
(1989) 11 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Revision Petition No. 548 of 1988

Dushyant Kumar and Others

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1939 — Section 110, 110D

Citation : (1991) ACJ 150 : AIR 1990 Raj 152 : (1990) 1 WLN 179

Hon'ble Judges : D.L. Mehta, J

Bench : Single Bench

Advocate : Subhash Jindal, for the Appellant; R.R.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.L. Mehta, J.—This revision petition is directed against the order dated, 27th May, 1988 passed by the learned District Judge, Jhalawar, in Motor Accident Claims No. 16/86.

2. Mr. Gupta appearing on behalf of the non-petitioner with all vehemence at his command submitted that the Motor Accident Claims Tribunal is not a Civil Court, but it is a Tribunal constituted under the Motor Vehicles, Act, as such, is not subordinate to the High Court u/s 115, C.P.C. and the revision petition does not lie.

On the other hand, Mr. Subhash Jindal appearing on behalf of the petitioner submits that the Motor Accident Claims Tribunal is a Civil Court and revision petition does lie u/s 115, C.P.C.

3. I have heard the rival contentions of both the parties.

4. It is necessary to consider the meaning of the word "Civil Court".

5. There is a real distinction that it may often be found to define the Tribunal and the Court. The distinction exists irrespective of whether a person constituting

Tribunal is a Judge of the Court of appeal is provided for the orders of the Tribunal to the High Court. A Tribunal is not clothed with the powers of the Court and the orders of the Tribunal are of limited jurisdiction and are open to judicial review. It will not be out of place here to state that it is necessary to understand the powers conferred on the authority by the provisions of the Statute. When a question is raised as to whether an authority constituted under a particular statute is an administrative body or Tribunal discharging the functions of the judicial character or a Court, the answer will be that the Court must find out from the statute itself and other relevant laws what are the powers and functions of the authority so created under a particular statute. The nomenclature is not of importance. Court constituted for deciding purely civil questions between the persons seeking their civil rights must be considered to be Civil Court, notwithstanding that they are created by a special statute and are mentioned in the statute as distinct from the Civil Court. It will not be out of place here to mention that originally the case falling within the purview of the Motor Accident Claims Tribunal used to fall under torts or fatal accidents Act. Claims Tribunals were constituted for the efficacious disposal of the Motor Accident Claims. The general law applicable earlier was only the common law and the law of Torts. Earlier the concept of owner's liability without any negligence was considered as opposed to the basic principles of the common law. It was considered by the Legislature that a pedestrian or any other person sustaining an injury should also be compensated without the proof of negligence of the Driver driving the vehicle and the provisions relating to the no fault liability were included in the Motor Vehicles Act. Composite and contributory negligence cases also fall within the purview of the Tribunal. Thus, the Tribunal adjudicated the rights of the injured in the matter of grant of compensation which he is entitled under the law, may be also under the law of Torts to get on account of injury sustained by him. This part of the function of the Tribunal adjudicating civil rights of the parties is a function of the Civil Court. In fact, prior to 1966 suits were instituted in the Civil Court and compensation was awarded. New efficacious machinery has been provided under the amended law to meet the ends of the requirements of the society as to provide effective and efficacious machinery having the powers of the Court to deal with all class of case just like a Special Court. Motor Accidents Claims Tribunal adjudicates the rights of civil nature between the injured and the owner of the vehicle including the Insurance Company and the Driver who was driving the vehicle.

6. Mr. Gupta invited my attention to the decision of this Court in the case of Rajasthan State Road Transport Corporation, Rajasthan State Road Transport Corporation, Jaipur Vs. Kalawati and Others, This Court held that the Claims Tribunal is not subordinate to the High Court within the meaning of Section 115, CPC and no revision petition lies. It is necessary to examine the provisions of the Motor Vehicles Act relating to the procedure and powers of the Claims Tribunal. u/s 110 of the Motor Vehicles Act State Government by notification constitutes the Claims Tribunal for the purpose of adjudicating/Claims for the compensation in

