
(2000) 04 MP CK 0042
In the Madhya Pradesh High Court
Case No : Civil Revision No. 1600/99

New India Assurance Co. Ltd.

APPELLANT

Vs

Meghnath and another

RESPONDENT

Date of Decision : 08-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(2), 24, 25
Constitution of India, 1950 — Article 136, 136(1), 227
Criminal Procedure Code, 1973 (CrPC) — Section 195
Industrial Disputes Act, 1947 — Section 10A
Motor Vehicles Act, 1939 — Section 110, 110C
Motor Vehicles Act, 1988 — Section 140, 165, 168, 169, 173

Citation : (2001) ACJ 627 : AIR 2001 MP 36 : (2001) 2 MPHT 258 : (2000) 3 MPLJ 247 : (2000) 3 MPLJ 246

Hon'ble Judges : Mr. A.K. Mishra, J

Bench : Single Bench

Advocate : Shri R.P. Agrawal, for the Appellant; Shri H.S. Ruprah and Shri A.S. Jha, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

This order shall also govern the disposal of Civil Revision No. 3037/99 (Oriental Insurance Co. Ltd. Vs. Smt. Rajmani).

Common question has arisen in the present two revisions as to the maintainability of the revisions on account of specific ban created by Section 173 of the Motor Vehicles Act, 1988. Section 173 provides that no appeal shall lie against an award below the sum of Rs. 10,000/-. In such event, when no appeal has been provided the question for decision is whether revision lies u/s 115, CPC.

Both the aforesaid revisions were taken up for hearing on 21-1-2000. Shri A.S. Jha and Shri H.S. Ruprah assisted the Court as amicus curiae and they also addressed the Court. In both the revisions, the insurer is the petitioner. In C.R.

No. 1600/99, New India Assurance Company Limited is the petitioner whereas C.R. No. 3037 of 1999 has been filed by Oriental Insurance Company Ltd.

The learned counsel appearing in both the cases have submitted that as the appeal is not provided u/s 173, sub-section (2) of the Motor Vehicles Act, 1988 with "respect to an award for the sum below Rs. 10,000/-,, and as the Tribunal is a Civil Court, the award is revisable at the instance of insurance company within the purview of Section 115 of the CPC. Learned counsel have placed reliance on various decisions which shall be referred to hereinafter.

Learned amicus curiae Shri A.S. Jha and Shri H.S. Ruprah assisting the Court have submitted that revision is not provided against the final award in the Motor Vehicles Act. It is submitted that Tribunals are constituted under a special Act and once finality is given to the award for a sum below Rs. 10,000/-that cannot be allowed to be destroyed by resorting to surreptitious method of Filing the revision. It is their submission that the Tribunal is a creation under the Act though it is having various powers of the Civil Court, but in strict terms it cannot be construed as a Civil Court and hence revision would not lie against each and every order particularly the award finally made by such Tribunal. It has been further submitted that if the revision is held competent against final award, provision of revision can be invoked with respect to various other Tribunals similarly functioning under various Acts.

Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") reads thus :

"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."

Another provision relevant i.e. Section 169 of the Act reads as under :

"169. Procedure and powers of Claims Tribunal.-- (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 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 it in holding the inquiry."

It may be seen that the legislature has enacted Section 173, sub-sections (1) and (2) with the purpose that against the award for a sum below Rs. 10,000/- no appeal should be filed. The legislative intent on the point is clear that finality is attached to such awards. The letter and spirit of the legislative intent must be given full effect to and should not be allowed to get rid of by adopting circuitous method of filing revision u/s 115, CPC or a petition under Article 227 of the Constitution of India. This question was considered by five Judges Bench of this Court in the case of Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, In the said case, one of the revision was filed by the Insurance Company against an interim award u/s 140 of the Act of 1988 asking the insurance company to pay compensation on account of no-fault liability. There were other revisions also which arose against rejection of the claim for compensation or award u/s 140 of the Act. Another revision was filed by the owner of the vehicle who was directed u/s 140 to pay compensation on account of no fault liability. Writ petition under Article 227 of the Constitution was also filed bearing No. M.P. 2351/92 which was filed by claimant for award u/s 140 of the Act. The 5 Judges Bench of this Court while answering the reference in the case of Chintaman (AIR 1995 Madh Pra 229) (supra) held that the decision can be challenged u/s 173 of the Motor Vehicles Act and it was further held that the decision of this Court in the case of Gaya Prasad Vs. Suresh Kumar 1992 ACC CJ 200 (Madh Pra) in which it was laid down that appeal does not lie u/s 173 against determination of a claim for compensation u/s 140 of the Act was held to be not laying down good law and was overruled. In para 14, this Court has laid down as under :--

"There cannot be any doubt that where an appeal lies revision cannot lie (see : Major S.S. Khanna Vs. Brig. F.J. Dillon, and Sunder Lal Vs. Paramsukhdas, This principle has been introduced in Section 115 of the CPC by means of sub-section (2) incorporated by Amendment Act No. 110 of 1976. Sub-section (2) states that the High Court shall not under this Section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. Since we have held that an appeal lies, it follows that a revision does not lie."

