(2000) 09 MP CK 0024

In the Madhya Pradesh High Court

Case No : Civil Revision No. 2096 of 1999

New India Assurance Co. Ltd. — APPELLANT

Vs

Rafeeka Sultan and Others — RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12, 35
Civil Procedure Code, 1908 (CPC) — Section 115, 140, 25, 4
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1988 — Section 110, 129, 140, 147, 149
Penal Code, 1860 (IPC) — Section 304A

Citation : (2001) ACJ 648 : AIR 2001 MP 116 : (2000) ILR (MP) 1174 : (2000) 2 MPJR 567 : (2000) 3 MPLJ 561

Hon'ble Judges : Bhawani Singh, C.J;Dipak Misra, J;A.K. Mishra, J

Bench : Full Bench

Advocate : Ravish Agrawal, Amicus curiae and S.K. Seth, AAG, Virendra Verma and Sanjay Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.

Whether insurance company can challenge quantum of compensation u/s 115 of the CPC or under Article 227 of the Constitution of India, is the question for determination in this case. It arises in circumstances being narrated hereinafter.

Mahmood-Ul-Hassan (40-45) was employed with M.P. State Road Transport Corporation, earning Rs. 1,400 per month, apart from allowances and other facilities. While he was going towards crossing from bus stand on 18.2.86, truck No. CPD 8250 driven by Dev Kumar rashly and negligently hit him resulting in his death. The matter was reported at Police Station, Hanumanganj and case u/s 304A of the Indian Penal Code filed in the court after investigation. Autopsy of the dead body of Mahmood-Ul-Hassan was conducted on 19.2.1986 at Hamidia Hospital. Dinesh Kumar was owner of the truck while the New India Assurance

Co. Ltd. was insurer. The claimants preferred a claim for Rs. 4,00,000, since they were dependent on the deceased. Other side admitted taking place of accident, rest of the allegations were denied and the insurance company alleged that it was not responsible for making payment.

The Motor Accidents Claims Tribunal (for brevity ''the Tribunal'') found on evidence recorded in the case that the accident was committed on 18.2.1986 at 9.30 p.m. by truck No. CPD 8250 driven rashly and negligently by driver and the deceased was not responsible for it. It found that in this accident, deceased suffered serious injuries resulting in his death and that the claimants were entitled to claim compensation. Accordingly, total compensation of Rs. 1,60,000 has been awarded with interest at the rate of 12 per cent per annum from the date of claim till the date of realisation, by award dated 27.3.1998 passed in M.C.C. No. 41 of 1994.

New India Assurance Co. Ltd. assailed this award through civil revision u/s 115 of the Code of Civil Procedure, alleging that the Tribunal acted illegally and in disregard of provisions of law in allowing the compensation with interest at the rate of 12 per cent per annum holding that the deceased was 40 years old and applied multiplier of 10, instead of holding that the deceased was 53 years old as reflected in the salary certificate and the case admitted multiplier of 6 (six) for determination of compensation, nor could interest at the rate of 12 per cent per annum from the date of filing the application for a period of 12 years be allowed since delay in disposal of case was attributable to the claimants for which the insurance company could not be penalised.

Initially, misc. appeal u/s 173 of the Motor Vehicles Act, 1988, was filed. However, it was converted into revision u/s 115 of the Code of Civil Procedure, with permission of the court at a later stage, presumably on realisation that appeal at the instance of the insurer as to quantum of compensation, was not competent. This matter appeared before brother Dipak Misra, J. In his Lordship''s view, the Division Bench decision of this court in United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, , required reconsideration by a larger Bench, since where appeal lies under the statute, quantum of compensation cannot be questioned at the instance of insurance company having limited defences, the award cannot be assailed in civil revision or for that matter in a writ petition under Article 227 of the Constitution of India, while the opinion of the Bench in Ramdas Patil''s case (supra) was to the contrary. For coming to the conclusion, the learned single Judge has taken into consideration number of important judgments, relevant provisions of law in a comprehensive manner. This is how the matter is before the Full Bench for determination of the question put up for consideration by the learned counsel for the parties and quoted in the beginning of the judgment.

Looking to the importance of the question, we requested Mr. Ravish Agrawal, senior counsel and Mr. S.K. Seth, AAG, to assist the court while Mr. Sanjay Agrawal is already assisting the court; extensive submissions were advanced by both the sides to tackle the issue under consideration.

Mr. Virendra Verma and Mr. Sanjay Agrawal, Advocates contended that when the insurance company cannot question the quantum of compensation, though shocking or arbitrary, it can challenge the award u/s 115 of the CPC or Article 227 of the Constitution of India, since Tribunal is a civil court subordinate to the High Court. With a view to bring home the submissions, the learned counsel placed reliance on United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, .

Learned counsel for the respondents vehemently opposed the submission and contended that the insurance company cannot challenge the quantum of compensation. In terms of Section 149(2) of the Motor Vehicles Act, 1988, limited defences are available to the insurance company; therefore, the insurance company cannot challenge the award on other grounds.

