

(2000) 04 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 31832 of 1999.

Narayana and Another

APPELLANT

Vs

H.R. Mohankumar

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, 115, 151, 25
Motor Vehicles Act, 1988 — Section 165, 168

Citation : (2001) ACJ 493 : AIR 2000 Kar 349 : (2000) ILR (Kar) 4791 : (2001) 1 KarLJ 244 : (2000) 2 KCCR 61 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Sri S.P. Shankar, for the Appellant; Sri V. Srinivasa Raghavan, for the Respondent

Judgement

1. This petition is filed challenging the order of the Principal District Judge and MACT at Mysore dated 4th June, 1999 in M.V.C. No. 155 of 1994 by the owner and the Insurance Company.

2. Facts.--Respondent-claimant filed a petition in M.V.C. No. 155 of 1994 on the file of the Principal District Judge and MACT at Mysore, seeking for a compensation of Rs. 1,10,000/-. After contest, the claim was allowed in terms of the order at Annexure-A, dated 30th November, 1998. The Tribunal granted a sum of Rs. 1,10,000/- together with interest. No appeal was filed against the said order. Thereafter an application was filed under Order 41, Rule 1 read with Section 151 of the CPC to review the order dated 30-11-1998 for awarding compensation at Rs. 2,00,000/- together with interest and costs and the said application, on contest, is allowed by the Tribunal. It is this order that is challenged before me by the petitioner on the ground that the Tribunal is not a Civil Court and it cannot review its order. It is also argued that the compensation of Rs. 2,00,000/- is granted much in excess of the claim made in the petition.

3. This Court ordered notice. Respondent entered appearance. Matter is heard.

4. An application seeking amendment of the petition was filed and the same was allowed by me vide order dated 29-3-2000. Mr. S.P. Shankar, learned Senior Advocate appeared for the Insurance Company. Respondent is represented by Sri V. Srinivasa Raghavan, learned Counsel. Both the learned Counsels have placed before me various authorities touching the subject-matter in the writ petition.

5. An important question arises in this case with regard to the power of the Tribunal in granting compensation in excess of what is claimed in the petition.

6. The admitted facts reveal, as mentioned earlier, that a claim petition was filed restricting the claim to Rs. 1,10,000/-. The Tribunal noticed in the order that the petitioner is entitled for a sum of Rs. 2,00,000/- as compensation but did not grant the same. Hence an application was filed which came to be allowed by the Tribunal holding that the Tribunal can review its order and grant the compensation much in excess of the claim made on the facts of the case. The contention raised before this Court is that the Tribunal has exercised a review jurisdiction which is not available to the Tribunal. The second contention is that in view of the restricted claim in the claim petition, the Tribunal cannot grant in excess of the claim made in the petition.

7. The various case-laws have been placed before me. Before considering the case-laws on the subject, I deem it proper to say that the Claims Tribunal is constituted under the Motor Vehicles Act enabling the claimants to claim compensation on account of an injury or on account of an actionable claim arising out of a motor vehicle accident. Article 39-A of the Constitution provides for a direct privilege towards a legal system for securing justice on the basis of equal opportunity and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Tribunal has to come to the aid of the injured or dependent of deceased to heal the wound or the suffering on account of the accident.

8. In *State of Haryana Vs. Smt. Darshana Devi and Others*, , the Hon''ble Supreme Court notices Article 41 in the matter of rendering public assistance without litigation in cases of disablement and undeserved want. The Hon''ble Supreme Court, after noticing the same has noticed as under:-

"Courts must give this bleeding class of cases high priority, adopt simplified procedures without breach of natural justice, try out pretrial settlements and narrow down the controversy and remember, that "wiping every tear from every eye" has judicial relevance. For, law must keep its promise to justice".

9. In *Bhagwati Devi and Others v M/s. I.S. Goel and Others*, the Hon''ble Supreme Court notices Section 25 of the CPC in the matter of transfer of claim petitions and ruled that the Motor Accident Claims Tribunal constituted under the Motor Vehicles Act is a Civil Court for the purpose of Section 25 of the Code of Civil Procedure. A Division Bench of this Court in *Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah, Gulbarga and Another*, , has ruled that the Tribunal is a Court subordinate to High Court. While so doing, this is what this Court says at page

630.-

"So both derive their power from and, partake of a common source, the "judicial power" of a sovereign State. They necessarily share the common features characteristic of and incidental to the very nature of the power they exercise; and to the commonness of the source of that power. In the case of Courts, however, the procedure followed by, and usually associated with them and possession of certain inherent and subsidiary powers intended to help them to effectuate their task are described as the usual trappings of the Courts".