Thus, it has been held by the five Judges Bench of this Court that against an award where an appeal lies no revision can be filed nor a petition under Article 227 of the Constitution would lie.

The learned counsel for the petitioners placed reliance upon a decision of this Court in M.A. No. 1138/99 [United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, decided on 9-8-1999 in which it has been laid down in para 14 as under:--

"In view of the binding decisions of the Supreme Court in the case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, and Narendra Kumar and Another Vs. Yarenissa and Others, (supra) as also the Division Bench decision of this Court in the case of United India Insurance Co. Ltd. Vs. Pratibha Rathi (1995 AIHC 3377) (supra), it has to be held that the insurer has no right to prefer an appeal only on the quantum of compensation."

However, in para 16, while answering the question No. 2 raised in the appeal, the Division Bench held as under :--

"Question No. 2 : Whether an appeal on quantum of compensation by the insurance can be entertained where the ground urged is that the compensation awarded by the Tribunal is shockingly excessive and disproportionate to the age and income of the victim ?

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We have given our thoughtful consideration to the above argument advanced on behalf of the Insurance Company. As we have found above, the provisions of the Act, as interpreted by this Court and the Apex Court, do not permit any right of appeal to the insurer, on quantum of compensation awarded. In cases where the Tribunal has passed shockingly excessive awards of compensation throwing all settled principles to the wind or the quantum of compensation awarded is arbitrary, in our considered opinion, the insurer is not without remedy. It can then instead of resorting to the remedy of appeal which is not available to him under the Act, invoke revisional jurisdiction of this Court u/s 115 of the CPC or its supervisory jurisdiction under Article 227 of the Constitution."

The above decision in Ramdas Patil of the Division Bench of this Court appears to be running counter to the decision of the Five Judges Bench of this Court. Whatever that may be, the question before the Division Bench was not whether revision would lie u/s 115, CPC in a case where the compensation awarded is below Rs. 10,000/-. The question which was posed before the Division Bench for consideration was whether in cases where compensation awarded is shockingly high, insurer can resort to revision. This is not the question involved in the present revisions. Thus, the reliance on the decision in United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, (M.A. No. 1138/99) decided on 9-7-99 is of no avail.

The main ground of the learned counsel for the insurer in support of maintainability of the revision is that Claims Tribunal constituted u/s 165 of the Act is a Civil Court subordinate to High Court and revision would lie u/s 115. CPC as the award below Rs. 10,000/- is not appealable under the Motor Vehicles Act.

There is divergence of opinion of various High Courts whether the Claims Tribunal is a Civil Court subordinate to the High Court and revision would lie u/s 115, CPC. In the case of Krishan Gopal Devi Prasad and Others Vs. Dattatraya Madho Lad, on difference of opinion between two Judges of this Court, the matter was referred to the 3rd Judge (Justice R.J. Bhawe). Deciding the difference of opinion it was held that Claims Tribunal constituted u/s 110 of the Motor Vehicles Act, 1939 (Section 165 of the Act of 1988) is a Civil Court and revision would lie u/s 115, CPC against an order passed by it in the course of proceedings before it. In the said case, the Court was considering revision against an interlocutory order and not against a final award. In the other decisions in Rambhau 1978 ACC CJ 463 and Ukadhbai 1978 ACC CJ 89, the question involved was not maintainability of revision against a final award. The cases are, therefore, distinguishable.

Distinction between a "Court" and a Tribunal" was considered by the Supreme Court in the case of Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, . It was laid down that the main test to be applied is whether the body or authority has been constituted by the State and has been clothed with the State's inherent judicial power to deal with disputes between parties and determine them on the merits fairly and objectively under Article 136(1) of the Constitution of India. The requirement of procedure which is followed in Courts and the possession of subsidiary powers which are given to Courts to try the cases before them, are described as trappings of the Courts. If trappings exist a Tribunal can be held to be a Civil Court. Still it was observed that the consideration about the presence of all or some of the trappings of a Court is really not decisive. The main and the basic test is whether the adjudicating power which a particular authority is empowered to exercise has been conferred on it by a statute and can be described as a part of the State's inherent power exercised on discharging its judicial function. In order to be a Tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties such as a private arbitrator or a Tribunal acting u/s 10A of the Industrial Disputes Act, 1947 does not satisfy the test of a Tribunal within Art. 136 of the Constitution. It matters little that such a body or authority is vested with the trappings of a Court. The Full Bench of this High Court has also taken the view that Claims Tribunals are "Courts" for all purposes. Proceedings before the Claims Tribunals are not in the nature of arbitration proceedings and as such the Tribunal acts as a Court. However, it may be seen that in the Division Bench case of Punjab & Haryana High Court in Barkat Singh and Others Vs. Hans Raj Pandit, Driver and Others, it was laid down that no doubt, the Claims Tribunal acts as a Court when it adjudicates upon a claim for compensation but it is not a Court in the technical sense of the term and is not part of hierarchy of the Civil Courts recognised by the Constitution. It is only a quasi judicial Tribunal exercising judicial functions and powers specifically conferred on it. It was held that Claims Tribunal is not a Civil Court subordinate to High Court for the purpose of Section 115 of the CPC and the orders passed by the Claims Tribunal are not