Motor Vehicles Act, 1988, provides for complete mechanism with regard to initiation and determination of just compensation in manner provided. Appeal u/s 173 of the Motor Vehicles Act is maintainable on certain grounds and where it is not available to a party, revision u/s 115 of the CPC and the writ petition under Article 227 of the Constitution of India is not maintainable. It is also contended that extended meaning cannot be given to ''aggrieved person'' in Section 173 of the Motor Vehicles Act, 1988, to enable a party, more so the insurance company, to assail the award on any ground whatsoever. This expression has to be read in the context of other statutory provisions in the Act and it may be a civil court subordinate to the High Court, but award can be assailed only on grounds and in circumstances mentioned in the Act. Large number of decisions, for and against the question before us, came to our notice during the hearing of the case. Some such decisions are: Krishan Gopal v. Dattatrya 1971 ACJ 372 Bhagwati Devi v. I.S. Goel 1983 ACJ 123 (SC); Dushyant Kumar and Others Vs. Rajasthan State Road Transport Corporation and Another, ; Darshan Singh Vs. Ghewarchand and Others, ; New India Assurance Co. Ltd. Vs. Ajay and Others, ; Sarjubai v. Gurudip Singh 1994 ACJ 997 (MP); Prabhatsing Nathubhai Mahida Vs. Shantilal Nagjibhai Thakore, ; Noreen R. Srikantaiah v. L. Dasarath Ramaiah 1985 ACJ 628 (Karnataka); State of Mysore v. K.L. Subbanna AIR 1974 Mys 109; Gaya Prasad and Another Vs. Suresh Kumar, ; United India Insurance Co. Ltd., Gauhati Vs. Member, Motor Accident Claims Tribunal, Lakhimpur and Others, ; State of Haryana v. Darshana Devi 1979 ACJ 205 (SC); Barkat Singh v. Hans Raj Pandit 1985 ACJ 318 (P&H); Om Prakash v. Rukmini Devi 1983 ACJ 300 (Allahabad); Abdul Gaffar Gujree v. Mohammad Phaphoo 1985 ACJ 556 (J&K); Laxminarain Misra v. Kailash Narain Gupta 1974 ACJ 79 (Rajasthan); Mittar Singh Vs. Ashish Kumar and Others, ; New India Assurance Co. Ltd. Vs. Ranjit Ghosh and Another, ; National Insurance Co. Ltd. v. Vipul 1999 ACJ 695 (HP); Oriental Insurance Co. Ltd. v. Motor Accidents Claims Tribunal 1999 ACJ 1015 (Kerala); Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, ; New India Assurance Co. Ltd. Vs. Meghnath and another, ; and Chinnama George and Others Vs. N.K. Raju and Another, .

However, before appreciating the rival submissions, it is necessary to quote some of the important provisions of the Motor Vehicles Act, 1988 (for brevity ''the Act''). Section 149(2) of the Act, which is relevant for our purposes, reads as under:

Section 149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.--

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(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely--

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely-

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

Section 169 of the Act, which is relevant for our purposes, reads as under:

Section 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.

(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.

Section 170 of the Act is as extracted below:

Section 170. Impleading insurer in certain cases.--Where in the course of any inquiry, the Claims Tribunal is satisfied that--

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made, has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer, who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in subsection (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

Section 173 of the Act, which is relevant for our purposes, reads as under:

Section 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.

Section 115 of the Code of Civil Procedure, 1908, which is relevant for our purposes, reads as under:

Section 115. Revision.--(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears--

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where,--

(a) the order, if it had been made in favour of the party applying for the revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) 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.

Explanation.--In this section, the expression ''any case which has been decided'' includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

Article 227 of the Constitution of India, which is relevant for our purposes, reads as under:

Article 227. (1) Every High Court shall have superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may--

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of

superintendence over any court or Tribunal constituted by or under any law relating to Armed Forces.

In Krishan Gopal v. Dattatrya 1971 ACJ 372 (MP), S.B. Sen, J., took the view that the Claims Tribunal constituted u/s 110 of the Act is a civil court and a revision petition would lie u/s 115, CPC against an order passed by it in the course of proceedings before it. Even if section 115, CPC is not strictly applicable, the principles thereof would apply since it is a Tribunal, which decides civil disputes and is subordinate to High Court. S.M.N. Raina, J., took contrary view and also said that the only remedy available to a party aggrieved by an order of the Tribunal would be to challenge the order by a petition under Article 226 or 227 of the Constitution of India. On reference, J.R. Bhave, J., held that the Claims Tribunal is a civil court; therefore, revision u/s 115 of CPC would lie against the order passed by it. Reasoning given is that the Tribunal is constituted under the statute. It discharges judicial functions of the sovereign State, untrammelled by executive considerations and while discharging functions, it is required to follow the well recognised judicial principles. The Tribunal is subordinate to the High Court; therefore, where the appeal is not available, revision u/s 115 of the CPC is maintainable. In paras 14, 15 and 16 of the said judgment, it has been held:

(14) So far as that is concerned we have seen that there is no decision of this High Court. The decision as we have seen is in C.R. No. 224 of 1965 (supra) decided under the Workmen''s Compensation Act in which the provisions are the same as in the Motor Vehicles Act. I see no reason, therefore, why the Claims Tribunal should also not be held subordinate to the High Court. In Gitabai v. General Manager, M.P. Roadways, of Gwalior Bench decided by Hon''ble Sharma, J., on 9.12.1963 a miscellaneous appeal was filed against a claim which was dismissed in default. Preliminary objection that no appeal lies was upheld and his Lordship Sharma, J., observed:

But a revision would lie against an interlocutory order passed by the Claims Tribunal in such cases.

His Lordship heard the case as a revision and set aside the order of dismissal in default. In Lucky Bharat Garage (P) Ltd., Raipur v. Shanti Devi Shrivastava 1969 ACJ 161 similarly a revision against the order of a Claims Tribunal was entertained and allowed. It is true that no question was directly raised about the maintainability of any petition for revision u/s 115, Civil Procedure Code.

(15) A reference was made at the Bar to the decision Brajnandan Sinha Vs. Jyoti Narain, . That was a case under the Contempt of Courts Act. While discussing the essential tests of a judicial pronouncement, their Lordships also observed:

It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial Tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

It is clear that a Claims Tribunal under Motor Vehicles Act as well as a Commissioner under the Workmen''s Compensation Act have power, apart from having some of the trappings of a judicial Tribunal to give a decision or a definite judgment which has finality and authoritativeness. Both the authorities act as courts and are subordinate to the High Court.

