
(1986) 03 KL CK 0018
In the High Court Of Kerala
Case No : M.F.A. No. 143 of 1986

New India Assurance Co. Ltd.

APPELLANT

Vs

K. Pathumma and Others

RESPONDENT

Date of Decision : 10-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 11A, 117
Motor Vehicles Act, 1939 — Section 110D

Citation : (1987) 1 ACC 461 : (1986) ACJ 571 : AIR 1987 Ker 47 : (1990) 68
CompCas 192

Hon'ble Judges : U.L. Bhat, J;K.T. Thomas, J

Bench : Division Bench

Advocate : S. Parameswaran, for the Appellant;

Judgement

Bhat, J.—This is an appeal filed by the insurer u/s 110D of the Motor Vehicles Act, 1939 (for short "the Act") challenging the award passed by the Claims Tribunal u/s 110B of the Act. The appeal has been posted for hearing on admission. Learned counsel for the appellant has raised a preliminary objection to the effect that an appeal u/s 110D of the Act cannot be scrutinised at the stage of admission since Rule 11 of Order XLI of the CPC (for short "the Code") is not applicable to such an appeal. We have heard learned counsel for the appellant and other members of the Bar interested in the question.

2. Sections 110 to 110F were substituted for former Section 110 by Central Act 100 of 1956. Section 110 deals with power of the State Government to constitute Motor Accidents Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Section 110A prescribes the particulars to be contained in an application for compensation. Sub-section (3) prescribes the period of limitation for filing an application, with power to entertain an application filed after the expiry of the period of limitation if the Tribunal is

satisfied that the applicant was prevented by sufficient cause from making the application in time. Section 110B prescribes the manner in which the Tribunal has to make an award. Section 110C lays down the procedure and power of the Tribunal. The Tribunal has to follow such summary procedure as it thinks fit. It shall have all the powers of a Civil Court for the purpose of taking evidence on oath and other matters enumerated in Sub-section (2). Section 110-D deals with appeals. Any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of award, prefer an appeal to the High Court. However, 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. No appeal shall lie against any award of a Tribunal, if the amount in dispute in the appeal is less than Rs. 2,000/-. Section 110-F bars jurisdiction of civil courts in any area where Claims Tribunal has been constituted. Section 111 gives power to the Central Government to make rules for the purpose of carrying into effect the provisions of the Chapter. Section 111-A gives power to the State Government to make rules for the purpose of carrying into effect the provisions of Sections 110 to 110E, and in particular, such rules may provide for all or any of the matters enumerated therein. One of the matters so enumerated therein is the procedure to be followed by the Tribunal in holding an enquiry; another is the form and manner in which and the fees on payment of which an appeal may be preferred against an award of a Claims Tribunal. It is significant to note that the enumerated matters do not take in the procedure to be adopted by the High Court.

3. Examination of the above provisions would indicate that an appeal against the award of the Claims Tribunal may be preferred to the High Court within the time limit prescribed, with power to the High Court to entertain an appeal even after the expiry of the period if it is satisfied that the appellant was prevented by sufficient cause in preferring the appeal in time. The enquiry before the Tribunal is to be conducted subject to rules, following such summary procedure as it thinks fit. The procedure to be followed by the High Court in disposing of the appeal is not prescribed in the statute. Rules framed by the Central Government or the State Government also do not deal with this aspect. The State Government has framed the Kerala Motor Accidents Claims Tribunals Rules, 1977, dealing with various matters arising before the Tribunal. The only rule relating to appeals is Rule 23(3) which prescribes a fee of Rs. 100/-. Thus we see that neither the statute nor the statutory rules indicate the procedure to be followed by the High Court in entertaining or disposing of appeals.

4. We may also notice some relevant "provisions of the Code. Part VII of the Code deals with appeals including appeals from original decrees, appellate decrees and orders. Part IX contains special provision relating to the High Courts. Section 116 states that the part applies to the High Courts. Section 117 states that save as provided in this part or in part X or in rules, the provisions of the Code shall apply to such High Courts. Section 120 states that sections 16, 17 and 20 do not apply to High Court in the exercise of its original jurisdiction. Part X

deals with Rules. Section 122 relates, inter alia, to the power of High Courts to make rules regulating their own procedure and to annul, alter or add to all or any of the rules in the First Schedule. High Courts have to follow certain procedure and formalities, as prescribed in Sections 123 and 124. Rules are subject to the provisions in Sections 126, 127 and 131. Order XLI deals with appeals from original decrees while Order XLIII deals with appeals from orders. Rules of Order XLI shall apply so far as may be to appeals or orders.

