
(1996) 02 MP CK 0008
In the Madhya Pradesh High Court
Case No : C.R. No. 2011 of 1995 (J)

National Insurance Co.

APPELLANT

Vs

Lachchi Bai

RESPONDENT

Date of Decision : 27-02-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Motor Vehicles Act, 1988 — Section 159, 169

Citation : (1997) 2 MPJR 212

Hon'ble Judges : S.S. Jha, J

Bench : Single Bench

Advocate : R.P. Agarwal, for the Appellant; Ashok Lalwani, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.

This order shall govern the disposal of Civil Revision Nos. 1978.2009.2010 and 2063 of 1995 also.

In all these revisions, the main question of law involved whether the Claims Tribunal constituted under the Motor Vehicles Act has power to review its award under Order 47, Rule 1, CPC in exercise of inherent powers.

The applicant filed an application for review of the order passing interim award. This application for review under Order 47, Rule 1, CPC has been rejected by the Additional Motor Accident Claims Tribunal holding that providing that provisions of Order 47, Rule 1, CPC are not applicable to the claim petition.

Section 159 of the Motor Vehicles Act provides for the powers of the Claims Tribunal and procedure to be followed by it. Section 169 of the Act is reproduced below:

169. Procedure and powers of Claims Tribunals. - (1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be made in this

behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed: and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure. 1973 (2 of 1974)

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist in holding the inquiry.

Shri R.P. Agrawal learned counsel for the applicant has drawn my attention to the provisions of section 11 of Industrial Disputes Act which relate of analogous provision pertaining to procedure to be followed by the arbitrator to decide the dispute under the Industrial Disputes Act. Section 11 of the Industrial Disputes Act reads thus:

11. Procedure and powers of Conciliation Officers, Boards, Courts and Tribunals. -

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

(2) A conciliation officer or a member of a Board or Court or the Presiding Officer of a Labour Court, Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishments to which the disputes relates.

(3) Every Board, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed;

and every inquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to

be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.

(5) A Court. Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise in the proceeding before it.

(6) All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(7) Subject to any rules made under this Act, the costs of, and incidental to any proceedings before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal, and the Labour Court, Tribunal or National as the case may be, shall have full power to determine by and whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the persons entitled, be recovered by that Government in the same manner as an arrear of land revenue.

(8) Every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes, of sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

Learned counsel for the applicant submitted that if there is no provision in the Motor Vehicles Act for review of the order, then procedural law i.e. CPC should be followed. He further submitted that if the Court has power to pass an award or an order, it has inherent power to review its own order. There is no clause or rule in the Motor Vehicles Act which restricts the power of review. The counsel for the applicant stated that the Tribunal has denied the jurisdiction vested in by refusing to review the order. Once section 169 of the Motor Vehicles Act provides for choosing its own method it amounts to vest discretion with the Claims Tribunal. He thus submitted that the Tribunal has inherent power to review its own orders.

Learned counsel for the applicant has drawn my attention to the decision of the Supreme Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, . In this judgment, the Supreme Court has held that the power of review is not an inherent power. It must be inferred either specifically or by necessary implication. The said case relates to an order passed by the Saurashtra Government and the order was reviewed by the delegate of Saurashtra Government, the Supreme Court held that if the power of review is

not provided under the statute or by necessary implication orders cannot be reviewed. Learned counsel further relied upon the judgment of the Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, . This case relates to section 11 of the Industrial Disputes Act. The question which was considered was that whether an ex parte award passed by the Industrial Tribunal can be set aside under Order 9, Rule 13, CPC in the absence of specific provision. The Hon'ble Supreme Court while distinguishing the case with *Narshi Thakershi's* case (supra), held that sub-sections (1) and (3) of section 11 of the Industrial Disputes Act makes a distinction between procedure and powers of the Tribunal under the Act. The procedure is left to be decided by the Tribunal to suit carrying out its functions under the Act. The powers of Civil Court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in section 11. The Court further held that different considerations arise on review in two distinct senses, namely procedural review which is either inherent or implied in a Court or Tribunal and review on merits. Regarding a second stage review on merits it has been held in *Narshi Thakershi's* case (supra) that no review lies on merits unless the statute specifically provides for it. The Court further held that the inadvertent error committed by the Tribunal must be corrected *ex debito jnsiitiae* to prevent the abuse of the process of Courts and such power inheres in every Court or Tribunal. From this passage, learned counsel for the applicant sub-netted that since sub-sections (1) and (3) of section 11 of the Industrial Disputes Act being *pari materia* to section 169 of the Motor Vehicles Act, a power of review is inherent in the Tribunal. The learned counsel for the applicant then relied upon the judgment of the Supreme Court in *Satnam Verma Vs. Union of India (UOI)*, and submitted that the Tribunal under the Industrial Dispute Act has power to set aside ex parte award. The Court held that the Labour Court as well as the High Court denied to itself jurisdiction vested in it to entertain the application for setting aside ex parte award and reached an erroneous conclusion. In this case, the Court further held that the provisions of Order 9, Rule 13, CPC are clearly attracted. If the Court has power to proceed ex parte it has power to set aside the ex parte decree.