(16) Thus, we see that the conditions laid down u/s 115, CPC are fulfilled in the case of a Tribunal under the Motor Vehicles Act. It is a ''court'' as has been held in a number of cases mentioned above. It is subject to the appellate jurisdiction is also clear from the statute itself. The power to revise is exercisable whether we take that revisional power is included in the appellate power as observed in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , or because it fulfils the two conditions mentioned u/s 115, Civil Procedure Code.

Single Bench of this court in New India Assurance Co. Ltd. Vs. Ajay and Others, , also followed Krishan Gopal v. Dattatrya 1971 ACJ 372 (MP) and held that the Claims Tribunal is a civil court subordinate to the High Court and a revision against the order/interim order of the Tribunal is maintainable. Same view has been taken by the single Bench of Raj-asthan High Court in Dushyant Kumar and Others Vs. Rajasthan State Road Transport Corporation and Another, , which is confirmed in the Division Bench decision of the same court in Darshan Singh v. Ghewarchand 1993 ACJ 534 (Rajasthan). In Sarjubai Vs. Gurudip Singh and Others, , this court held that the Claims Tribunal is a civil court subordinate to the High Court and its orders are amenable to revisional jurisdiction of the High Court. The Division Bench followed the earlier decision of this court in Krishan Gopal v. Dattatrya (supra) and another judgment of Rajasthan High Court in Darshan Singh v. Ghewarchand (supra) and dissented from the view taken in Dimple Vs. Lajjaram and Others, . In paras 7 and 8 of the judgment reported in Sarjubai v. Gurudip Singh (supra), the Division Bench said:

(7) The distinction between the courts of general jurisdiction and courts of special jurisdiction was noted by their Lordships of Privy Council in Rajah Nilmoni Singh Deo Bahadur v. Taranath Mookerjee, 9 IA 174 and the observations of that case were interpreted by the Madras High Court in the case of Sriramrao v. Suryanarayanamurthi AIR 1954 Mad 340, to mean thus:

Courts constituted for deciding purely civil questions between persons seeking their civil rights must be considered to be civil courts, notwithstanding that they are created by a special statute and are mentioned in that statute as distinct from civil courts. The true import of such a distinction is that while special courts have jurisdiction over a limited class of suits specified in the statute the jurisdiction of the civil courts is not limited to any class of suits. To this extent, there is a distinction between the two classes of courts but in respect of the class of suits actually entrusted to the jurisdiction of special courts they perform in relation to them functions which but for the special Act would have been performed by civil courts and to that extent the special courts can be said to be civil courts in a different attire.

(8) In the case of Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , the Supreme Court for determining whether a court or Tribunal is subordinate to the High Court or not, has observed thus:

The right of appeal is one of entering a superior court and invoking its aid and interpretation to redress the error of the court below. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior court and the power on the part of the former to review decisions of the latter. When the aid of the High Court is invoked on the revisional side, it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense.

Further, in para 12 of the said judgment, the Division Bench held:

(12) A Full Bench of this court in case of Smt. Sarmaniya Bai and Others Vs. Madhya Pradesh Rajya Parivahan Nigam and Others, , wherein the question was whether the Claims Tribunal passing an award under the provisions of the Act for compensation to claimants for death or injuries lacks jurisdiction to enforce its award adopting the procedure provided under the Code of Civil Procedure, exercising its inherent jurisdiction in that regard, referring to the provisions of Section 110C and Rule 297 of the Rules, in para 15, relying on the decision of the Supreme Court in the case of State of Haryana v. Darshana Devi 1979 ACJ 205 (SC) and a decision of Apex Court in case of Bhagwati Devi v. I.S. Goel 1983 ACJ 123 (SC), wherein it has been held that the Claims Tribunal was a civil court, it observed that the Tribunal is a court of civil judicature which is required to follow the procedure prescribed under the CPC in that regard. It is obviously an essential attribute of the Claims Tribunal that it acts judicially and exercises civil jurisdiction in deciding the claims relating to civil wrongs and civil liability of tortfeasors and liability also of insurers arising out of the statutory and contractual obligations. The jurisdiction of the Tribunal in applying any provision of the CPC for exercising any power in accordance with the procedure prescribed in CPC is not impaired in any manner as it has got all the trappings of the civil court. In para 19, it was further observed that the true character of the Claims Tribunal is exposed by the requirement of the same being constituted by judicially trained persons of high calibre such as a District Judge or a High Court Judge as per Section 110(3). Factually, the position is more potent and patent in this State as District Judges and Additional District Judges are appointed u/s 110 to perform duties of Claims Tribunal as per Section 3, M.P. Civil Courts Act, ''civil courts'' are constituted with them (among others), in this State. Therefore, the court held by reading the provisions that the Claims Tribunal exercises jurisdiction of a civil court and as such it has jurisdiction to execute its own

award under the provisions of Order 21 of Code of Civil Procedure.

Further, in paras 13, 14 and 15 of the said judgment, the Division Bench observed:

(13) Therefore, from the above discussion, it is clear that the Claims Tribunal is a ''civil court'' and is subordinate to High Court, its orders are amenable to revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure.

