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In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 64 of 1991

Gaya Prasad and Another — APPELLANT

Vs

Suresh Kumar — RESPONDENT

Date of Decision : 13-12-1991

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1939 — Section 110B, 110D
Motor Vehicles Act, 1988 — Section 140, 140(1), 149(1), 168, 168(1)

Citation : (1992) ACJ 200 : (1993) 76 CompCas 711 : (1992) JLJ 143 : (1991) 2 MPJR 427 : (1992) 37 MPLJ 485 : (1992) MPLJ 485

Hon'ble Judges : T.N. Singh, J;R.C. Lahoti, J;K.M. Pandey, J

Bench : Full Bench

Judgement

T.N. Singh, J.

For this Bench''s opinion are referred, in two separate matters, the following two questions :

M. A No. 64 of 1991 :

Whether the. insurer and/or the owner/driver of the offending motor vehicle or vehicles against whom an order for compensation is passed in terms of the provisions of Section 140 of the Motor Vehicles Act, 1988, has a right of appeal against that order u/s 173 of the Act ?

M. M. No. 138 of 1991 :

Whether any appeal filed on or after June 1, 1989, challenging an order of compensation passed by the Motor Accidents Claims Tribunal in terms of the provisions of Section 140 of the Motor Vehicles Act, 1988, or the final award passed u/s 168 of the Act, can be entertained without the appellant fulfilling the requirement of the provisions contained in Section 173 of the Act of making requisite deposit of the sum contemplated thereunder ?

Hereinafter, the above questions would be referred to as the first and the second question, respectively.

The parties and also the facts of the two matters are different but, for the sake of convenience, we are treating them as analogous for answering the questions of law above referred, both involving the same exercise of interpretation of Section 173, Motor Vehicles Act, 1988 (for short, " the Act"). Indeed, another common feature of the two matters is that orders for interim compensation passed u/s 140 of the Act by the Motor Accidents Claims Tribunal are challenged in the two . appeals preferred u/s 173.

The appellants in M. A. No. 64 of 1991 are owners of a bus, bearing registration No. CPJ 8342, said to be involved in an accident on March 24, 1988, in which the claimant/respondent is found to have been seriously injured. On February 18, 1991, the Motor Accidents Claims Tribunal, Bhind, passed the impugned order against the owners for payment to the claimant of interim compensation of Rs. 7,500 after recording the finding that particulars of the insurer could not be ascertained. In the appeal, the two-fold plea disputes the identity of the vehicle involved in the accident and the fact of the claimant suffering permanent disability. When the matter came up for hearing on admission before the learned single judge, he took the view that the question of maintainability of the appeal deserved consideration and decision of a larger Bench because it was necessary to examine the correctness of the view expressed in this court''s Division Bench decision in Oriental Insurance Co. v. Pritamlal [1989] ACJ 1129. As such, the respondent was not noticed but when this Bench heard the matter, we requested Shri B. N. Malhotra, advocate, to assist the court as amicus curiae. We heard the appellants'' counsel, Shri M. C. Jain, but allowed Shri Malhotra time to file written arguments which have come on record and are perused.

In the other matter, the insurer is the appellant and in that appeal too, in another form, the question of maintainability of the appeal arises. It was contended by the appellant''s counsel that though the appeal was preferred u/s 173 of the Act, the accident having taken place on February 8, 1985, prior to the enforcement of the new Act, the appellant was not required to make the deposit contemplated under the proviso to Section 173(1). He had relied on this court''s Division Bench decision in Jaswant Rao Vs. Kamlabai and Another, to support his contention which did not appeal to the referring judge. That decision he found amenable to reconsideration on its substratum being shaken by this court''s subsequent Full Bench decision in Babulal and Others Vs. Ramesh Babu Gupta and Others, Under the impugned order, passed on November 29,1990, by the Motor Accidents Claims Tribunal, Morena, for the death of Shrichand, his widow (claimant respondent No. 1) and two sons (claimants/respondents Nos. 2 and 3) are held entitled to be paid Rs. 15,000. There is a finding recorded in the impugned order that in the accident, two vehicles are involved : Truck No. CPH 9485 owned by respondent No. 4, Virendra Pal Singh ; and tractor No. RTT 347, owned jointly by respondents Nos. 7 and 8, Bharat Singh and Bhagwan Singh.

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Both insurers, New India Insurance Co. and the instant appellant, United India Insurance Company, along with the owners, have been held jointly and severally liable. Shri J.D. Suryavanshi, appellants'' counsel, had suffered an accident and filed belatedly, therefore, on October 22, 1991, his written arguments in this matter. We have perused those arguments and also the written arguments filed by the learned amicus curiae. The main contention agitated in the memorandum of appeal is that the tractor in question was not insured with the appellant during the relevant period.

Lest we lose direction and purpose, we set out below the statutory radar, extracting in extenso, Section 173 :

" 173. Appeals. -- (1) Subject to the provisions of Sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty five thousand rupees or fifty per cent, of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than ten thousand rupees. "

Two basic legal constitutional postulates of undisputed immutability we must also bear in mind, they are :

The Legislature has plenary power to enact any law within constitutional limits. Basically, that constraint is two-fold. First, the legislative competence with respect to the subject-matter of legislation, to be determined in terms of Part XI and the Seventh Schedule to the Constitution. Second, insulation of the law enacted against any likely challenge posed by article 13. Legislative power can be exercised not only for enacting a statute or amending it, but also for repealing it or re-enacting it, with respect to the same subject-matter.

The right of appeal is a creature of the statute. It is a substantive right, but its scope and ambit depends on legislative intent expressed in the provision enacted. Because the Legislature can enact retrospective legislation, it can modify or even take away a vested right of appeal ; such intention is ordinarily explicitly manifested, but it follows also from necessary implication.

Judicial legislation is forbidden ; but judicial impotence is sinful. That also we must remember because High Courts are constitutional courts and its judges are supposed to look ahead and through tangled webs ; law is to be interpreted teleologically according to constitutionally ordained norms to ensure that the

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"paramount parchment" does not turn into a "Dead-Sea Scroll". The provisions, whether of ordinary law or of the Constitution, are to be interpreted, it has been authoritatively held, to effectuate the directive principles and to ensure that those are not defeated. See, in this connection, Pathumma and Others Vs. State of Kerala and Others, and Ranjan Dwivedi Vs. Union of India (UOI), A country without a written Constitution, England, is also veering increasingly to lean on purposive interpretation. The House of Lords decision in Shah v. Barnet London Borough Council [1983] 1 All ER 226 is a recent example of that exercise. The Constitution Bench, in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, has recognised that trend and has accorded it primacy. Other decisions also may be referred to : Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others, and Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, but of immediate relevance is the holding of their Lordships in the recent decision in Atma Ram Mittal Vs. Ishwar Singh Punia, They observed : "purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else; " Shetty J.''s view in Kehar Singh and Others Vs. State (Delhi Administration), deserves also to be referred to in this connection : the court cannot substitute its own notion of legislative intent but it does possess the power of choice ; there is no "golden rule" of universal application. A passage from his judgment we feel tempted to extract below (at page 1945) :

" Court would then examine every word, every section and every provision. Court would examine the Act as a whole. It would look at the mischief which the Legislature intended to redress. It would look at the whole situation and not just one-to-one relation. It will not consider any provision out of the framework of the statute. It will not view the provisions as abstract principles separated from the motive force behind. It will consider the provisions in the circumstances to which they owe their origin. It will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences."

In order to answer the first question, we regard it appropriate to . extract Sub-sections (1) and (2) of Section 140 :

" 140. Liability to pay compensation in certain cases on the principle of no-fault. -- (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death of disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees."

Sub-sections (3) and (4) contemplate that the claimant is not to" plead and

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establish " that the accident occurred due to any " wrongful act, neglect or default" of the owner or owners and that contributory negligence of the victim or "the deceased can be no defence against the claim ; Subsection (2) of Section 141, however, deserves to be extracted in extenso for its material bearing on the controversy :

" A claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expe-ditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place."