Again in para 7, this Court has ruled as under:-

"However, it appears to us, the distinction between the concept of a "Court" and of a "Tribunal", neither term having been a defined one, does not purely turn on the basis of the exclusiveness of their jurisdiction. References to and the recognition of "Civil Courts" in the statute need not necessarily detract from the adjudicatory forum set up by the statute being itself, a "Court" ".

This Court notices the dictum of the Hon"ble Supreme Court in the case of Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, , wherein their Lordships have said that the Claims Tribunal for all intents and purposes discharges the same functions and duties in the same manner as a Court of law is expected to do. This Court, in the said judgment finally ruled that the Tribunal is also a Court subordinate to High Court. In fact, this Court has ruled that the Tribunal has the usual trappings of a Civil Court.

10. In Oriental Insurance Company Limited v Shivaprakash, a Division Bench, after noticing various judgments, has ruled in paras 3, 4 and 5 as under:-

"Even apart from that it may be noticed that the Tribunal which is for all practical purposes a Civil Court with jurisdiction on specified matters has all the trappings of the Civil Court and it has got a duty to give direction to keep the amount awarded in the case, for safeguarding the interest of the claimants".

"By the very nature of the judicial power exercised by the Tribunal, though in a limited field, possession of certain inherent and subsidiary powers intended to help them effectuate their task described as usual trappings of the Court is practically a must".

"Section 151 of the CPC gives recognition to an all important power of Civil Court to make such orders as may be necessary for the Courts of justice or to prevent abuse of the process of the Court by declaring that the said power is inherent in the Civil Court".

"Having regard to all these decisions we are satisfied that the Motor Accidents Claims Tribunal should be deemed to be a Civil Court for certain purposes and it exercises judicial powers of the Sovereign States in special matters, and therefore it should, by virtue of the very entrustment of that power, be held to possess certain inherent and subsidiary powers though not specifically mentioned

anywhere in the Act or the Rules framed thereunder".

This Court categorically stated in unmistakable terms that Section 151 of the CPC gives recognition to an all important power of Civil Court to make such orders as may be necessary for the Courts of Justice or to prevent abuse of the process of the Court by declaring that the said power is inherent in the Civil Court.

11. A learned Single Judge of this Court in *The Oriental Insurance Company Limited, Bangalore Vs. Thibbegowda and Others*, , has ruled that the Claims Tribunal is not a Civil Court for the purpose of Section 115 and the learned Judge ruled that the decision of the Division Bench holding that the Claims Tribunal is a Court per incuriam and may be ignored as a binding precedent. Later, another Judge of this Court in *The General Manager, Karnataka State Road Transport Corporation, Central Offices, Bangalore and Another Vs. Smt. Housamathi Shidramappa Saladagi and Others*, , has ruled that the Motor Accidents Claims Tribunal is a Court subordinate to the High Court and the Division Bench judgment has to be followed. In the light of these various case-laws, I am of the view that the Tribunal has all the trappings of the Court. The Division Bench of this Court in *Noreen's case*, supra, in unmistakable terms has ruled that the Tribunal has all the trappings of the Civil Court. The same has been followed by this Court in *Smt. Housamathi Shidramappa Saladagi's case*, supra. In the circumstances, I have no doubt in my mind that the Tribunal can exercise its powers in view of the fact that the Tribunal is having all the trappings of the Court. In the case on hand, the Tribunal has allowed an application filed by way of review petition u/s 151 of the CPC. The said view of the Tribunal, in my opinion, cannot be said to be an error requiring my interference. On the other hand, to quote the Division Bench judgment in *Shivaprakash's case*, supra, u/s 151 of the CPC the Tribunal can render justice and the said power is inherent upon the Tribunal. In fact, the Division Bench has noticed that by the very nature of the judicial power exercised by the Tribunal, though in a limited field, possession of certain inherent and subsidiary powers intended to help them effectuate their task described as usual trappings of the Court is practically a must. If such powers are excluded, the laudable object of rendering a social justice of wiping out of the tear of the dependants would be rendered meaningless. The Tribunal must have the necessary power to render justice in such cases. Therefore I reject the contention of the Tribunal lacking power as mentioned in the grounds in the writ petition. I hold that the Tribunal has the necessary power and jurisdiction to exercise its power of review to correct errors thereby rendering complete justice. I uphold the view of the Tribunal with regard to its power. In fact, the Tribunal has noted the judgment referred to above and has come to the right conclusion that it has the power which I endorse in this order.