(14) However, the decision in Dimple Vs. Lajjaram and Others, , rendered by Dr. T.N. Singh, J., takes a contrary view, wherein it has been held that no revision lies against an order rejecting an application u/s 140 of the Act, placing reliance on a Full Bench decision of this court in the case of Gaya Prasad v. Suresh Kumar 1992 ACJ 200 , learned Judge observed that the provision of appeal or revision is creature of the statute. If legislature in enacting the special law thought it advisable not to create the remedy of revision in respect of any order passed by the Claims Tribunal and thought it fit to provide appeals only against certain orders passed by the Tribunal, power to make an order u/s 140 conferred on the Claims Tribunal under special law and any order passed by the Tribunal is not to be affected obviously in any manner by the provisions of the Code of Civil Procedure, including Section 115 thereof.

(15) With respect, we may say that in case of Gaya Prasad and Another Vs. Suresh Kumar, , the point of controversy was whether against an order of interim award passed u/s 140, an appeal lies u/s 173 of the new Act. While dealing with the question, the court observed that appeal is maintainable only against the award determining the compensation u/s 168 though interim order passed u/s 140 is in the case of trial of the claim it carries also the implication of the finality, as interim order is not impugnable under any provisions of Chapter XII. Indeed, legislature''s competence to make non-appealable any interim order from the scheme of Chapter X is beyond dispute, while R.C. Lahoti, J., took a contrary view. However, in that case, no question was involved for determination whether a ''Claims Tribunal'' is subordinate to High Court and its orders are amenable to the revisional jurisdiction. Therefore, in our opinion, in case of Dimple Vs. Lajjaram and Others, , reliance on Gaya Prasad''s case (supra) was not appropriate. However, if the learned Judge was of the view that the order of the Claims Tribunal is not amenable to revisional jurisdiction of the High Court as the Claims Tribunal is not a ''civil court'', with due respect, we are of the view that a Judge sitting singly could not have taken a contrary view to the one taken by the third Judge, on difference of opinion in Krishan Gopal''s case 1971 ACJ 372 (MP). Therefore, the view taken in Dimple''s case (supra) and followed by R.C. Lahoti, J., in Safiya Khatun v. Shivnesh Chandra, Civil Revision No. 137 of 1992; decided on 30.9.1992, is contrary to the view taken in Krishan Gopal''s case (supra), we respectfully are unable to subscribe and respectfully agree with the view taken in Krishan Gopal''s case (Supra) and in case of New India Assurance Co. Ltd. Vs. Ajay and Others, .

In Bhagwati Devi v. I.S. Gael 1983 ACJ 123 (SC), the Apex Court observed that:

In view of observations of this court in the State of Haryana v. Darshana Devi 1979 ACJ 205 (SC), we are of the view that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act is a civil court for the purposes of Section 25 of the Code of Civil Procedure...

In Dimple Vs. Lajjaram and Others, , Dr. T.N. Singh, J., took the view that the Tribunal is not a court subordinate to High Court and revision in terms of Section 115 of the CPC against an order of the Claims Tribunal is not maintainable. The Claims Tribunal is a creature of the Act and not of Civil Procedure Code. The revision being not contemplated under the Act, jurisdiction of High Court cannot be invoked u/s 115 of the CPC though claimant may invoke writ jurisdiction of the High Court for redressal of grievance against the order. In para 13, the Seamed Judge said:

(13) Law, in my view, is well settled that the provision, whether of appeal or revision, is creature of statute. If legislature in enacting the special law thought it advisable not to create the remedy of revision in respect of any order passed by the Claims Tribunal and thought it fit to provide appeals only against certain orders passed by the Tribunal, judicially the Claims Tribunal cannot be vested with the revisional jurisdiction. This court''s Full Bench in Gaya Prasad and Another Vs. Suresh Kumar, , has indeed held that Chapter X is a self-contained code and what is also clear is that neither in that Chapter nor in Chapter XII which deals with the powers, jurisdiction and the functions of the Claims Tribunal, is made any provision of revision against an order passed by the Tribunal. Reference may be appropriately made also in this connection to Rajmata Vijayaraje Scindia''s case 1988 MPLJ 78, wherein the Division Bench at para 7 of the report referred to Section 4, Civil Procedure Code, and that is relevant to the instant controversy. A plain and simple reading of Section 4 makes it clear that ''nothing in this code shall be deemed to limit or otherwise affect any special or local laws not in court of any special jurisdiction or power conferred''. Power to make an order u/s 140 is a special power conferred on the Claims Tribunal under the special law and any order passed by the Tribunal in exercise of that power is not to be affected obviously in any manner by any provision of CPC including Section 115, Civil Procedure Code. For that holding inspiration may also be invoked from Shah Babulal Khimji Vs. Jayaben D. Kania and Another, . Obviously, the High Court in dealing with any matter arising out of the proceeding before the Claims Tribunal under the Motor Vehicles Act would be exercising its jurisdiction with reference to provision of the Act and not of CPC and it would be exercising ''special jurisdiction'' under that Act and it has to find powers for interfering with any order passed in that proceeding in revision not outside that Act; revision being not contemplated under the new Act, that jurisdiction the High Court cannot assume unauthorisedly.

Five Judges Bench of this court in Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, , overruled Gaya Prasad and Another Vs. Suresh

Kumar, . In para 3, it has been held:

(3) The cases involve grant or refusal, as the case may be, of compensation by Motor Accidents Claims Tribunal u/s 140 of the Act in the absence of the parties having invoked either jurisdiction of the High Court u/s 115 of the Civil Procedure Code, 1908, or the supervisory jurisdiction of this court under Article 226 of the Constitution. They have done so in view of the decision in Gaya Prasad and Another Vs. Suresh Kumar, , to the effect that no appeal lies against a decision of the Tribunal u/s 140 of the Act. Two Judges of the Full Bench took that view while the third Judge took a contrary view. The Full Bench overruled an earlier decision of the Division Bench in Oriental Insurance Co. Ltd. v. Pritamlal 1989 ACJ 1129 (MP), where it has been held that an appeal lies against such an award.