Chapter VII-A was inserted in the old Act of 1939 with effect from October 1, 1982, containing sections 92A et. seq. Chapter X of the new Act re-enacts verbatim those provisions. This statutory innovation owes its prigin to the judicial clamour raised at the highest level as recognised in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, At para 5 of the report, their Lordships extract the Statement of Objects and Reasons appended to the Bill of the old Act and at para 6 they proceed to refer to their earlier decisions highlighting the need for " no-fault liability." A short passage from one of those decisions, N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, per Krishna Iyer J. deserves to be extracted (at page 1355) :

" Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and article 41 of the Constitution Jays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years."

Evidently, as noted above, the provision for interim compensation has been envisaged to take care of " cases of undeserved wants" to fulfil the constitutional imperative of article 41 in order to prevent destitution of widows and orphans and also to care for the permanently disabled victim of a motor accident. In Shivaji Dayanu Patil [1992] 75 Comp Cas 348 (SC) their Lordships have held that orders for interim compensation are to be passed summarily and formal procedure prescribed with regard to adjudication of the claim preferred u/s 110A (old Act) to enforce liability of tortfeasors on the principle of fault is not to be followed. Because, Legislature has contemplated explicitly as per Section 141(2) for a certain sum to be made available to the victim or his heirs "as expe-ditiously as possible." This court in Mahila Ramdei Vs. Nand Kumar and Others, has held that the Tribunal is to act suo motu u/s 92A and until the claim envisaged thereunder is decided, it shall have no jurisdiction to proceed further and try the claim petition and adjudicate liability under the principle of fault. As

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held in Shivaji''s case [1992] 75 Comp Cas 348 (SC) the Tribunal is only required to " satisfy itself" with respect to the triune requirement; an accident has arisen out of use of one or more motor vehicles ; it has resulted in permanent disablement of the claimant or of death of the person whose legal representatives'' claim is to be decided ; the owner or owners and the insurer or insurers of the motor vehicle or vehicles involved in the accident are held liable.

Indeed, nowhere in the language of the provisions of Chapter X is the word "award" used. The jurisdiction of the Tribunal to make an order u/s 140 is traceable obviously to Section 141(2) and the Explanation to Section 165(1) but reference may also be made to Section 166(2), proviso, and Section 168(1), proviso. Chapter X is a complete code which is supposed to deal with all matters concerning " liability without fault in certain cases " and that position is buttressed by Section 168(1), proviso, mandating disposal of the claim in that regard as per the provisions only of Chapter X and thereby excluding applicability of the provisions of Chapter XII which contains Section 168 as also Section 173. No provision for any appeal against the order passed u/s 140 is contemplated in the said Chapter. The liability once determined by the Tribunal, acting within the scope of its jurisdiction, with due satisfaction recorded in respect of the conditions precedent noticed in Shivaji [1992] 75 Comp Cas 348 (SC) becomes indefeasible. Although the " owner " or " owners " in terms of Section 140(1), are primarily liable, their liability devolves statutorily in terms of Section 145(c) and Section 149(1) on the insurer and the Tribunal gets vested with jurisdiction and competence to direct the insurer to discharge that liability. Section 144 of Chapter X imparts " overriding" effect to other provisions thereof, which are to prevail over " any other provisions of this Act or of any law for the time being in force." For good and valid reason, to achieve the pre determined and paramount objective, the Legislature took care to ensure that no order passed u/s 140 is taken in appeal and that is enforced instantly to reach the destitute immediately that relief granted. Pendency of such appeals in the High Court would interdict the "immediate" relief and frustrate the object of the order. When the Tribunal refuses arbitrarily to pass an order u/s 140, the claimants would not be remedyless. High Courts, where appeals u/s 173 are heard, possess supervisory jurisdiction under Article 227 of the Constitution to give them due relief with greater expedition. In any case, courts of District Judges, functioning as Tribunals, are supposed to act with full awareness of the responsibility saddled on them and pass orders exercising their jurisdiction judicially and not arbitrarily.

On a comparison of the provisions of Chapters X and XII of the Act, it appears clear that the order contemplated u/s 140 of Chapter X is an interim order passed in the course of the proceeding instituted in the Claims Tribunal. Compensation may be claimed by a person injured in a motor accident and also by legal representatives of the deceased in the case of death. No sooner is an application u/s 166 of Chapter XII lodged, than the statutory obligation of the Tribunal to pass an order with reference to the claim made in the application arises immediately u/s 140, read with Section 141(2), of Chapter X irrespective

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of prayer in that regard being made separately or in the same application as contemplated under the proviso to Section 166(2). The order is passed in the course of trial of the same claim to which composite character is statutorily imputed and separate provisions are made for dealing with and disposing of at different stages of the proceedings the two different parts of the same claim founded on differing principles of " fault" and " no-fault". Although the order passed u/s 140 disposes of finally one part of the claim, the proceedings do not terminate and they continue till the final " award " is passed u/s 168. Though the proviso to Section 168(1) clearly manifests legislative intent to treat the order passed u/s 140 as an interim order passed in the course of trial of the claim, it does carry also the implication that the finality of that interim order is not impugnable under any provision of Chapter XII. Indeed, the Legislature''s competence to make non-appealable any interim order is beyond dispute, and the provisions of Sections 96 and 104, Civil Procedure Code, exemplify this. In this connection, we refer to Shah Babulal Khimji Vs. Jayaben D. Kania and Another, and Rajmata Vijaya Raje Scindia [1988] JLJ 86 ; [1988] MPLJ 78. Special provisions for dealing with the whole hog any claim for compensation on the principle of " no-fault " liability contemplated under Chapter X must be accorded primacy and the right to appeal against an order passed in that regard being denied expressly, such a right cannot be judicially interpolated.

Section 173(1) of the Act may be legitimately compared to Section 96(1)", Civil Procedure Code. " Every decree " is appealable u/s 96(1), Civil Procedure Code, but u/s 173(1) of the Act, the appellant is required to satisfy twin conditions. He can challenge only an " award " and he must also be a person who can claim to be " aggrieved " thereby. In Black''s Law Dictionary, 5th Edition, the meaning given to the expression " aggrieved person " /" aggrieved party " is --" whose legal right is invaded by an act complained of". Obviously, such a person who can plead in appeal that the Tribunal wrongly rejected his lawful plea can be a person who can say that the order invaded his legal right. An order u/s 140 is passed on the Tribunal''s satisfaction recorded in respect of three simple requirements as held in Shivaji''s case [1992] 75 Comp Cas 348 (SC) and Sub-sections (2) and (3) expressly bar specifically defence pleas contrary thereto. Although an insurer may rightly complain in a given case that he had taken the plea before the Tribunal that the vehicle was not duly insured with it at the time of accident, or that he may be heard by the High Court under Article 227 of the Constitution as the question of the Tribunal''s jurisdiction to hold the insurer liable illegally would arise.

It is also argued that if the Legislature could expressly bar appeals under Sub-section (2) when " the amount in dispute in the appeal is less than 10,000 rupees", it could also expressly make its intention clear similarly by providing that against an order for interim compensation too an appeal will not lie. To that contention, there is a short answer. Sub-section (2) speaks of an " award " and indeed Section 173 in its entirety is to be read subject to the provisions of Chapter X. The provisions of Chapter X being expressly invested with an

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overriding effect a repeat exercise was out of the question. Indeed, the innovative provision, the first proviso of Section 173(1), is meant indeed to take care of a casus omissus ; it is at once beneficent and curative. To read it otherwise may defeat its object and purpose. As is the position under the new Act, under the old Act too Section 92A applied also to a proceeding in the Workmen''s Compensation Commissioner''s Court and a claim for death or injury (even in a motor accident) was triable in that court. u/s 30(1). Workmen''s Compensation Act, any order passed by that court was appealable but on the full amount of compensation awarded being deposited. The provision of appeal (Section 110D) under the old Act failed to maintain parity in regard to " award " passed by the Claims Tribunal. That " mischief" the new provision in the new Act has sought to remedy to some extent. The Legislature has, however, contemplated limited application of the new provision to its field of operation in respect of an " award " impugned in the appeal preferred u/s 173(1) in respect of adjudication of the claim on the principle of "fault" ; to extend its scope judicially would be a constitutional sin, relatable to violation of the mandate of Articles 39A and 41.

