisions of Chapter X. Two different provisions are made for judgment and award of compensation in respect of fault claim and no fault claim.

43. Rule 273 requires the Claims Tribunal to record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer and the owner of the vehicle who may be found vicariously responsible for causing the accident and also the person or persons to whom compensation shall be paid. This is meant for claim under fault liability. Rule 279 speaks about form of appeal and contents of memorandum. Rule 279(2) states that the memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the award appealed from without any argument or narrative and such grounds shall be numbered consecutively. Rules 273 and 279 are required to be read conjointly. These formalities are prescribed for fault claim.

44. However, under Rule 281, nothing is said about the contents of judgment. The word "Judgment" has only appeared in clause title of Rule 281. It is to be noted that the judgment and award contemplated under Rule 281 is in respect of claim u/s 140 of the Act. A separate form of judgment and award of compensation is given in Rule 281A for claim u/s 163A of the Act. Rule 281 does not contemplate judgment similar to the judgment similar to the judgment referred in Rule 273. This is indicative of fact that no appeal is provided for a claim u/s 140 of the Act.

45. Under the circumstance, it cannot be said that Chapter XII of the Act has impact on Chapter X of the Act. The Madhya Pradesh High Court has not considered the provision of over riding effect contained in Section 144 of the Act. The Madhya Pradesh High Court has also not considered the Proviso to subsection (7) of Section 149 of the Act wherein it is specifically stated that the

award means an award made u/s 168 of the Act. Therefore, we find it difficult to concur with the view taken by the Madhya Pradesh High Court in the above case.

46. The scheme u/s 140 of the Act is very special and extra ordinary, by which certain benefits are conferred on the heirs of deceased and the person who has suffered permanent disability. Therefore, the provision of appeal is not made in Chapter X. The appeal would defeat the very purpose of beneficial legislation. Therefore, Section 173 of the Act cannot be resorted to. However, Section 174 of the Act falling under Chapter XII can be resorted to for the purpose of execution of the peremptory award passed u/s 140 of the Act. Because the extraordinary beneficial provision is respected thereby and it is in consonance with the intention of legislation for the purpose of providing immediate relief. The award passed u/s 140 of the Act is not an appealable award under Sections 166, 168 read with Section 173 of the Act.

47. We accordingly answer both the issues in the negative. First Appeal No. 815 of 2002 be now placed before the Appropriate Bench.