respect of the accident involving the death of or bodily injury to the person arising out of the use of the Motor Vehicle. It will not be out of place here to mention that Section 110 of the Motor Vehicle Act further provides that the claims for compensation u/s 92A can also be adjudicated by the Claims Tribunal. Application for Compensation is filed by the injured u/s 110A. Injured includes the persons who are legal representatives of the deceased for the purpose of interpreting the provisions of this Act. u/s 110-B. Awards are passed determining the amount of compensation which appears to the Tribunal to be the just and specifying the persons to whom the compensation shall be paid. Tribunal also specifies amount which shall be paid by the insurer owner or driver of the vehicle involved or any of them as the case may be. Section 110C provides that the Tribunal shall have the power of Civil Court for the purpose of taking evidence on oath and enforcing the attendance of the witnesses and compelling of discovery and production of documents and material object and for such other purpose as may be prescribed. It further provides that the Claims Tribunal shall be deemed to be a Court for the purpose of Criminal Procedure Code. This section enables the Tribunal to formulate its own procedure. However, the Tribunal cannot adopt a procedure which may be against the principles of natural justice.

7. In the case of *Mrs. M.J. Stone v. Union of India* AIR 1975 Him 62 the Court held that in the proceedings before the Tribunal if the interest of minors is involved, it is necessary that the provisions of Order 32 should be invoked. It may be stated that the Tribunal has a power to enforce the attendance of the witnesses but, some times it may be difficult to procure the attendance of witness, may be on the ground of sickness or other sufficient ground and it may become necessary to examine the witnesses by issuing a Commission and there is no specific provision u/s 110-C for the issuance of the Commission. Thus, to meet the ends of justice it is necessary to interpret that a reference has to be made only about the enabling provision but, it does not prohibit exercise of the powers of the Civil Court and particularly the powers given in CPC if it is necessary to do so in the interest of justice. It is not necessary that the procedure laid down in the C.P.C. should be followed in all cases. Due to mounting arrears of cases, the need of the early disposal was felt by the Legislature in its wisdom and it was considered that the delay defeats, as such, an efficacious machinery was created for the disposal of the cases in which the persons who suffer injuries and lose their near and dear, could get relief and claim their right, which was originally a right under the Torsts and the common law. It is a machinery for adjudicating the rights of a civil nature and to pass an award adjudicating the rights of the claimant qua the owner, driver and the insurer is nothing but a civil act and performs the duties of the Civil Court.

8. Award is nothing but a decree or an order of the Court which needs execution if not satisfied. It will not be out of place to mention that to safe-guard the interest of the claimant provisions have been made also about the payment of interest. Section 110 provides that where any money is due from any person under an Award the Claims Tribunal may on an application made to it by the

persons entitled to money issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as arrears of land revenue. This section is an enabling section and additional mode of recovery has been provided u/s 110. It does not prohibit the execution of the award like a decree under the provisions of Order 21, C.P.C. The award passed can be executed as a decree of a Civil Court and the provisions of Order 21, C.P.C. can be invoked in the matter of execution on independently of the provisions providing the recovery of the award, as arrears of land revenue. Beneficial legislation has to be interpreted for the benefit of the Society. There may be a feeling amongst the Collectors whenever the question of issuing the certificate and the execution of the award is there that the property of the State Government and the Corporate body should not be attached. If it is allowed to continue then the claimants will fail to get the proper relief in time. Number of writ petitions have been filed before this Court for the issuance of mandamus against the Collector with a prayer that the Collector may be directed to execute the award. This because of the fact that Section 110 has been misunderstood and it has not been considered that it is a supplementary section and it supplements the mode of recovery provided under Order 21, C.P.C. Section 110(E) does not take away the mode which has already been provided under the said Act. In the case of *Smt. Afsari Begum v. Oriental Fire and General Insurance Company* 1979 All LJ 1168, the Division Bench of the Allahabad High Court considered the provisions of Section 115, C.P.C. The Division Bench of the Allahabad High Court held that the Claims Tribunal under Motor Vehicles Act being a Civil Court was amenable to revisional jurisdiction of High Court because, it was a Court subordinate to the High Court. Their Lordships held that u/s 110D appeal lies to the High Court and it was also decided by the Division Bench of the Allahabad High Court that Tribunal is a Civil Court.

9. In the case of *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, their Lordships of the Hon"ble Supreme Court held as under (Para 6):--

"Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the State, basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sence."