The spectre of constitutional apostacy deters any attempt to dabble in involved logic as will flout the deliberately proclaimed legislative intendment. Even if the nuanccs of the legislative venture displays a subtle strain, judicial labour is not to be misdirected ; its source, the " mischief rule", is not to be ignored. By making the entitlement of the claimant to compensation on the principle of " no-fault" absolute and indefeasible in virtue of Section 144 (which imparts "overriding effect" to Section 140) the enforcement of the right in terms of order passed u/s 140 is also pari passu secured firmly and the claimant is assured of immediate payment in full, from the owner/insurer, of the amount ordered to be paid to him. If appeal against that order is to be held maintainable u/s 173(1) that provision is to be applied in a truncated form (minus the first proviso) for obvious reasons ; judicial amputation of a statutory provision is, however, constitutionally forbidden. It is obvious that the moment any appeal is filed u/s 173(1) the first proviso thereof becomes operative instantly, imperatively and invariably. The claimant''s right to get immediate payment of the full amount specified in the order impugned is at once arrested in virtue of the right contemplated under the said proviso of the appellant to deposit only a part of the amount and claim validly, deferment indefinitely of payment of the balance. Additionally, such an appeal may delay disposal of the claim on the principle of " fault", the claimant may be forced to trudge along a tear-shodden path, criss crossed by multiple proceedings.

We now look at the decisions cited, beginning with Pritamlal [1989] ACJ 1129 of this court. What appears clear to us is that the Bench considered the matter from a single angle. The learned judges thought that if the order of interim compensation passed u/s 92A (old) was not regarded as an " award ", that would be a " paper order" and would defeat the object of Chapter VII-A (old). For that, immediate inspiration was provided by Section 110E (old) which contemplated

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recovery as arrears of land revenue of any money due under an " award ". This court''s Full Bench has since enlarged the scope of jurisdiction of the Claims Tribunal in Smt. Sarmaniya Bai and Others Vs. Madhya Pradesh Rajya Parivahan Nigam and Others, It is held that the Claims Tribunal is competent to execute its orders awarding compensation in the exercise of its inherent jurisdiction which it continues to possess as a civil court and that it has jurisdiction to enforce its orders applying the provisions of Order XXI, Civil Procedure Code. As the matter has not been viewed in Pritamlal [1989] ACJ 1129 from any other angle, we are required to observe only this much that the apprehension which troubled the learned judge has vanished. That apart, due attention does not appear to have been paid to the legislative intent of deliberately avoiding the use of the word "award" in the entire Chapter VII-A (old). A word or two about the Allahabad High Court''s decision in Sant Ram v. Suryapal [1986] ACJ 202 on which they relied. Although the learned single judge took pains to refer to the different provisions of the Act, at para 10 of the report, the buck stopped at Section 110E which was regarded as an " important clue ". Indeed, it is for this reason that Pritamlal [1989] ACJ 1129 drew inspiration from this decision.

The learned amicus curiae, Shri Malhotra, has cited case-law expressing divergent views. Because there are only two decisions taking a view similar to ours, we would first refer to them. In Rajasthan State Road Trans. Corpn. and Others Vs. Chhitariya and Others, a learned single judge has held that appeal against an order granting interim compensation u/s 92A does not He and that the appeal may be treated as a revision. He has, of course, given no reason for the view expressed. Another learned single judge of the Jammu and Kashmir High Court in Janak Raj v. Union of India [1989] ACJ 1148 has also held that an order for interim compensation passed u/s 92A (old) is not appealable. Before him also, the Allahabad decision in Sant Ram [1986} ACJ 202 ; [1987] 62 Comp Cas 87 was cited without success. The learned judge proceeded on the basis that the right of appeal being a statutory right and that right being conferred only in respect of an award passed in terms of section HOB (old), the scope o''f that right cannot be extended to an order passed u/s 92A (old). He also observed that if that view is not taken, the object of making provision for payment of compensation on the principle of " no-fault liability" would be defeated as the deserving claimant would not receive immediate assistance.

We may now refer to the other line of decisions taking the contrary view. However, the Jammu and Kashmir High Court''s Full Bench decision in Mohammad Yousuf Wani v. Abdul Rehman Gujri [1983] ACJ 242 to which Shri Malhotra has drawn our attention in particular to paras 16, 17 and 19 of the report, also supports the view we have taken. Separate judgments were rendered in that case by the learned judges and the reasoning adopted by the majority conforms essentially to our view. A different question, however, was to be decided in that case : whether the order of the Claims Tribunal refusing to set aside an order dismissing the claim petition for non-appearance of the claimant was appealable. According to the majority opinion, the order was not an " award

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" and was, therefore, not appealable. Per Kotwal J., at paras 16 and 17, the meaning of the term " award " used in Section 110D, in the context of Section 110B, is illustratively determined and at para 19, finally, the learned judge holds the order to be not an " award " and not appealable, because the order did not dispose of the claim petition finally. The reasoning adopted by the learned judge is essentially the same as ours as he holds that if each and every order passed by the Tribunal is regarded as an " award ", that would cause considerable delay in granting appropriate relief to the aggrieved party.

A learned single judge of the Bombay High Court in Sulochana v. Gurbachan Singh [1989] ACJ 667 was dealing with the claimant''s appeal challenging dismissal of the claim petition itself. The claim had been made only u/s 92A and, therefore, the maintainability of the appeal was challenged. Kotwal J.''s view was relied on to hold that of the same ingredients were made the order passed u/s 92A and the " award " made u/s 110B. Section 110E was also referred to for harmonizing the different provisions of the Act, but mainly, Rule 306B of the Bombay Motor Vehicles Rules, 1959, was relied on to construe the term " award ". We do not think, however, that any extra jural meaning can be given, to relieve hardship or in dealing with a "hard case", to the terms " award " judicially through a tortuous exercise, by tearing it apart and viewing it in isolation, out of its statutory context and setting. We do not also think that any subordinate legislation can control the parent law.

Another decision taking a contrary view is of a Division Bench of the Kerala High Court in United India Insurance Co. Ltd. Vs. Padmavathy and Others, The word "award" being not defined either in the new Act or in the repealed Act, the learned judges regarded it legitimate to refer to the Law Lexicon by P. Ramanatha Aiyar. They held accordingly that the term "award" ordinarily means, "to adjudge to be due, by judicial determination or deliberate judgment". They also accorded primacy to the proviso to Sub-section (2) of Section 168. Although the learned judges referred to Sub-sections (2) and (3) as well of Section 168 to support the view taken, we have found ourselves unable to agree with the conclusion reached. We do not think the Claims Tribunal is in any way handicapped in delivering copies of the order passed u/s 140 or in making direction in regard to satisfaction of that order because this court''s Full Bench in Smt. Sarmaniya Bai and Others Vs. Madhya Pradesh Rajya Parivahan Nigam and Others, as observed above, has held authoritatively that a Claims Tribunal possesses inherent powers and that, in our view, can be exercised to enforce all types of orders it passes. It obviously has inherent jurisdiction to deal also with any incidental matter in respect of the order it passes u/s 140. We need not deal with State of Uttar Pradesh Vs. Bhagwati Pawar and Others, because no question as to appealability of an order for interim compensation passed u/s 92A was raised in that case; the question agitated was, whether the amount paid (although referred to in the judgment as " interim award ") was deductible from the final " award ".