Referring to the scheme of the Act, Five Judges Bench in paras 11 to 13 said:

(11) The decision of Gaya Prasad and Another Vs. Suresh Kumar, , proceeded on the basis that the determination of compensation u/s 140 of the Act is not an award and, therefore, appeal u/s 173 would not lie against such determination. The provisions in Chapter X only declared the rights and liability of the parties and the details of such rights and liabilities. The provisions in Chapter X do not provide the procedure for determination of the claim u/s 140 and do not indicate whether the determination should be by way of an order or a judgment or an award. The irresistible conclusion is that Chapter X is not a self-contained code. To effectuate the provisions of Chapter X, the Tribunal must necessarily follow the relevant provisions of Chapter XII. Chapter XII has an impact on the claim u/s 140 which is clear from the Explanation to subsection (1) of section 165, proviso to Sub-section (2) of section 166 and the proviso to Sub-section (1) of section 168. By those provisions, some of the provisions of Chapter XII are attracted in the matter of determination of the compensation payable u/s 140 of the Act. The Tribunal is constituted also for the purpose of determining the claim for compensation u/s 140. The claim for compensation u/s 140 may be made in the application in which the compensation for fault liability is also claimed. Section 168 contemplates an award being passed on the application made u/s 166. In the generality of cases, claims u/s 140 are projected in the application filed u/s 166 of the Act. The determination of the right and liability u/s 140 is made following the procedure prescribed in Section 168. The provision in the proviso to Sub-section (1) of Section 168 that the claim u/s 140 has to be disposed of in accordance with the provisions of Chapter X makes abundantly clear that such determination is only under Sub-section (1) of Section 168. This provision is made since liability u/s 140 is no fault liability and the quantum of compensation is pre-determined by the statute so that in making the determination, the quantification cannot be gone into and the fault of the respondents is not relevant. These circumstances make it amply clear that the determination of right or liability u/s 140 of the Act amounts to an award as contemplated in Section 168. The provisions of Chapter X are beneficial in character. The parallel provision in the Motor Vehicles Act, 1939, was

incorporated only in response to the suggestions repeatedly made by courts of this country. Those suggestions are made in order to help persons who are injured in such accidents or the legal representatives of persons who sustained fatal injuries in such accidents and to secure them minimum amount of compensation without being compelled to prove the fault of the persons whose fault alone would give rise to compensation according to principles of law of Torts. If the determination of the compensation payable u/s 140 of the Act is not to be regarded as an award, certain beneficial aspects of Sections 168 and 173 would be denied to the claimants who may be dragged to the superior courts by challenges against such determination. The benefit of Section 168(2) requiring the Tribunal to deliver copies of the award to the parties expeditiously, of Sub-section (3) of section 168 requiring the person liable to deposit the amount awarded by the Tribunal within 30 days, and of the requirement in the proviso to Sub-section (1) of Section 173 to deposit Rs. 25,000 or fifty per cent of the award, whichever is less, in the High Court as the precondition for entertainment of the appeal, will not be available to the claimants. It is not possible to accept that the legislature which introduces no fault liability in the 1939 Act and the 1988 Act intended to deprive such claimants of the beneficial provisions referred to above. If the party against whom a claim is made for compensation u/s 140 desires to challenge the determination of the liability before the superior court either by way of revision or under Article 226 of the Constitution, the claimants will not secure the benefits that they would have otherwise secured u/s 173(1) of the Act. It is not possible to accept that such was the legislative intention.

(12) Award is explained in Black''s Law Dictionary, 4th Edn., at page 174 as meaning ''to grant, concede, or adjudge to; to give or assign by sentence or judicial determination...the decision or determination rendered by arbitrators or commissioners, or other private or extra-judicial deciders, upon a controversy submitted to them, also the writing or document embodying such decision''. An award, as generally understood, is a document incorporating the adjudication or determination of a matter in dispute by a person competent to adjudicate or determine the dispute. There is nothing in Chapter X or XII of the Act to indicate that any different meaning has been attributed to the expression in Section 173 of the Act. The decision of liability u/s 140 is an award which can be challenged u/s 173.

(13) ...The Motor Vehicles Act, 1988, does not define an award. It must, therefore, follow that the expression ''award'' contained in the provisions referred to above carries its general meaning and content. A decision u/s 140 is a decision on a claim for compensation thereunder. It must be passed after following the procedure contemplated in Section 166(2) of the Act. It must indicate the findings and the reasons, at least briefly. These attributes of ''determination'' of a claim u/s 140 would certainly make the ''determination'' an award for the purpose of Section 166 as well as Section 173 of the Act. With great respect, we are of the opinion that the decision in Gaya Prasad and Another Vs. Suresh Kumar, , does not lay down good law, to the extent it holds that an

appeal does not lie u/s 173 of the Act against determination of a claim for compensation u/s 140 of the Act. We hold that determination of a claim u/s 140 of the Act is an award and an appeal lies against such an award u/s 173 of the Act.

Finally, in para 14 of the said judgment, it is said:

(14) There cannot be any doubt that where an appeal lies revision cannot lie. [See: Ahmedabad Mill Owners'' Association Etc. Vs. The Textile Labour Association, and Sukhram and Another Vs. Gauri Shankar and Another, . This principle has been introduced in Section 115 of the CPC by means of Sub-section (2) incorporated by the Amendment Act No. 110 of 1976. Subsection (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. Since the appeal lies, it will also follow that the impugned award is not liable to be challenged under Article 227 of the Constitution of India.