12. The second question is with regard to enhancement of compensation notwithstanding a restricted claim in the claim petition. In the case on hand, the Tribunal in its award has noticed that the petitioner in all is entitled to a total

sum of Rs. 2,00,000/- as compensation. However the compensation was restricted to Rs. 1,10,000/- by the Tribunal. Later on, when an application was filed before the Tribunal, the Tribunal ruled in para 7 of the impugned order that the claimant is entitled for grant of Rs. 2,00,000/- as compensation though the claim is restricted to Rs. 1,00,000/-. This finding of the Tribunal is called in question in this petition.

13. Mr. S.P. Shankar, learned Counsel for the petitioner and Mr. Srinivasa Raghavan, learned Counsel for the respondents have placed all the case-laws on the subject. The Bombay High Court in *Municipal Corporation of Greater Bombay and Another v Kisan Gangaram Hire and Others*, has considered this question of grant of excess compensation than what has been claimed in the petition. But the Tribunal granted Rs. 1,05,000/-. The said grant of excess claim was questioned in the said case. The Bombay High Court, after noticing the various points covered in the Tribunal, ruled as under:-

"There are cogent reasons to give ample liberty both to the claimant as well as to the Tribunal in the matter of claiming and granting compensation as they are occasioned by the very nature of the claim. Else it would occasion avoidable delays and difficulties in the trial of the applications for claim. As has been emphasised earlier, the amount of compensation being the consequence of the accident which is the cause of action and since that amount would keep varying or fluctuating even till the date of the decision of the application, enough leeway is necessary in the matter of both claiming and granting compensation".

"The variation, if any, is not on account of the variation in the cause of action but on account of the modification or addition of the particular or particulars of the consequences of the accident. These modifications do not go to the root of the application for claim and no prejudice is caused to the opposite party on account of such variation except in the matter of the quantum of the amount claimed".

"At the cost of repetition, it may be stated that in most of the cases, the claimant can at best give only an estimate of the compensation at the time he files his application for claim. It is neither fair nor realistic to insist that he shall not claim more than what is claimed by him at the initial stage or that in spite of the evidence on record the Tribunal shall not grant more than what is claimed in the application. Therefore to hold that under no circumstances the claimant should be awarded compensation which is in excess of the amount claimed originally in the application, is neither reasonable nor just. This is particularly so when the legislature has in unmistakable terms given ample powers to the Tribunal to award compensation as it thinks just. It is also necessary to emphasise that the act itself nowhere lays down that the Tribunal will not grant amount in excess of the amount claimed in the application, It may be that while it does so the Tribunal has to give a notice or intimation or an opportunity to the opposite party to meet the excess claim. But that is a matter relating to the procedure to be followed in such cases and is not an inhibition on the powers of the Tribunal to grant what it thinks is just even if it is in excess of what is claimed. It is in the

light of this statutory position, on the subject that we may now examine some of the authorities which were cited before us".

This Court in Smt. Hanumakka and Others Vs. Bipin Bai and Others, , has ruled in para 2 reading as under.--

"At the hearing, appellant s learned Advocate relied on a Division Bench ruling of the Bombay High Court in Municipal Corporation of Greater Bombay"s case, supra. The Division Bench while considering a somewhat similar stand had occasion to hold that in cases of this type where the compensation claims are quantified, that neither sub-heads nor the aggregate would necessarily limit the power of the Court to award either a lower or higher amount insofar as these were all approximations. That principle is a correct one and having regard to the situation, the appellants would be entitled to the additional compensation. The award is accordingly modified and it is directed that the appellants shall be entitled to recover the aggregate compensation of Rs. 81,000/- together with costs and simple interest as indicated in the award less the interim compensation if any paid to them. It is clarified that the additional compensation when deposited with the Tribunal shall be apportioned in the same manner as has been indicated in the original award. The insurance company shall deposit the balance amount with the Tribunal within an outer limit of twelve weeks from today and on receipt of the same, the Tribunal shall disburse the same in the manner as indicated in the original award. The appeal succeeds and stands disposed of. No order as to costs".

The Hon"ble Supreme Court in the case of Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another, , was considering an award of the Motor Accidents Claims Tribunal. In the said case, a claim of Rs. 1,00,000/- was made but it was noticed that the claimant is entitled for Rs. 1,40,000/-. However, the Hon"ble Supreme Court in para 5 ruled as under.-

"The claimants would get Rs. 1,40,000/- towards the compensation. Since the claim is limited to Rs. 1,00,000/-, the claimants are entitled to get Rs. 1,00,000/- as compensation with interest at 6 per cent per annum from the date of the judgment of the High Court".