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We have been unable to persuade ourselves to subscribe to the Bombay and Kerala views and indeed we have found support for our view from the decisions cited of the Rajasthan and Jammu and Kashmir High Courts. We have already explained the changed circumstances under which it is not possible to hold this court''s decision in Pritamlal [1989] ACJ 1129 as laying down the law correctly and indeed, we have also given reasons for dissenting from the Allahabad High Court''s decision in Santram [1986] ACJ 202 ; [1987] 62 Comp Cas 87.

Accordingly, we answer the first question in the negative. We hold that no appeal lies u/s 173, Motor Vehicles Act, 1988, against an order passed u/s 140 of the Act against the insurer and/ or the owner/driver of the offending motor vehicle or vehicles. Consequently, the decision in Pritamlal [1989] ACJ 1129 stands overruled.

We proceed to answer the second question now. At para 5, Section 173 of the new Act has been extracted in extenso, but in dealing with the second question, reference is to be made also to Section 217 as that has a material bearing on the question mooted. Therefore, the relevant portion of that section is also extracted ;

"217. Repeal and savings.--(1) The Motor Vehicles Act, 1939 (4 of 1939), and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereinafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments, --

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted or any confiscation made or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments and in force immediately before such commencement shall, so far as is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act ;

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."

Although a large mass of case-law has been cited by Sarvashri Malhotra and Suryavanshi, of which some citations are common, we have no doubt about the crux of the controversy. That is, whether in terms of the savings contemplated u/ s 217, the pre-existing right (contemplated u/s 110D of the old Act) can be invoked in derogation of the new provision of appeal contemplated u/s 173 of the new Act. Potently and patently, the entire old Act (Motor Vehicles Act, 1939), is " repealed " by Section 217(1) and we do not know if that clear intendment of the Legislature can be defeated by resort to any general theory on which much emphasis is laid, relying on the apex court''s decision in Padma Srinivasan Vs.

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Premier Insurance Company Limited, True, we would be required to examine the scope and ambit of Sub-section (4) of Section 217, but we shall advert to that in due course. We may profitably refer even at this stage, however, to the Privy Council''s decision in G. Ogden Industries v. Lucas [1969] 1 AH ER 121. Construing the term " right accrued " in the Crown Lands Act, 1884, which had repealed the earlier Act of 1861 and had provided that notwithstanding the repeal" all rights accrued " by virtue of the repealed enactment should remain unaffected, their Lordships held that the mere right existing at the date of the repealing statute to take advantage of the provisions of the Act repealed was not a " right accrued" within the meaning of the saving clause. Evidently, legislative competence to extinguish existing rights cannot be denied and, therefore, there can be no question of any " right accrued " unless any such right is saved under the new enactment repealing the old provisions.

A word now about Padma Srinivasan Vs. Premier Insurance Company Limited, In that case, their Lordships held that the liability of the insurer would be extended to the legal provision as it stood on the date of the accident and as that had occurred during the currency of the policy, the insurer''s liability was unquestionable. In that case, the enforcement of the particular right was not a right of appeal, but the right to enforce liability against the insurer in a proceeding u/s 110A (old) for compensation. It was in that context that their Lordships observed that " the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy ". That dictum''s relevance to the instant controversy is unimaginable. Accordingly, we hold inappropriate also reliance on this court''s Full Bench decision in New India Assurance Co. Ltd. v. Nafis Begum [1991] JLJ 490 ; [1991] MPLJ 700 ; [1991] AC] 960 . Although two of the learned judges constituting the Bench leaned heavily on Padma Srinivasan Vs. Premier Insurance Company Limited, for the view taken, S. K. Jha, Chief Justice, who gave s separate judgment in that case, preferred, however, to deal with the question of retrospectivity of Section 92A, old Act, raised in that case in a different manner. The learned Chief Justice took the view that " no-fault liability " contemplated u/s 92A would be operative from the date when the Legislature intended it so and, therefore, the date of enforcement of the provision would be determinative of legislative intent. In that case, too, the question that was agitated was not of right of appeal, but of the right to enforce the liability itself (" no-fault").

We examine now the decision injaswant Jaswant Rao Vs. Kamlabai and Another, the correctness of which is doubted by the learned referring judge. At para 6 of the report, the Bench referred to, and relied on, this court''s earlier Division Bench decisions in Chuluram Vs. Bhagatram, and Sitaram v. Chatarao [1981] JLJ 171 to lean on the principle that the right of appeal accrued to the parties to the suit on the date of institution of the suit and on that basis indeed reached the conclusion that the objection to the maintainability of the appeal under the

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proviso to Section 173(1), new Act, was not maintainable and it was held that the appellant was not required to deposit Rs. 25,000 as contemplated thereunder. Those two decisions relied on in Jaswant Rao Vs. Kamlabai and Another, have, however, been overruled by this court''s Full Bench in Babulal and Others Vs. Ramesh Babu Gupta and Others, and for the view taken, the Full Bench referred to the statutory saving clause, in that case, of Section 97, CPC (Amendment) Act, 1976. They observed, however, that " there is no inherent right of appeal (and that) once a right of appeal has been given, it can be taken away only by express provision in the statute or by the necessary intendment".

Although in Jaswant Rao Vs. Kamlabai and Another, the view expressed by the Division Bench of the Allahabad High Court in Oriental Insurance Co. Ltd., Haldwani Vs. Dhanram Singh and others, was found unacceptable, we find the Allahabad decision quite illuminating and, in our view, the correct law was laid down in that case by the learned judges of the Allahabad High Court. It has been rightly held that though the right of appeal is a substantive right and that right is saved, matters of procedure relating to that right are not saved. While taking that view, due consideration was paid to the provisions of Section 217, aforequcted, and also to Section 6 of the General Clauses Act, 1897, separately, to which reference is incorporated in Section 217(4). We express our respectful agreement with the conclusion recorded at para 15 of the report that even in respect of a right of appeal which accrued u/s 110D (old), that right must be availed only in the manner provided for under the repealing Act, namely, u/s 173 of the new Act.

As observed at para 23 above, impact only of Sub-section (4) of Section 217 is to be considered on the controversy. Neither Sub-section (2) nor Sub-section (3), in our view, has any relevance to the controversy though reliance is placed on Clause (a) of Sub-section (2) and in that regard we have to say a few words. That clause apparently saves any action taken not by any party under the Act, but by any functionary exercising its power and jurisdiction for doing that act under the old Act ; though it speaks of " penalty or fine imposed, any forfeiture, cancellation or any other thing done ", in terms thereof also, there is no saving contemplated of any pre-existing right or liability of any party. A Division Bench of this court (Dr. T.N. Singh J. and R.C. Lahoti J.) had noted this position in Prabhavati Sharma and Others Vs. Brijmohan Parihar and Others, It was held that Sub-section (2)(a) of Section 217 had not kept alive for adjudication under the new Act the " liability" with respect to which, as per Section 6, General Clauses Act, "legal proceeding or remedy" contemplated under the old Act has to be " continued or enforced ". That ratio applies squarely to the instant controversy because on a parity of reasoning, we can say that no right to file an appeal under and in accordance with the provisions of the old Act (Section 110D) has been kept alive by Section 217(2)(a). We reiterate the view expressed in Prabhavati Sharma and Others Vs. Brijmohan Parihar and Others, and we do not think, therefore, that fresh examination is at all called for of Sub-section (4) which Prabhavati Sharma and Others Vs. Brijmohan Parihar and Others, had

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construed along with the role of Section 6, General Clauses Act in the operation of that provision. Still, one word we may add that Section 217(4) speaks of " general application " of the said Section 6 and nothing beyond that; it does not create in terms any saving aliunde in respect of any other matter not enumerated in Subsection (2).