In Full Bench decision of Gauhati High Court in United India Insurance Co. Ltd., Gauhati Vs. Member, Motor Accident Claims Tribunal, Lakhimpur and Others, , it is held in para 6 that:

(6) We notice that almost all the High Courts have more or less uniformly held that the restriction in Section 96(2) would operate on the insurer at the appellate stage also. [See the three Full Bench decisions referred to earlier and also Kantilal & Bros. v. Ramarani Debi 1980 ACJ 501 (Calcutta); United India Fire & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta 1985 ACJ 245 (Allahabad); New India Assurance Co. Ltd. v. Shakuntla Bai 1987 ACJ 224 (MP); General Assurance Society Ltd. v. Jaya Lakshmi Ammal 1975 ACJ 159 (Madras); Abdulkadar Ebrahim Sura v. Kashinath Moreshwar Chandani 1968 ACJ 78 (Bombay); United India Fire & Genl. Ins. Co. Ltd. v. P. Parvathamma 1982 ACJ 293 (AP); United India Fire & Genl. Ins. Co. Ltd. v. Kalyani 1983 ACJ 29 (Kerala); Hindustan General Insurance Society Ltd. v. Satish Chandra Paul 1972 ACJ 453 (JC, Tripura); National Insurance Co. Ltd. v. Nathibai Chaturabhuj 1982 ACJ 153 (Gujarat); Northern India Genl. Ins. Co. Ltd. v. L. Krishnan 1972 ACJ 420 (Mysore); Vanguard Co. Ltd. Vs. Rabinder Kaur and Others, ; and Kamla Devi v. Navin Kumar 1973 ACJ 115 (Rajasthan).

In para 16 it is said:

(16) In view of what is indicated above, we hold that Hemendra Dutta Choudhury''s case 1988 ACJ 813 (Gauhati), does not lay down good law and the insurer is bound by Section 96(2) (Section 149 of 1988 Act) in the appellate forum also and the right of appeal is restricted to raising contentions enumerated in Section 149 of the Act unless, of course, the Tribunal has passed an order u/s 170 of the Act, or unless the insurer has reserved in the policy the right to contest the claim on behalf of the insured. The reference is answered accordingly.

Similar view has been taken by the High Court of Bombay in Oriental Fire & Genl. Ins. Co. Ltd. v. Rajrani Surendrakumar Sharma 1990 ACJ 60 (Bombay), in paras 5 and 6, which are as extracted below:

(5) u/s 96(6) no insurer to whom notice referred to in Sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in Sub-section (1) otherwise than in the manner provided for in Sub-section (2). In interpreting this provision the Supreme Court said that apart from this statute an insurer has no right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of Section 96, however, gives it the right to be made a party to the suit and to defend it. The right, therefore, is created by statute and its content necessarily depends on the provisions of the statute. It has held that the defences which the insurer can take, are only those which are permitted under Sub-section (2). Thus, Sub-section (2) of Section 96 expressly enumerates these defences. No other defence can be raised by the insurer.

(6) This decision of the Supreme Court has been followed in a number of decisions by several High Courts. For example the Madhya Pradesh High Court in a Full Bench decision in the case of Mangilal v. Parasram 1970 ACJ 86 (MP), held that the insurer can only take such defences as are open to the insurer u/s 96(2). The Full Bench of Orissa High Court in the case of National Insurance Co. Ltd. v. Magikhia Das 1976 ACJ 239 (Orissa), held also that an insurer can only take up defences u/s 96(2) of the Motor Vehicles Act and that even in appeal the insurer cannot take defences other than those permitted u/s 96(2). A Full Bench of the Jammu and Kashmir High Court in the case of United India Fire & Genl. Ins. Co. Ltd. v. Lakshmi Shori Ganjoo 1982 ACJ 470 (J&K), has also taken a similar view. Calcutta, Allahabad, Orissa, Rajasthan as well as Patna High Courts have taken the view that even in appeal the insurer cannot take defences other than those permitted u/s 96(2). See in this connection Kantilal & Bros. v. Ramarani Debi 1980 ACJ 501 (Calcutta); United India Fire & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta 1985 ACJ 245 (Allahabad); Oriental Fire & General Ins. Co. Ltd. v. Laxman Mahto 1985 ACJ 775 (Patna); New India Assurance Co. Ltd. v. Shakuntla Bai 1987 ACJ 224 (MP); The New India Assurance Company Ltd. Vs. Smt. Sulochana Sahu and Others, ; United India Insurance Co. Ltd. Vs. Ismail and Others, ; National Insurance Co. Ltd. v. Tulsi Devi 1988 ACJ 962 (Rajasthan); and National Insurance Co. Ltd. v. Shanim Ahmad 1985 ACJ 749 (Patna). The insurance company has been permitted to take other defences available to the insured only when it is so authorised by the insured or on behalf of the insured.

The Full Bench decision of Orissa High Court in National Insurance Co. Ltd. v. Magikhia Das 1976 ACJ 239 (Orissa), said in para 11 that:

(11) As the facts of this case show, the insured had entered contest and there is no reason to hold in the absence of any allegation, and something more, that the insured has been colluding with the claimant. Leave of the Tribunal had

admittedly not been taken u/s 110-C (2-A) of the Act. There exists a clause in the policy bond authorising the insurer to defend in the name of the insured. As we have already noted, the insured and the insurer simultaneously wanted to defend, the insured defending in his own name and the insurer in its own name. The term in the policy bond did not authorise such defence by the insurer. In the instant case, therefore, to the insurer the restriction u/s 96(2) of the Act applies and he could not travel beyond the restriction imposed by the statute either before the Tribunal or in appeal before this court. None of the grounds in the memorandum of appeal appertains to a defence raised within Section 96(2) of the Act and what is being mainly challenged is the quantum and liability on a ground not covered by Section 96(2) of the Act. On these grounds, the insurer was not entitled to contest the claim nor the award. The appeal filed on its behalf, therefore, is not maintainable.