amenable to the revisional jurisdiction of the High Court.

It may further be seen that in the case of *Om Prakash and Another Vs. Smt. Rukmini Devi and Others*, , it was held that the Tribunal is not Court instead it is a creation of the special statute, it does not enjoy the status of a Civil Courts, and its orders are, therefore, not amenable to appeal under Order 43, CPC. In the said case, the Allahabad High Court was considering an interlocutory order. It was held that an interlocutory order, such as refusal to set aside ex parte order is not appealable. A Single Bench of the Karnataka High Court in the case of *Revanappa Vs. Gunderao and Others*, , following the Punjab view held that the Tribunal is not a Court for the purpose of Section 115, CPC. It was observed that the striking distinction between a Tribunal and a Civil Court is that, in the case of a Tribunal a special jurisdiction is conferred under a special enactment to perform and exercise some of the judicial functions and powers of the State; whereas in the case of a Civil Court, it enjoys all the judicial powers and functions of the State concerning the causes of civil nature except where its jurisdiction is specially taken away. Therefore, the Motor Accident Claims Tribunal constituted under the Motor Vehicles Act cannot be held to be a Civil Court falling within the hierarchy of Courts which have been invested with the State's inherent judicial powers. It was further held that Claims Tribunal is not a Civil Court merely because it is specially empowered to exercise certain powers of the Civil Court. If really it were to be a Civil Court, it was not at all necessary to make such a specific provision like Section 110-C (2).

A Division Bench of the Jammu & Kashmir High Court in the case of *Abdul Gaffar Gujree Vs. Mohammad Phaphoo and Others*, held that if the Claims Tribunal were a Civil Court or intended (o be a Civil Court so many fictions were not needed to be created, for instance, there was no requirement to apply CPC in only specified matters for taking evidence and enforcing the attendance of the witnesses and compelling the production of documents. In doing so, application of CPC in other matters is excluded. It is also prescribed that the Tribunal would evolve its own procedure for holding the proceedings and in the rules framed under the Act application before the Tribunal is to be treated a suit. That, perse, will not make it a Civil Court subordinate to the High Court. There are administrative Tribunals which may have power to decide civil rights, nevertheless they cannot be termed as Civil Courts. The Rajasthan High Court in *Rajasthan State Road Transport Corporation, Jaipur Vs. Kalawati and Others*, and *Lax-minarayan Mishra Vs. Kailash Narayan Gupta* AIR 1974 Raj 55, has taken the view that Tribunal is not a Civil Court and revision is not maintainable against its order. The Kerala High Court in the case of *Beeran Vs. Rajappan* 1980 ACC CJ 287, has also taken a similar view.

In *State of Haryana Vs. Smt. Darshana Devi and Others*, , before the Supreme Court, dispute involved was as to the payment of Court-fees. The High Court had extended the pauper provisions to the auto accident claims. The reasonings of the High Court that Order 33, CPC applied to the Tribunals which have the

trappings of the Civil Court was approved and the decision was affirmed as the Supreme Court has held in the said case that Tribunal is having the trappings of the Civil Court.

Long drawn controversy has been settled by the Apex Court. The Supreme Court in *Bhagawati Devi Vs. M/s. I.S. Goel* 1983 ACC CJ 123, has held that the Claims Tribunal constituted under the Motor Vehicles Act is a Civil Court for the purposes of Section 25 of the CPC and the power u/s 25, CPC was exercised for transferring the case on that basis. However, the Supreme Court in both the aforesaid decisions has considered the matter at the interlocutory state and it was in that context that it was held that Claims Tribunal is a Civil Court.