What survives now is to note merely the other decisions which counsel cited to establish the accepted position with which there is no quarrel. Reference is made to the decisions in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, ; Garikapatti Veeraya Vs. N. Subbiah Choudhury, ; State of Bombay Vs. Supreme General Films Exchange Ltd., ; Mukund Deo (Dead) represented by his legal representatives Kasibai and Others Vs. Mahadu and Others, ; Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, ; T.S. Baliah Vs. T.S. Rengachari, ; T.S. Baliah Vs. T.S. Rengachari, and Jayantilal Amrathlal Vs. The Union of India (UOI), We have gone through those decisions, but we do not find that the view taken by us is indented in any manner by anything stated in those cases. Suffice it to say this much that different saving clauses in different enactments were construed in some of those cases and the construction evidently was founded upon the language of statutory provisions in each case.

It is true, as held in Jayantilal Amrathlal Vs. The Union of India (UOI), and T.S. Baliah Vs. T.S. Rengachari, ; T.S. Baliah Vs. T.S. Rengachari, that the court''s approach should be " not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law, but whether it has taken away those rights and liabilities ". However, it is also held in those decisions (as indeed is mandated by the language of the said Section 6, General Clauses Act) that enquiry is also to be made if the new Act expresses a " different intention ". That is really the clinching clue of the present controversy. There is clear departure in the new Section 173 in respect of the mode and manner in which an appeal thereunder can be preferred as there was no provision in the old Act u/s 110D of the nature of the first proviso to Section 173(1). The clear intention of the legislature to circumscribe the right of the appeal in all cases preferred after the new Act is manifested expressly and that intendment admits of no ambiguity. There is a weighty rationale of the new object to be fulfilled by the new provision embodied in the first proviso to Section 173(1), leaving no scope for any ambiguity about legislative intent underlying the new provision. Frivolous appeals deserved to be curtailed and even otherwise, claimants'' right deserved to be safeguarded by insisting on prior deposit of a part of the sum awarded which could be made available to the claimants by an interim order when the appeal is admitted.

Indeed, even in Garikapatti Veeraya Vs. N. Subbiah Choudhury, that position is recognised, holding that though a right of appeal is a vested right, it can still be taken away by subsequent enactment if that is so provided expressly or by necessary intendment. The reason why the right of appeal is regarded as a

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substantive right is that the institution of a suit carried with the implication that all rights of appeal in force are preserved to the parties till the rest of the career of the suit. So, the implied right can be varied too by the Legislature expressly or by necessary intendment as held in Garikapatti Veeraya Vs. N. Subbiah Choudhury, About other decisions, we need not say anything because of the established position stated in those cases that a right of appeal is not merely a matter of procedure.

We conclude accordingly, answering in the negative the second question. We reiterate that the law applicable for the exercise of the right of appeal against an " award " passed by the Motor Accidents Claims Tribunal is the law in force on the" date on which the appeal is preferred ; the procedure prescribed under the new law would apply to the appeal to be preferred thereunder. We hold that to any appeal pending disposal on July 1, 1989, already preferred u/s 110D (old), the provisions of Section 173 (new) would not apply ; but, to any appeal preferred under the new provision, the old procedure which has been repealed would not apply. In any appeal preferred u/s 173, after July 1, 1989, irrespective of the date of accident and date also of the " award " (whether passed u/s 110B, old; or 168, new), the appellate court would be required, as statutorily mandated under the first proviso to Section 173{1), to pass necessary order in regard to the requisite deposit to be made for the appeal to be heard and decided. However, in respect of any pending appeal, no deposit, as is contemplated under the new proviso, is required to be made; hearing of that appeal would proceed and decision on that appeal is to be rendered on merits in case only of challenge made in such an appeal to an " award " finally passed by the Motor Accidents Claims Tribunal and the appeal challenging any order of interim compensation would be liable to be dismissed as not maintainable. We express our respectful agreement with the Allahabad High Court''s Division Bench decision in Oriental Insurance Co. Ltd., Haldwani Vs. Dhanram Singh and others, and we are constrained to hold also that the law laid down in Jaswant Rao Vs. Kamlabai and Another, by this court is not the correct law.

We place on record our appreciation of the valuable assistance which Shri B.N. Malhotra has rendered as amicus curiae in this matter.

Records shall now be placed before the referring judge for final disposal of the two matters on merits,

R.C. Lahoti, J.

I have had the advantage of going through the opinion recorded by my learned brother, Dr. T.N. Singh J. Though I express my agreement with his opinion recorded on question No. 2 arising out of M. M. No. 138 of 1990 as will be noticed hereinafter, yet I have not been able to persuade myself to agree with the view taken by my learned brother on question No, 1 arising out of M.A. No. 64 of 1991. On that question, I proceed to record my own opinion setting out the reasons for taking a different view.

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Question No. 1, noted in the first para of the opinion of brother, Dr. T.N, Singh J., which question I need not reproduce, has two aspects :

(i) whether an order directing payment of compensation on the principle" of " no-fault liability" statutorily recognised u/s 140 of the Motor Vehicles Act, 1988 (referred to hereinafter as " the new Act", for brevity), can be called an " award" within the meaning of Section 173 of the Act so as to make it appealable inasmuch as Section 173 contemplates an appeal against an " award " alone ;

(ii) whether the insurer and/or owner and/or the driver of the offending motor vehicle/s can be said to be a " person aggrieved " by an order of " no fault liability " compensation.

It is true that Section 140 does not use the term "award" to designate the order of compensation made thereunder. That will not make any difference because we have to determine the nature of such order though Parliament has chosen not to lend the name "award" to such an order. To compose the problem, it is : whether an order of " no-fault liability " compensation u/s 140 amounts to an " award " within the meaning of Section 173(1) of the new Act. The new Act (or the old -- Motor Vehicles Act, 1939, too) does not define the term " award ". Chambers 20th Century Dictionary (new edition, 1983) defines "award" to mean " to adjudge ; to determine ; to grant --judgment, final decision ; that which is awarded, etc. ", meaning thereby if something has been adjudged or determined or granted or awarded by an order of the court, that would amount to an " award ".

The question posed calls for examining the correctness of the law laid down by the Division Bench of this Court in Oriental Insurance Co. Ltd. v. Pritamlal [1989] ACJ 1129. In that case, the Division Bench, considering the pari materia provisions contained in Sections 92A and 110D of the old Act, has taken the view that an order awarding compensation on the principle of " no-fault liability " u/s 92A was an interim award and hence appealable as an award u/s 110D. The Division Bench assigned mainly two reasons for taking the view : firstly, that the provision of payment of compensation on the principle of " no-fault liability " is an interim relief or interim award in a claim case in which compensation is claimed both on the principle of" no-fault liability " and on the basis of allegations of commission of negligence or tort; secondly, that taking the view that such order was an " award " would make it both recoverable as well as appealable ; otherwise grant of such compensation would only be a paper order and would defeat the very object of the Legislature in introducing the provisions giving speedy relief to the victim of motor accidents, for the (old) Act provided no remedy for execution of such orders, unless they were held to be the awards.

In my opinion, the view taken by the Division Bench is right and does not call for any reconsideration. The interpretation placed by the Division Bench on Section 92A and Section 110D of the (old) Act applies with full force to the successor provisions contained in Sections 140 and 173 of the new Act.

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As I have already stated that the bare dictionary meaning of the term "award" permits an order directing payment of compensation under "no-default liability" being included within its meaning. Additional clue is provided by Section 168 of the new Act. Sub-section (1) of Section 168 reads as under :

" 168. Award of the Claims Tribunal --(1) On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall 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 any of them, as the case may be :

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X. "

The proviso clearly indicates that an order u/s 140 of the new Act is definitely referable to Section 168(1) of the Act and is nothing but part and parcel of an award to be finally made by the Tribunal. At times, an application for compensation might be disposed of finally with an order passed u/s 140 of the Act itself which would be an award u/s 168 too appealable u/s 173 ; the claim having been made solely on the basis of " no-fault liability " without reference to liability under the law of torts.