The Division Bench of Kerala High Court in United India Insurance Company Ltd., Ernakulam Vs. K.N. Surenderan Nair and Others, , in paras 5 and 6 said:

(5) This Sub-section would suggest that an order under this section enabling an insurer to contest the claim on all or any of the grounds that are available to the insured, can be passed by the Tribunal only as a sequel to the order directing impleadment of the insurer, he would pass on his being satisfied that either there is collusion between the claimant and the insured or the insured has failed to contest the claim, the counsel representing the contesting respondents submit. We are not impressed by this argument. This Sub-section in our view, was introduced to safeguard the interests of the insurer, which going by Section 96(2) is not entitled to take any defence which is not specified therein. Apart from Section 96(2), an insurer has no right to get itself impleaded as a party to the action by the claimants against the insured causing the injury. This right is a statutory right. While conferring this right, Sub-section (2) of Section 96 has imposed certain restriction in regard to the defences the insurer can take. The insurer is not entitled to take any defence which is not specified in that subsection. In short, the only method of avoiding the liability provided for under Sub-section (2) is setting up the defences enumerated therein. [See: British India General Insurance Co. Ltd. v. Captain Itbar Singh 1958 ACJ 1 (SC)]. The restriction thus imposed on the defences made it impossible for the insurer to contest the claim not properly contested by the insured. The intention of the legislature thus is clear that Sub-section is meant to safeguard the interest of the insurer. The objective of the Sub-section could be achieved only if the insurer is allowed to contest the claim on all or any of the grounds available to the insured. However, a lateral adherence to the words used in the section, namely, that an insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest, could result in the insurer who had already been impleaded u/s 96(2), not getting the chance to contest the claim on all or any of the grounds available to the insured even if it is established that the insured is hand in glove with the claimants and as such not contesting the claim. A grammatical and literal

interpretation of these words, in our view, would lead to manifest absurdity. In such circumstances, a construction not quite strictly grammatical or literal can be adopted. [See: Craies on Statute Law, 17th Edn., pp. 87, 88]. We, therefore, are of the view that the insurer who is already a party to the claim petition [having been impleaded u/s 96(2)] can also avail of this defence. Such an insurer accordingly can move the Tribunal under this Sub-section and obtain the requisite permission to contest the claim on all or any of grounds, the insured would take. If the insurer makes an application in this regard, the Tribunal shall consider the same on merits after notice to the claimant and insured and pass appropriate orders in writing enabling the insurer to contest the claim on the grounds available to the insured. In the present case, there is nothing on record to show that the insurer appellant has obtained such permission from the Tribunal and if that be so, the insurer appellant is not entitled to contest the claim on the grounds that are available only to the insured. The above argument of the learned counsel, therefore, is rejected.

(6) We, nonetheless, are constrained to consider yet another argument of the learned counsel, namely, that in any event the appellant is entitled to contest the claim raising the grounds the insured alone can raise, in view of Clause (2) of the condition incorporated in the policy. Clause (2) reads:

No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the insured without the written consent of the company which shall be entitled if it so desires to take over and conduct in the name of the insured the defence or settlement of any claim or to prosecute in the name of insured for its own benefits any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceeding or in the settlement of any claim and the insured shall give all such information and assistance as the company may require.

Construing an identical clause, a Division Bench of this court in United India Insurance Co. Ltd. v. Premakumaran 1988 ACT 597 (Kerala), no doubt, has observed that the said clause enables the insurance company to contest the claim on all or any of the grounds the insured alone could raise, notwithstanding the restrictions imposed by Sub-section (2) of Section 96. This observation of the Division Bench is based on a decision of the Madras High Court in Madras Motor & Genl. Ins. Co. Ltd. v. Jaga-deeswari 1974 ACJ 234 (Madras). The Madras High Court while holding so, has made reference to the decision of the Supreme Court in British India General Insurance Co. Ltd. v. Captain Itbar Singh 1958 ACJ 1 (SC). On going through the following observation of this court, we are of the view that the above observation is obiter:

There is some force in this argument of the learned counsel for the insurance company. However, we do not go into that question since we feel that the decision reported in British India General Insurance Co. Ltd. v. Captain Itbar Singh (supra) may not be applicable to the case in hand.

In our view the decision of the Supreme Court does not lend support to the view taken by the Madras High Court which provides the basis for the above observation of the Division Bench. A reference in this connection to the following observations of the Apex Court in British India General Insurance case (supra) is profitable:

There is another ground on which the learned Solicitor General supported the contention that all defences are open to an insurer excepting those taken away by Sub-section (3). He said that before the Act came into force, an injured person had no right of recourse to the insurer and that it was Section 96(1) that made the judgment obtained by the injured person against the assured binding on the insurer and gave him a right against the insurer. He then said that, that being so, it is only fair that a person sought to be made bound by a judgment should be entitled to resist his liability under it by all defences which he can in law advance against the passing of it. Again, we find the contention wholly unacceptable. The statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and, therefore, to the statute for reasons of hardship....

The Supreme Court thereafter stated as follows:

We are furthermore not convinced that the statute causes any hardship. First the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship, if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do.