5. Generally speaking, Claims Tribunals deal in matters arising from the law of Torts and also the provisions of the Fatal Accidents Act. In the absence of constitution of a Tribunal, compensation has to be sought from the appropriate civil court and the procedure to be followed by such courts and appellate courts shall be regulated by the Code and any rules applicable to such courts.

6. When a statute creates or recognizes a right, it has further to provide for the constitution of an appropriate forum for the establishment of such right or direct an established court to adjudicate such rights. The statute may also create or recognize right of appeal against the decision of such forum or court and create an appellate forum or recognize an established court as the appellate court. In the latter case, this is in addition to the existing appellate jurisdiction of the established court. In all such cases, it is open to the statute (or the statutory rules, subject to the existence of rule-making power) to prescribe the procedure to be followed by the appellate forum or court. The absence of such statutory provisions would imply that the ordinary incidents of the procedure of, that court would be attracted. In other words, the incidents of its jurisdiction are maintained. If it is one of the ordinary courts of the land, the ordinary rules of procedure applicable to proceedings before such court would apply to the proceeding, unless there is anything in the statute to exclude the application of such rules or procedure. Where the appellate forum recognized is the High Court, it has the right to prescribe its own rules of procedure. Such an appeal must be entertained and disposed of by the High Court in the same manner as an ordinary appeal would be entertained and disposed of, and an ordinary appeal in a High Court would be governed by the provisions of the Code, as provided in Section 117 of the Code. If that be so, the provisions in Order XLI of the Code would govern appeals u/s 110-D of the Act.

7. What we have indicated above clearly emerges from a long line of decisions. In *National Telephone Company, Limited (In Liquidation) v. His Majesty's Postmaster-General* 1913 AC 546, the House of Lords dealt with a question whether an appeal lay to the House from a decision of the Railway and Canal Commission u/s 17 of the Railway and Canal Traffic Act. Viscount Haldane L. C, after referring to the provisions of the Act observed :

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches.

Lord Parker of Waddington observed :

"Where by a statute matters are referred to the determination of a Court of record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same."

8. In *Secy, of State v. Chellikani Rama Rao* AIR 1916 PC 21, the Privy Council considered the provision in the Madras Forest Act laying down right of appeal to the District Court in respect of rejection of a claim put forward before the Forest Settlement Officer. The following observations are relevant:

"Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the CPC apply. This is in full accord with the decision of the Full Bench, *Kamaraju v. Secretary of State* ILR (1888) 11 Mad 309 a decision which was given in 1888 and has been acted on in Madras ever since."

Distinguishing an earlier decision of the Privy Council in *Rangoon Botatung Co. v. Collector, Rangoon* (1912) 39 Ind App 197, it was observed :

"The merits of the present dispute are essentially different in character. The claim was the assertion of a legal right to possession of and property in land; and if the ordinary Courts of the country are seized of a dispute of that character, it would require, in the opinion of the Board, a specific limitation to exclude the ordinary incidents of litigation."

9. In AIR 1948 12 (Privy Council) , the Board dealt with the provisions in Madras Act 4/1938 and their impact on the appellate jurisdiction. The Board observed :

"The true rule is that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal."

10. The above principles have been followed by the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, wherein the provisions of the Trade Marks Act came up for interpretation. The Supreme Court held that the decision given by a single Judge of the High Court in an appeal preferred u/s 76 of the Trade Marks Act constitutes a judgment within the meaning of Clause 15 of the Letters Patent. The statute provided for appeal to the High Court, with power to the High Court to make rules in the matter. The Supreme Court observed :

"Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance

with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court."

Dealing further with the matter, the Court observed :

"The rights created by the Trade Marks Act are civil rights for the protection of persons carrying on trade under marks which have acquired reputation. The statute creates the Registrar a tribunal for safeguarding these rights and for giving effect to the rights created by the Act, and the High Court as such without more has been given appellate jurisdiction over the decisions of this tribunal. It is not easy to understand on what grounds it can be said that the High Court while exercising this appellate jurisdiction has to exercise it in a manner different from its other appellate jurisdiction. It seems to us that this is merely an addition of a new subject matter of appeal to the appellate jurisdiction already exercised by the High Court."

11. In *Collector of Varanasi Vs. Gauri Shankar Misra and Others*, , Supreme Court considered the question whether special leave under Article 136 of the Constitution could be granted against a decision rendered by the High Court u/s 19(1)(f) of the Defence of India Act, 1939 and answered the question in the affirmative. Supreme Court declined to countenance the plea that the High Court acting under the statutory provision is a *persona designata* and not a Court. The statutory provision was that an appeal shall lie to the High Court against an award of the Arbitrator appointed u/s 19(1)(f) of that Act. The Court observed :

"We were informed that neither the Act nor the rules framed thereunder, prescribe any special procedure for the disposal of appeals u/s 19(1)(f). Appeals under that provision have to be disposed of just in the same manner as other appeals to the High Court. Obviously after the appeal had reached the High Court, it had to be determined according to the rules of practice and procedure of that Court. The rule is well settled that when a statute directs that an appeal shall lie to a court already established, then that appeal must be regulated by the practice and procedure of that court."