In Bhagwan Das and Another Vs. National Insurance Company Ltd. and Another, while disposing of the appeal on the difference of opinion between the two learned judges of this court (vide paras 91 and 93) of the report, I have said (at page 1142) :

" A new liability under the concept of ''no-fault liability'', hitherto unknown to common law was brought statutorily into existence for the first time, creating a corresponding right in favour of heirs of the deceased in a motor accident and persons suffering permanent disability in an accident."

" A new head of liability having been created and a new measure of damages having been brought into existence taking a long march in the field of the law of torts, the amendment is certainly within the domain of substantive law and not procedural law. The common law recognised the concept of liability in road accidents only on proof of negligence and hence enactment of '' no fault liability'' cannot be termed a ''pre-existing liability''. Section 92A cannot be read as providing a procedure merely for enforcement of such liability."

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Thus, an order made u/s 140 of the New Act is within the domain of substantive law and determines substantive rights and liabilities.

Smt. Sarmaniya Bai and Others Vs. Madhya Pradesh Rajya Parivahan Nigam and Others, to which decision I was also a party does not have any material bearing on resolving the problem at hand. The Full Bench was posed with a question as to whether recovery through the Collector as arrears of land revenue was the only mode of execution of the award of the Tribunal and the Full Bench held that it was not the only method but the Claims Tribunal could execute its award in accordance with the provisions of the CPC also. To be executable whether through the Collector or by the Tribunal itself, the order has to be an executable order. If an order u/s 140 of the new Act were to be taken as an order merely declaring the right to recover and the liability to pay compensation, it would not be executable. If it is an order directing compensation to be paid, then it becomes an award in the ordinary meaning of the term. It is settled that while interpreting the law that view has to be preferred which gives the law its claws.

It is only if an order u/s 140 could be deemed to be ''an order allowing a claim for compensation'' that the Tribunal would be enabled u/s 171 also to award interest on the quantum of compensation from the date of making the claim.

In my opinion, placing an interpretation which would make " an order directing payment of compensation under no-fault liability" an award, appealable u/s 173 of the new Act, would not in any manner offend the rule of beneficial interpretation of remedial and welfare legislations. It would rather advance the cause of rule. The Motor Accidents Claims Tribunal is a civil court subordinate to the High Court and the orders passed by it in the course of proceedings are open to revision u/s 115, Civil Procedure Code, if not appealable. (See opinion by R.J. Bhave J. on difference between S.B. Sen and Raina JJ. in Krishan Gopal Devi Prasad and Others Vs. Dattatraya Madho Lad, ; Anirudh Prasad Ambasta and Others Vs. State of Bihar and Another, and United India Insurance Co. Ltd. Vs. Katukuri Raghavareddy and Others, . If an order of the Tribunal is held to be not appealable, then it would be revisable. If only we were to examine the law from the point of view of the claimants, holding an order of " no-fault liability" compensation to be an award would be a more beneficial and purposive interpretation because if appealable, the insurer/owner/ driver appealing against the order would be required to make deposit contemplated by proviso to Sub-section (1) of Section 173 of the new Act, which they would not be obliged to do if the order would not be appealable but merely revisable. In the event of a claimant being wrongly denied compensation under " no-fault liability" clause, he too would have a right of appeal giving a wider scope of hearing than what is permitted in revisional jurisdiction or in exercise of powers of superintendence under Article 227 of the Constitution. Merely because a judge hearing an appeal against an order passed under " no-fault liability" clause would have a jurisdiction to grant stay or regulate the manner of deposit of the awarded amount this cannot be a factor relevant for determining the nature of the order.

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Power to grant stay is capable of being exercised even by a judge hearing a revision or a Bench hearing a petition under Article 227 of the Constitution. On the contrary, the power to give stay under these two jurisdictions is unbridled while the power to grant stay in exercise of appellate jurisdiction is circumscribed by an obligation to secure deposit u/s 173(1), proviso of the new Act.

Sections 141(2) and 144 of the new Act merely contemplate expeditious disposal of claims for "no-fault liability". These provisions do not render any assistance in determining the nature of the order. Section 165(1) speaks of constitution of the Claims Tribunals for adjudicating upon claims for compensation. The adjudication would naturally be an award. The Explanation appended to Sub-section (1) of Section 165 provides :

"Explanation. -- For the removal of doubts, it is hereby declared that the expression ''claim for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles'' includes claims for compensation u/s 140. "

The Explanation lends strength to the contention that fault or no fault, whatever is claimed is a claim for compensation. It follows as a corollary that an adjudication of either nature of claim for compensation would be an " award ".

Section 144 occurring in Chapter X dealing with liability without fault in certain cases, gives the provisions of Chapter X overriding effect over other provisions of the Act including Chapter XII. That does not, however, mean that exclusion of Chapter XII to all the provisions contained in Chapter X is to be inferred. The procedure and powers of the Claims Tribunals for impleading the insurer in certain cases and award of interest where any claim is allowed are the provisions to be found in Chapter XII. The provisions for recovery of money from the insurer and bar of jurisdiction of civil courts are also to be found contained in Chapter XII. All these apply to claims u/s 140, Chapter X. Once it is held that an order directing payment of compensation on the principle of " no-fault" is an award, it would be appealable u/s 173 and it is difficult to read any provisions in the Act excluding the applicability of Section 173 of the Act to orders u/s 140 either expressly or by necessary implication.

A word about the decisions cited at the Bar but only the relevant ones out of them. The Full Bench of the Jammu and Kashmir High Court in Mohammad Yousuf Wani v. Abdul Rehman Gujri [1983] ACJ 242 was posed with the question of appealability of an order dismissing compensation application for non-appearance of the claimants and not the problem posed before us. In Janak Raj v. Union of India [1989] ACJ 1148 the learned single judge of the Jammu and Kashmir High Court in holding the interim award not appealable chose to follow the earlier view of that High Court, as he was duty bound to do, in preference to the weight of authorities emanating from the Allahabad, Bombay and Karnataka High Courts, taking a view to the contrary. The reason assigned, vide para 5 by the learned judge for not following the view taken by the three High Courts, is a

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very casual one and does not appeal to me.

As already noticed, the view taken by the Allahabad High Court in Sant Ram v. Surya Pal [1986] ACJ 202 ; [1987] 62 Comp Cas 87 has been followed by a Division Bench of this court in Pritamlal''s case [1989] ACJ 1129 and is also in line with the view taken by the Bombay High Court in Oriental Fire and General Insurance Co. Ltd. v. Aleixo Fernandes [1986] ACJ 1137 ; [1987] 61 Comp Cas 130 and the Karnataka High Court in Mohammad Iqbal v. Bhimaiah [1985] ACJ 546 ; [1986] 60 Comp Cas 1094 . A Division Bench of the Kerala High Court in United India Insurance Co. Ltd. Vs. Padmavathy and Others, has also taken the view that an order of compensation on " no-fault liability " is an award, also appealable.

For the foregoing reasons, I subscribe to the view taken by the Division Bench in Pritamlal''s case [1989] ACJ 1129 . I am also unhesitatingly of the view that an order of compensation passed in terms of Section 140 is an " award", appealable u/s 173.

Once it is held that an order directing payment of compensation under the " no-fault liability " clause is an " award ", it would be appealable at the instance of any person aggrieved by an award of the Claims Tribunal, which would include''all or any of the persons saddled with the liability. The term "person aggrieved" has come up before the apex court on more occasions than one. Any person who has a genuine grievance because an order has been made which prejudicially affects his interests is a person aggrieved. See Maharaj Singh Vs. State of Uttar Pradesh and Others, , paras 20 and 21 ; Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, ; State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another, para 84. A right of appeal is conferred on a person whether a party to the decree or order or not, if he is either bound by the order or is aggrieved by an order or is prejudicially affected by it, subject to leave of the court, if he be not a party.