Learned Counsel for the applicant submitted that though Rule 240 of M.P. Motor Vehicles Rules. 1994 does not expressly provide for application of Order 47, Rule 1, CPC but from the language of section 169 of the Motor Vehicles Act it is clear that provisions of review are inherent in the Tribunal.

Learned counsel for the non-applicant submitted that once the order becomes final, there is no scope for review. He relied upon section 173 of the Motor Vehicles Act and submitted that any award passed is appealable and therefore there is no scope for review. He submitted that this review was filed against the passing of interim award which was appealable u/s 173 of the Motor Vehicles Act, and as such, in such circumstances the application for review filed by the applicant itself was not maintainable. The counsel further submitted that in the

absence of any procedure or rules for review in the Motor Vehicles Act or the Rules, no review is permissible. He relied upon the judgment of Narshi Thakershi's case (supra) and submitted that review application is not maintainable. The counsel for the non-application further submitted that the intention of the legislature is to be seen while considering this question. He submitted that it is not the intention of the legislature to give powers to the Tribunal to review its own orders.

The procedure and powers of the Claims Tribunal are provided u/s 169 of the Motor Vehicles Act, 1988. Sub-section (1) of section 169 provides that the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Similar provision is provided u/s 11 of the Industrial Disputes Act. A Full Bench of the Punjab and Haryana High Court in *Jai Singh and Another Vs. N.A. Subramaniam and Another*, has considered the scope of section 110-C of the Motor Vehicles Act of 1939. While considering the powers of the Claims Tribunal regarding the sentence. "The Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit, the Court held that the Tribunal is at liberty to follow any procedure that it may choose to evolve itself so long as the said procedure is not arbitrary is consistent with the rules of natural justice, and does not contravene the positive provisions of law. When such a wide power exists in the Tribunal, there will absolutely be no justification to reconstruct the exercise of that power on the ground that the legislature impliedly intended to do so by not applying all provisions of the Code of Civil Procedure. In order to do justice and to achieve the purpose for which it has been constituted, a Tribunal would have inherent power to apply all or any of the procedures of the Civil Procedure Code on principles of justice, equity and good conscience. The Supreme Court while considering the scope of the similar provisions u/s 11 of the Industrial Disputes Act. held that the power of review is not inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act - while the procedure is left to be derived by the Tribunal to suit carrying out of its functions under the Act. the powers of the Civil Court conferred upon it are clearly defined.

The expression "review" is used in two distinct senses, namely (i) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it: and (ii) review on merits when the error sought to be corrected is one of law and is apparent on the face of record. In the case of *Narshi Thakershi's* case it is held that no review lies on merits unless the statute specifically provides for it. Obviously, when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process and such powers inheres in every Court or Tribunal. The Hon'ble Supreme Court has given a limited power of review to the Tribunal and while considering the scope of sub-sections (1) and (3) of section 11, it was held

that the review is maintainable. Similarly, in Satnam Verma's case (supra) considering the scope of powers of the Tribunal u/s 11 of the Industrial Disputes Act, it was held that the Tribunal is endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The jurisdiction vested in the Tribunal under the wide powers cannot be denied by the Tribunal to itself.

From the aforesaid discussion It is clear that the power of review vests with the Tribunal in its inherent power, u/s 169 of the Motor Vehicles Act though Rule 240 of the M.P. Motor Vehicles Rules, 1994 has not expressly provided for application of Order 47, Civil Procedure Code. A review application is maintainable when it is sought due to a procedural defect, or inadvertent error committed by the Tribunal, to prevent abuse of its process. Such powers inheres in the Tribunal. The contention of the learned Counsel for the non-applicant cannot be accepted that power of review is not provided by the statute, therefore, it cannot review its own order. As considered by me earlier, wide powers are vested with the Tribunal u/s 169 of the Motor Vehicles Act, Therefore, review on limited grounds as mentioned above is permissible.

In the result, the order of the Claims Tribunal holding that it has no power to review the award is therefore set aside and the case is remanded to it for deciding the application for review on merits in accordance with law. The revision is allowed. There shall be no order as to costs.