12. Courts in India have had occasion to consider this question in the light of the provisions of the Motor Vehicles Act also. The Act confers a right of appeal. It does not specifically confer a right to file cross objections. The question is whether the respondent in an appeal u/s 110-D of the Act could file cross objections and whether the High Court could entertain such cross objections. The near unanimous view of the High Courts in India is that cross objections would lie. That is the view taken by the Delhi High Court in *Delhi Transport Undertaking and Another Vs. Kumari Lalita*, which is based on an earlier Full Bench decision of that court in *Municipal Corporation of Delhi Vs. Kuldip Lal Bhandari and Others*, . The same view is taken by the Madhya Pradesh High Court in *Manjula Devi Bhuta*

v. Manjusri Raha 1968 ACJ 1, by the Orissa High Court in Madhusudan Rai Vs. Smt. Basanti Kumari Devi and Others, , by the Madras High Court in The Union Co-operative Insurance Society Ltd., Madras Vs. Lazarammal Ravel and Others, by the Calcutta High Court in Smt. Gurdev Kaur Vs. Rash Behari Das,), by the Allahabad High Court in U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others, by the Karnataka High Court in K. Chandrashekara Naik and Another Vs. Narayana and Another, and by this Court in Sudhakaran v. Varghese 1983 KLT 5 : (AIR 1983 NOC 111). We notice the contrary view taken by a learned single Judge of the Assam and Nagaland High Court in Oriental Fire and General Insurance Co. Ltd. v. Nani Choudhury 1974 ACJ 269. This decision proceeds on the basis that the High Court disposing the appeal acts only as a Tribunal and not as a Court, a view with which we respectfully disagree. A learned single Judge of the Andhra Pradesh High Court has taken the contrary view in Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, holding that an award not being a decree and the Tribunal not being a Court, the provisions of Order XLI would not apply. We do not think this decision can be supported in the light of the long line of decisions of the House of Lords, Privy Council and the Supreme Court already referred to. The decision of the Mysore High Court in B. P. Venkatappa Setty v. B. N. Lakshmiah 1973 ACJ 306 : (AIR 1973 Mys 350) taking the contrary view has been overruled by a Full Bench of the Karnataka High Court in K. Chandrashekara Naik and Another Vs. Narayana and Another, The Full Bench decision of the Allahabad High Court in U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others, has overruled the earlier contrary decisions taken by Division Benches of that Court.

13. This view is consistent with what we have already indicated. The reasons urged that the Claims Tribunal is only a Tribunal and not a Court and the award is not a decree, in our opinion, are really no reasons to hold that the provisions of Order XLI of the Code would not apply. We are not dealing with the power of the Tribunal but with the procedure to be followed by the High Court, as the appellate court. For the reasons already indicated, we are of the opinion that an appeal has to be dealt with by the High Court in the same manner in which it would deal with an ordinary appeal which is governed by the provisions of Order XLI of the Code. In this view, we hold that Rules 11 and 11A of Order XLI of the Code would apply and the High Court is entitled to scrutinize the appeal at the stage of admission to see if there is a prima facie case for the appellant and whether it is a case where notice should be ordered to the respondent.

14. Even if the provisions of Order XLI of the Code cannot be invoked, in our opinion, that is of no consequence. A party aggrieved by the award has a right to prefer an appeal to the High Court; he has the right to have the appeal heard and disposed of on merits. Such a right cannot take in a right to insist that notice should be issued to the respondent or that the respondent should be heard before disposing the appeal. It is the right of the respondent to insist that he should be notified and given an opportunity of being heard before any decision adversely affecting his interests is taken. It will be a futile exercise for the High

Court to order notice to the respondent in an appeal even when it is satisfied that the appellant has no prima facie case. Ordering notice in such an appeal would amount to calling upon the respondent to answer a case which is prima facie unsustainable. That cannot be and should not be done in the absence of any statutory provision or prescription which requires the High Court to do so. No such statutory provision or prescription is cited before us. We are, therefore, of the opinion that irrespective of the provisions of Rule 11 of Order XLI of the Code, High Court has the power to scrutinise an appeal filed u/s 110-D of the Act at the threshold to satisfy itself that there is a prima facie case which the respondent must be called upon to answer and to dismiss the appeal if no such prima facie case is made out.

We therefore overrule the preliminary objection raised by learned counsel for the appellant.