It cannot be denied that the insurer/owner/driver are persons bound by, also adversely affected by the order directing payment of compensation. Their liability is joint and several. The claimant may recover from any or all of them. Cases are not difficult to seek where the vehicle may not be insured or the Tribunal may prima facie find that though the vehicle was insured yet the insurer was not even prima facie liable. In that event the liability would fall on the owner and/or driver. We cannot lay down different interpretations for different situations. If any one answers the test of " person aggrieved ", be he an owner or a driver or an insurer, he must have a right of appeal. The right cannot be denied and nipped in the bud at the threshold though on hearing on the merits, the appellate court may find that there was no genuine grievance to be canvassed and hence may dismiss the appeal.

For the foregoing reasons, I answer question No. 1 arising in M.A. No. 64 of 1991 in the following terms :

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" The insurer and/or owner and/or driver of the offending motor vehicle or vehicles against whom an order of compensation is passed in terms of the provisions of Section 140, Motor Vehicles Act, 1988, has a right of appeal against that order u/s 173 of the Act,"

On question No. 2 (M. A. No. 138 of 1990) I agree with the conclusion arrived at by my learned brother. Dr. T.N. Singh J., holding that the law applicable for the exercise of the right of appeal against an award passed by the Motor Accidents Claims Tribunal is the law in force on the date on which the appeal is preferred ; that is to say that any appeal filed on or after July 1, 1989, against the award of the Tribunal must comply with the provisions relating to the deposit enacted by the proviso to Sub-section (1) of Section 173 of the Act of 1988.

A reading in juxtaposition of Section 173 of the new Act with Section 110D of the (old) Act shows that the right of appeal, the forum, the limitation, have all been kept intact with the only distinction that a condition as to deposit of a limited amount out of the awarded amount has been imposed on the appellant to make the appeal entertain able. It is not a case where the right of appeal has been taken away or repealed or such onerous conditions have been imposed as to narrow down and whittle down substantially the right of appeal compared with the predecessor right of appeal.

I propose to refer to two more decisions of the Supreme Court. In Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, , their Lordships have made observations which supply additional strength to the view taken hereinabove. Their Lordships were examining the effect of refusing to entertain the appeal unless certain amount is deposited. Their Lordships observed (headnote of Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay,

" It could not be said that the appellant''s right of appeal is whittled down by an alteration of procedure."

The right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudication. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. It is not the law that adjudication by itself following the rules of natural justice would be violative of any right -- Constitutional or statutory -- without any right of appeal, as such. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant."

In Hardeodas Jagannath Vs. State of Assam and Others, , the facts were that Section 30 of the Assam Sales Tax Act, 1947, was amended requiring deposit of the assessed tax and penalty as a condition for filing an appeal. The ''amendment came into force on April 1, 1958. Assessment under appeal was for the period ending with date prior to April 1, 1958. Their Lordships held (headnote of Hardeodas Jagannath Vs. State of Assam and Others,

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" The appeals against the assessments were filed after the amendment, the appeals are governed by the amended section and the Assistant Commissioner can ask the appellants to comply with the provisions of the amended section, namely, depositing of assessed taxes and penalty, before dealing with the appeals. In such a case it cannot be said that the amending Act has been given retrospective effect."

The object behind enacting the proviso to Sub-section (1) of Section 173 of the new Act is remedial and beneficial. This is a paramount consideration for repelling the argument to the contrary that the proviso should not be applied to the appeals filed on or after July 1, 1989, though arising out of the claim cases instituted prior to that date.

Only by way of abundant caution I would like to make it clear that whatever has been said by me is not supposed to have any applicability for interpreting Section 173(2) which completely takes away the right of appeal against awards of the Claims Tribunal, if the amount in dispute in the appeal is less than Rs. 10,000 though the predecessor provision contained in Section 110D(2) of the old Act prohibited exercise of right of appeal only when the amount in dispute in the appeal was less than two thousand rupees. Needless to say, that question is also not before us.

K.M. Pandey, J.

I have had the advantage of going through the opinion recorded by my learned brothers, Dr. T.N. Singh and Mr. R.C. Lahoti JJ., I find myself in agreement with the view expressed by my learned brother, Dr. T.N. Singh J., on both the points but I would like to add something more in answer to question No. 1. So far question No. 2 is concerned I do not feel like adding anything more.

The following questions have been referred for opinion by this Bench :

Question No. 1 (in M.A. No. 64 of 1991) :

Whether the insurer and/or the owner/driver of the offending motor vehicle or vehicles against whom an order of compensation is passed in terms of the provisions of Section 140, Motor Vehicles Act, 1988, has a right of appeal against that order u/s 173 of the Act?

Question No. 2 (in M. A. No. 138 of 1991) :

Whether any appeal filed on or after July 1, 1989, challenging an order of compensation passed by the Motor Accidents Claims Tribunal in terms of the provisions of Section 140 of the Motor Vehicles Act or the final award passed u/s 168 of the Act, can be entertained without the appellant fulfilling the requirement of the provisions contained in Section 173 of the Act of making requisite deposit of the sum contemplated thereunder?

The abovementioned questions hereinafter will be referred to as question No. 1 and question No. 2 respectively. Although these questions have arisen in two

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separate matters, but it would be proper if we treat them analogous for answering.

Question No. 1. -- Section 173 of the Motor Vehicles Act, 1988, is the subject-matter of interpretation and the other common point in the two matters is the question whether the order for interim compensation granted u/s 140 of the Motor Vehicles Act, 1988 (hereinafter to be called as " the Act" only), is appealable ?

The appellants in M. A. No. 64 of 1991 are owners of a bus which is said to be involved in an accident on March 24, 1988. The claimant/ respondent was seriously injured. On February 18, 1991, the Motor Accidents Claims Tribunal, Bhind, passed an order against the owners for payment to the claimant, of interim compensation amounting to Rs. 7,500 after recording a finding that the particulars of the insurer could not be ascertained. In appeal, the dispute about the identity of the vehicle involved in the accident and the fact about the claimant suffering permanent disability arose. When the matter was taken up for consideration on admission by the learned single judge, he was of the view that the matter deserved to be referred to a larger Bench because it was necessary to examine the correctness of the view expressed in this court''s Division Bench decision in Oriental Insurance Co. Ltd. v. Pritamlal [1989] ACJ 1129.

In the other matter also the insurer is the appellant and in that appeal too the question of maintainability arose. It was contended by the appellant that though the appeal was preferred u/s 173 of the Act, the "fact remains that the accident had taken place on February 8, 1985, when the present Motor Vehicles Act had not come into existence and the question was whether the appeal is to be decided according to the old law (Motor Vehicles Act, 1939) or the present Act of 1988 will govern it?

In the accident two vehicles were involved. They are truck No. CPH 9485 owned by respondent No. 4, Virendra Pal Singh (in M. A. No. 138 of 1991), and tractor No. RNT 347 owned jointly by Bharatsingh and Bhagwant (respondents Nos. 7 and 8 respectively in M. A. No. 138 of 1991). Both the insurers, namely, the New India Insurance Company and the instant appellant, the United India Insurance Company, have been held jointly and severally responsible. The main contention was that the tractor, in question, was not insured with the appellant.

The right of appeal is a creature of statute and it is a right of the aggrieved party. In order to give any answer to the first question we have to consider and examine Sub-sections (1) and (2) of Section 140 of the Act. Section 140 of the Act is a new section introduced in the Motor Vehicles Act and has for the first time propounded a new theory about liability without fault in certain cases. It reads as below :

" 140. (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles

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shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the 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."

Section 141 makes a provision about the right to claim compensation for death or permanent disablement. Sub-section (1) of Section 141 says that the right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall be in addition to any other right (hereinafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force. Sub-section (3) says that notwithstanding anything contained in Sub-section (1) where in respect of death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and this section further makes provision as to how the compensation will be paid in case of difference between the first mentioned compensation and the second mentioned compensation. We need not discuss this.