A similar view was taken by a Division Bench of Karnataka High Court in *Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah, Gulbarga and Another*, and the decision in the case of *Revanappa Vs. Gunderao and Others*, was held to be not laying down the correct position of law. It was held that Tribunal is a Court subordinate to the High Court, hence power u/s 24, CPC could be exercised for transferring a case. Another decision of Karnataka High Court in *State of Mysore Vs. K.L. Subbanna* AIR 1974 Kan 109, was also overruled following the law laid down by the Supreme Court in the case of *Bhagwati Devi* 1983 ACC CJ 123.

A Single Bench of the Bombay High Court in the case reported in 1997 ACC CJ 372, where a writ petition was filed against an order rejecting the application for setting aside an ex parte award, it was held that writ petition was not maintainable and the order was held to be amendable to the revisional jurisdiction of the High Court u/s 115, CPC. In the said decision the Court was not considering maintainability of a revision against the award itself. The Bombay High Court has considered the matter of rejection of an application to set aside ex parte award.

Right of appeal is a vested right whereas revision is not provided as of right. In the case of *Ramesh Singh and another Vs. Cinta Devi and others*, the Supreme Court has considered the nature of the right of appeal and it was held that right of appeal is a vested right and such right of appeal gets crystallised at the time of the institution of the application in the Tribunal in the first instance and that vested right of appeal would not be dislodged by the enactment of 1988 Act, and decisions of Allahabad High Court in 1990 ACC 321 and Madhya Pradesh High Court in *Jaswant Rao Vs. Kamlabai and Another*, were confirmed and that of Patna High Court in *Ramesh Singh and Another Vs. Chinta Devi and Others* was reversed. Similar view has been taken by the Andhra Pradesh High Court in the case of *Oriental Insurance Co. Ltd. Vs. Mukku Bullemma* 1996 ACT 1213 : (1996 AIHC 3675).

In the instant case, the claim proceedings were instituted subsequent to the enactment of 1988 Act hence the maintainability of appeal would be governed by the provisions of Section 173(2). Section 173(2) specifically bars filing of an appeal if the amount of compensation is less than Rs. 10,000/-. The provision

has been enacted in order to save the claimants from the hierarchy of the Courts and multiplication of the expenses incurred at different levels. Therefore, in its wisdom the legislature has considered it fit and proper that if the amount is less than Rs. 10,000/- finality be attached to the awards passed by the Claims Tribunal. If it is held that revision is maintainable at the behest of the insurer or other persons liable to pay the compensation, where the amount is less than Rs. 10,000/- the intent of the legislature would be defeated in its letter and spirit. Simpliciter fact that the Tribunal is having trappings of the Civil Court, does not mean that in every case where the appeal is specifically barred resort can be had to revision. In other words, if an appeal lies on a question of law or a substantial question of law, revisional powers cannot be invoked of the same Court on other grounds u/s 115, CPC. Revision is not a vested right. The Full Bench of this Court has considered this aspect and it was held that right of revision is not a vested right and can be curtailed or abridged by the legislature. The decision in *Pirbux Bilkhi Vs. Babulal Dwarka* 1986 MPLJ 720 : (AIR 1986 Mp 18) distinguished between right of appeal and right of revision. The right of appeal has been held to be a vested right, not right of revision. The Supreme Court in the case of *Shri Vishnu Awatar Vs. Shiv Autar*, AIR 1980 SC 1575, held that right of revision to the High Court could be curtailed. The matter came up for consideration before the Full Bench of this Court in *Ramchandra and Others Vs. Dattatraya and Another*, In para 8, this Court observed as under:--

"In our opinion, in order to ascertain as to whether a right of revision is or is not conferred on a litigant, it would be necessary to examine the provision of law under which that right is being claimed. Does it provide that a revision shall lie against a particular order or does it merely confer power on a superior authority to revise orders of a subordinate authority ? In one case a substantive right is conferred while in the other case it is not so. That is why the Supreme Court held in *Vishnu Awatar Vs. Shiv Autar and Others*, that the amendment made in Section 115, CPC was a procedural reform in the field of revision to the High Court."

If the Motor Vehicles Act is examined, it becomes amply clear that finality is provided to the awards for less than Rs. 10,000/-. By necessary implication of the terminology in Section 173, sub-section (2), right of revision against a final award is not available. The Act envisages finality to be attached to the awards for an amount less than Rs. 10,000/-. Therefore, revision being not a vested right it cannot be said that right of revision is available even when the Tribunal is held to be Civil Court having the trappings of a Civil Court.

In the result, there is no escape from the conclusion that revision is not maintainable in a case in which award is less than Rs. 10,000/-. As the finality is attached to such awards, neither an appeal is competent nor revision lies against such an award. The two revisions are, therefore, dismissed as not maintainable. There shall be no order as to costs. The Court places on record the appreciation of the help rendered by Shri A.S. Jha and Shri H.S. Ruprah, learned counsel, who

have assisted the Court ably in deciding the present revisions.

Civil Revisions dismissed.