This judgment has been followed by another learned Judge of this Court in H.J. Girish and Another v Smt. Sarojamma alias Jaitunbi and Others, and ruled that the compensation to be awarded cannot exceed the amount claimed in the petition.

14. The Hon"ble Supreme Court in the judgment of Dalbir Singh and Others Vs. State of Punjab, , has in para 22 ruled as under.-

"With greatest respect, the majority decision in Rajendra Prasad Vs. State of Uttar Pradesh, , does not lay down any legal principle of general applicability. A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less

"law declared" within the meaning of Article 141 of the Constitution so as to bind all Courts within the territory of India. According to the well-settled theory of precedents every decision contains three basic ingredients:

- (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts;
- (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
- (iii) judgment based on the combined effect of (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient No. (iii) is the material element is the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purposes of the doctrine of precedents, ingredient No. (ii) is the vital element in the decision. This indeed is the ratio decidendi. It is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of *Qualcast (Wolverhampton) Limited v Haynes*, it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the Court, the Judge is not bound to draw the same inference as drawn in the earlier case".

In *Prakash Amichand Shah Vs. State of Gujarat and Others*, , in para 26, the Hon"ble Supreme Court has ruled as under:-

"But the learned Counsel for the appellant however drew our attention to certain subsequent decisions of this Court to persuade us to differ from the above view. First he referred us to the decision of this Court in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , which is popularly known as the Bank Nationalisation case, in which again the majority judgment was written by Shah, J. Then the learned Counsel referred us to the decision in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , and to the decision in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, , in support of his plea that the decision in *State of Gujarat Vs. Shantilal Mangaldas and Others*, stood overruled. We have gone through these decisions carefully. Before embarking upon the examination of these decisions we should bear in mind that what is, under consideration is not a statute or a legislation but a decision of the Court. A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later

case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. We have earlier seen what Justice Shah has laid down in *Shantilal Mangaldas case, supra*".

15. The Hon"ble Supreme Court in the case of *Municipal Corporation of Delhi Vs. Gurnam Kaur*, , has held in para 9 as under:-

""The only thing in a Judge"s decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority. The direction given by the Supreme Court in *Jamna Das v Delhi Administration*, to construct stalls and put the petitioning pavement squatters in possession thereof was made not only with the consent of the parties but there was an interplay of various factors and the Supreme Court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority".

Hon"ble Supreme Court in *Palani Swami Saran Transports case, supra*, did not have any occasion either to deal with the review power or enhancement of compensation by way of review in a case of restricted claim. No argument on this issue was advanced before the Court. The Hon"ble Supreme Court did not have an occasion to consider as mentioned earlier, these two vital issues as in the present case. In the circumstances, it cannot be said that the said judgment comes in the way of granting excess compensation by way of review in a case of restricted claim.

16. the case on hand, following a judgment of this Court in *Hanumakka's case, supra*, the Tribunal has rightly ruled that the respondent is entitled for Rs. 2,00,000/- as against Rs. 1,10,000/-. But the subsequent judgment in *Girish's case, supra*, this Court has ruled on the facts of that case that the claimant cannot get more than what is claimed by him in the claim petition. This case of this Court is clearly distinguishable on facts. In *Girish's case, supra*, the Court

was not concerned with regard to the power of review and the enhancement by way of review. Therefore, that case also cannot come in the way of the petitioner getting the enhanced compensation. Therefore, it cannot be said that the claim is to be restricted to the claim made in the claim petition only. In fact, a Division Bench of the Bombay High Court has given cogent and categorical reasoning for granting a higher compensation than what is claimed in the claim petition (Ref. Municipal Corporation of Greater Bombay's case, supra. The same has been followed by this Court in Hanumakka's case, supra. I respectfully follow the judgment in Hanumakka's case, supra, and hold that the Tribunal is justified in granting the compensation. Moreover, in the case on hand, since I have already allowed the amendment application, the claim also gets amended to that extent. Therefore, in the case on hand, there is no difficulty in accepting the order of the Tribunal on the facts and circumstances of this case. I hold that in appropriate cases the Court can certainly grant such compensation as it deems fit in terms of statute even where the claim petition is one of restricted claims.

17. In the circumstances, I hold that the Tribunals have the trappings of a Civil Court and have power and jurisdiction to review its order. I further hold that the Tribunal in appropriate cases can grant compensation much in excess of what is claimed in the claim petition. This finding of mine is in the light of the object of the Act and in wiping the tears of the injured/dependants suffering on account of an actionable claim under the Motor Vehicles Act.

18. In conclusion, the order of the Tribunal is upheld. Writ petition is dismissed. No costs.