The short point for consideration in answer to question No. 1 is whether an appeal lies against an order u/s 173 of the Act. The Motor Vehicles Act does not provide for an appeal against an order for compensation u/s 140. A reading of the Act and the provisions of Chapter X makes it clear that the Legislature intended to provide for compensation irrespective of the fault of the person concerned. Section 140 makes it absolutely clear that if an accident has taken place the owner of the vehicle shall jointly and severally be liable to pay compensation in respect of such death or permanent disablement in accordance with the provisions of this section. No evidence on the amount of compensation to be paid or the loss suffered by the victim is to be assessed while awarding

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compensation under this provision. The minimum compensation has been provided in the statute for payment to the victim in case of death or permanent disablement. This provision appears to have been made on compassionate grounds and the amount so fixed for payment as compensation under this section is a sum of Rs. 25,000 in case of death and Rs. 12,000 in case of permanent disablement. The law has been so framed as to rule out an investigation about the loss suffered or the question of fault. As a matter of fact Chapter X fixes liability without fault in certain cases. Even if the owner of the vehicle is not at fault even then the Legislature thought it fit to award this minimum compensation because of the death or permanent disablement suffered by the victim. Sub-section (3) of Section 140 makes the intention of the Legislature very clear. While making provision for this compensation the Legislature consciously appears to have avoided any provision for appeal or evidence in this section. Sub-sections (3) and (4) make the intention of the Legislature very clear. Sub-section (3) reads as follows :

" In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person."

Sub-section (4) reads as follows :

"A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the 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."

A bare reading of the aforesaid provisions show that the Legislature never intended to make the subject-matter of compensation a matter of dispute or evidence. Fault or no-fault, the compensation has to be paid and the Legislature has gone to this extent that the responsibility of the accident and the manner of the accident will not be a subject-matter of investigation. When at the very inception the Legislature thought it fit to grant compensation but did not permit to admit evidence or fix responsibility about the factum of accident or the amount to be granted as compensation, it leads to the necessary inference that the Legislature wanted this amount of compensation in case of death or permanent disablement to be away from litigation. The State is a welfare State in a democracy and this provision appears to have been inserted as a welfare measure on compassionate grounds for the victim.

If the Legislature intended to keep this matter of compensation beyond proof of the manner of accident, and fault liability of the person concerned then it is unthinkable that the Legislature intended to provide for an appeal against the

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compensation and make it a subject-matter of dispute. After all, an appeal has to be provided for what when the liability has been fixed without fault and the amount of compensation has also been fixed and no evidence is permitted to be invited in this regard. It would be adding something in the mouth of the Legislature if we say that the order passed u/s 173 is appealable.

The doors have not been closed to the claimant for claiming higher amount. Section 141 says that the right to claim compensation u/s 14Q in respect of death or permanent disablement shall be in addition to any other right (hereinafter in this section referred to as the right of principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force. Thus, if the claimant is awarded compensation for the death or disablement on the principle of " fault", the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place. Sub-section (3) of Section 141 makes provision for the payment of compensation and the manner in which the compensation on the principle of " fault" is to be adjusted. The result is that it cannot be said that the Legislature wanted to fix the limit of compensation in case of such death or accident and close the doors for claiming higher amount of compensation. It was left open to claim any amount of compensation on proof. The remedy available in civil law or any other law for the time being in force has not been denied. Section 140 of the Act only makes a minimum amount of compensation to be paid irrespective of the fault and this liability without fault in certain cases introduced in Chapter X appears to be within the ambit of welfare activity of the State and on compassionate grounds. The Legislature did not intend to make this amount also disputable and a subject-matter of controversy. The intention is clear that the Legislature intended that this amount should be paid irrespective of the fault and should be kept above unnecessary controversy. It is clear that the Legislature never intended to make this amount a subject-matter of dispute to be dragged to a court of law. The omission to provide for an appeal in a claim for compensation u/s 140 does not appear to be an accidental omission in the statute. It is very much intentional and fits within the provisions of Chapter X. The Legislature has enacted a forum for agitating the amount of compensation. Chapter XII makes provision for Claims Tribunals and compensation for a higher amount can be claimed in that forum. Section 173 of the Act makes provision for appeals against orders of Claims Tribunals under certain conditions within 90 (ninety) days. Herein, also, it is crystal clear that the Legislature never intended to make the compensation up to Rs. 25,000 a subject-matter of controversy. Although this section provides for an appeal against an award -of the Claims Tribunal, the first proviso to Section 173 also indicates in the same direction. It makes provision for preferring an appeal to the High Court against an order of the Claims Tribunal, but clarifies in the proviso that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it Rs. 25,000 or 50 per cent, of the amount so awarded, whichever is less, in the manner directed by tbe High Court and the

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second proviso says that the High Court may entertain an appeal after expiry of the period of 90 (ninety) days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. No appeal has been provided against any award of the Claims Tribunal, if the amount in dispute, in the appeal, is less than Rs. 10,000. What I want to impress is that the amount of Rs. 25,000 has been intended to be made secure by the Legislature and the right of appeal has even been denied against an award of the Claims Tribunal. This amount of Rs. 25,000 has to be paid to the victim in any case.

It is also significant to note that the expression " award " has not been used in Chapter X where liability without fault has been fixed. The expression " award " has been used by the Legislature for the first time in Chapter XL This also makes it clear that any order by which an award of compensation is made under Chapter X is not a subject-matter of dispute and care has been taken not to use this word " award " in Chapter X. The Legislature has used the words "compensation" and "liability without fault" in such cases. It appears that the Legislature never intended to make this provision for liability without fault a subject-matter of controversy in a court of law, It is unthinkable that the compensation which has not been made a subject-matter of dispute at the initial stage should be thrown into a dust-bin of controversy at the appellate stage. I am, therefore, clear in my mind that the amount of compensation which is payable u/s 140 is not appealable and would be completely against the intention of the Legislature.

In the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , their Lordships have held that the orders for interim compensation are to be passed summarily and a formal procedure prescribed with regard to the adjudication of the claim preferred u/s 110A (old) to enforce liability of tortfeasors on the principle of fault, is not to be followed because the Legislature has contemplated explicitly as per Section 141(2) for a certain sum to be made available to the victim or his heirs as expeditiously as possible. Chapter X is a complete code which is supposed to deal with all matters concerning liability without fault in certain cases.

A question may arise about the remedy available to a person, if the compensation u/s 140 is arbitrarily refused. I think, the Legislature has taken care of it. The Courts of District Judges functioning as Claims Tribunals are expected to be careful about the intention of the Legislature and the right of the claimant. Not only this, but the High Court can also interfere in its supervisory jurisdiction under Article 227 of the Constitution.

The law applicable for the exercise of the right of appeal against an award passed by the Motor Accidents Claims Tribunal is the law in force on the date on which the appeal is preferred. The appeal filed on or after July 1, 1989, against an award of the Tribunal must comply with the provisions as required u/s 173 of the Act.

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In view of the discussions above my answer to question No. 1 is in the negative. No appeal lies u/s 173 of the Motor Vehicles Act, 1988, against an order passed u/s 140 of the Act against the insurer or the driver or the owner of the offending motor vehicle.

The two questions are answered accordingly.

Order of the Court

The first question arising out of Miscellaneous Appeal No. 64 of 1991 is answered, as per majority opinion, in the negative. No appeal is maintainable u/s 173, Motor Vehicles Act, 1988, against an order of compensation for " no-fault" liability, passed u/s 140 of the said Act. The law laid down to the contrary in Oriental Insurance Co. Ltd. v. Pritamlal [1989] ACJ 1129 (MP) would no longer hold good and that decision is overruled.

The second question arising out of M. A. No. 138 of 1991 is answered unanimously, also in the negative. In respect of any appeal filed after July 1, 1989, u/s 173, challenging any award passed u/s 168 after July 1, 1989, in terms of the first proviso to Section 173(1) it would be necessary for the appellant to make the requisite deposit contemplated thereunder irrespective of the date of accident. Jaswant Rao Vs. Kamlabai and Another, stands overruled.

Both questions are answered as above and the reference stands disposed of accordingly. Records shall be placed now before the referring judge for passing appropriate orders in the two matters separately.

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