In the case of *Shankar Ram Chandra (supra)* their Lordships have held that when the High Court is having a appellate jurisdiction, automatically is having the revisional jurisdiction, as the revisional jurisdiction is only circumscribe and limit the powers of the appellate jurisdiction at a particular stage in fact they are part of the appellate jurisdiction. I agree with the view taken by the Allahabad High Court.

10. In the case of *Noreen R. Srikantiah Vs. L. Dasarath Ramaiah, Gulbarga and Another*, Karnataka High Court held that Section 24 of the CPC applies and

claimant can seek transfer of the case from one Claims Tribunal to another on medical grounds and the High Court has a jurisdiction to invoke the powers u/s 24. Thus, High Court invoked the powers u/s 24 though, they are not prescribed.

11. In the case of Bhagwati Devi v. I.S. Goel, 1983 Acc CJ 123, Hon''ble Supreme Court exercised the powers u/s 25 of the Civil Procedure Code. Thus, their Lordships of the Hon''ble Supreme Court applied CPC though not prescribed under any sub-section regulations or the rules. In the case of State of Haryana Vs. Smt. Darshana Devi and Others, their Lordships held that the reasoning of the High Court in holding that Order 33 will apply to the Tribunal which have a drapping of the Civil Court, finds our support. Thus, the Supreme Court applied the provisions of Section 25, C.P.C. as well as Order 32, C.P.C. Any provision of the C.P.C. can be applied unless specifically prohibited or by implication prohibited and other alternative procedure has been laid down. Under the Act or the Rules as laid down by this Court in the case of Rajasthan State Road Transport Corporation, Jaipur Vs. Kalawati and Others, does not survive after the various decisions of the Hon''ble Supreme Court. Apart from that one should not forget the purpose of the legislation. The purpose of the legislation is that it should be treated as special Civil Court having the special power in the matter of framing of the rules and following the summary procedure. Thus, it may not be necessary to record the evidence. The parties may be asked to file their affidavits and the proceedings may be allowed to be continued by allowing the other party to cross-examine. Thus, it may lead to the curtailment of the unwarranted time, which is taken by the regular Civil Court. Similarly, it may not be necessary to allow to have a detailed cross-examination and to prohibit on some points and to limit it on some points. This Section 110(C) now Section 169, which is just like the procedure laid down in Chapter 21, C.P.C., under Sections 260 to 265. Tribunal can prescribe such rules. It will not be out of place here to mention that the law u/s 173 of the Amended Motor Vehicles Act, 1988 provides that no appeal shall be entertained by the High Court unless the appellant has deposited with it Rupees 25,000/- or 50% of the amount was awarded whichever is less, in the manner prescribed by the High Court. I advised the Registrar of this Court to bring to the notice of the Hon''ble Chief Justice that it is our duty on the administrative side to prescribe the manner of deposit. Thus, Section 173 of the Act further curtails the rights of appeal or limits the right of appeal for one reason or the other. Thus, the subordination of the Motor Vehicles Tribunal is there because of the provisions of Section 110-D now 173 of the Act of 1988.

12. Mr. Gupta submitted that in some cases the revision has been converted in the writ petition. The powers under Article 227 are very limited powers. High Court has a power of superintendence under Article 227 of the Constitution. Power of superintendence does not confer the power of hearing the appeal. However the power of appeal leads us to consider that the Motor Vehicles Tribunal is a Court subordinate to the High Court.

13. It will not be out of place here to mention that the Motor Vehicles Claims

Tribunal cannot be equated with the Industrial Tribunal and the Labour Tribunal. Under the industrial law there is no power vested in the High Court to hear the appeal. The reasoning given by Mr. Gupta, in such circumstances may be good about the Industrial Tribunals where the power to hear the appeal is not vested in the High Court, in that course it may be said that the power is only limited up to the power of superintendence and, as such, it can be said that the Industrial Tribunal is not Court Subordinate to High Court. However, the powers of appeal given under the Motor Vehicles Act will definitely lead to a conclusion that it is subordinate to the High Court and the nomenclature given to the Motor Vehicles Tribunal that it is a Tribunal will not take it out of the purview of the Civil Court, I am of the view that this revision petition is maintainable. As far as the merits of the case is concerned, in the interest of justice, the petitioner should be given further opportunity to produce evidence on the next date.

14. In the result, the revision petition is accepted. The order dated 27th May, 1988 is set aside.

15. No order as to costs.