The Supreme Court made the above observation (italicised portion of the excerpt) at a time when Section 110-C (2-A) was not there. Whatever that be the positive declaration of the Supreme Court, namely, ''the statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and, therefore, to the statute for reasons of hardship'' disentitles the appellant to rely on Clause (2) of the insurance policy and contend for the position that the said clause reserves its right to contest the claim on all or any of the grounds that are available to the insured. Sub-section (2-A) of Section 110-C, as construed by us, entitled the insurer to contest the claim on all or any of the grounds available to the insured provided the Tribunal grants the requisite permission in terms of the said subsection to the insurer to take up the said defence. There is another aspect that should be borne in mind while considering this question and it is this: This policy issued by the insurer is a policy of insurance in respect of third party risk arising out of the use of motor vehicles, such as complies with the requirements of Chapter VIII of the Act and includes unless the context requires otherwise, a cover note. The policy, therefore, should be one that complies with the requirements of Chapter VIII of the Act. That means any clause or condition in the policy can have force only subject to the provisions contained in Chapter VIII of the Act. Clause (2) of the policy extracted above, therefore, should be read and understood in the light of Sub-section (2-A) of Section 110-C. This clause, to the extent to which it runs counter to the above Sub-section is liable to be ignored. It, therefore, follows that an insurer with the permission of the Tribunal alone can contest the claim on all or any of the grounds, the insured can raise against the claim.

In the light of what is stated above, we are of the view that the appeal is not maintainable...

In Oriental Insurance Co. Ltd. Vs. Motor Accidents Claims Tribunal, Thalassery and Others, , it is held that the petition under Articles 226 and 227 against the award of compensation amount of less than Rs. 10,000, does not lie. Statutory bar under the Motor Vehicles Act cannot be circumvented by filing petition under Article 226 or 227 of the Constitution of India. Right of appeal is a creation of statute. It is for legislature to provide or not to provide appeal, para 2 of the said judgment is as extracted below:

(2) Having heard learned counsel for the petitioner in extenso, I am not satisfied that the petitioner(s) are entitled to succeed in these original petitions. It is the contention of the learned counsel for the petitioner that a petition under Articles 226 and 227 of the Constitution of India is the only remedy available to the insurance company in view of the express bar of an appeal created by Section 173(2) of the Act which says that ''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''. Admittedly in the award which is the subject-matter of challenge in these original petitions award amount is less than Rs. 10,000 in which case going by the mandate of Section 173(2) of the Act, no appeal will lie. According to the learned counsel when an appeal is barred, a petition under Articles 226 and 227 of the Constitution of India is maintainable to quash the award. I cannot agree. Once the legislature in its wisdom has thought it fit that no appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than Rs. 10,000 this court cannot lend its aid to the petitioner to circumvent the statutory bar by enabling it to question the award collaterally by filing a petition under Articles 226 and 227 of the Constitution of India. This court cannot sit in judgment over the legislative wisdom and policy in regard to filing of appeals, more so when it is remembered that right of appeal is not a vested right or a constitutional right but a creature of the statute. There is no inherent right of appeal from the original forum unless such a right is created by the statute which creates the forum. In other words, right of appeal is a creature of statute and it is for the legislature to provide or not to provide appeal. The legislature can also impose condition for the maintainability of an appeal. Similarly, the legislature can create a total bar of an appeal under certain circumstances as in

the instant case. Since right of appeal inheres in no one an appeal for its maintainability requires clear authority of law. In the face of the express statutory bar against an appeal as contained in Section 173(2) of the Act, I do not think that this court will be justified in interfering with the award in this proceeding under Articles 226 and 227 of the Constitution of India. No doubt, this court can and will interfere in exercise of its jurisdiction under Article 226 or 227 of the Constitution of India provided the findings of the Tribunal are utterly perverse or the Tribunal has misdirected itself on points of law or when the statute simply says that the decision of the authority or Tribunal is final. That is not the case here. As already noticed, here is a total bar of appeal against any award of a Claims Tribunal if the amount in dispute in the appeal is less than Rs. 10,000. In such a case the defeated party cannot be permitted to upset the decision of the Tribunal by resort to proceedings under Articles 226 and 227 of the Constitution of India. The position will be different once the jurisdiction of the Constitutional Court is barred by the legislative device of a ''finality'' clause as already noted. In such a case, this court in exercise of its supervisory jurisdiction will certainly interfere with the impugned award, provided that sufficient grounds are made out notwithstanding the finality clause. The grounds usually urged in support of such interference are illegality and irregularity in the proceedings of the Tribunal, jurisdictional error or defect or the order being not in conformity with the fundamental principles of judicial procedure resulting in miscarriage of justice. No such ground has been made out in these original petitions.

The following Full Bench decision of the Gauhati High Court in United India Insurance Co. Ltd., Gauhati Vs. Member, Motor Accident Claims Tribunal, Lakhimpur and Others, , the single Bench decision of the same High Court in New India Assurance Co. Ltd. Vs. Ranjit Ghosh and Another, , holds that when Motor Vehicles Act provides for an appeal and the insurance company has limited defence u/s 149, the writ petition under Article 226 or 227 of the Constitution of India was not maintainable. Single Bench judgment of Himachal Pradesh High Court in National Insurance Co. Ltd. Vs. Vipul and Others, , following the decision of the same High Court in Mittar Singh Vs. Ashish Kumar and Others, , also holds that the petition under Article 227 of the Constitution was not maintainable when the appeal under the Motor Vehicles Act was not maintainable in award of less than Rs. 10,000. In National Insurance Co. Ltd. Vs. Vipul and Others, , it is said in paras 11 to 13 that:

(11) Thus, taking into consideration the aforesaid facts reflected from the record itself the petitioner''s right to assail the awards under reference under Article 227 of the Constitution of India is not there. In case, the present petition is entertained and matter is to be argued like an appeal as has been contended by the learned counsel for the petitioner(s), the provisions u/s 173, subsection (2) of the Act would be rendered redundant and infructuous which is not the intention of the legislature.

(12) Otherwise, even if, for arguments sake the present petition(s) is

maintainable in that event also in view of the limited scope of Article 227 of the Constitution of India, award(s) under reference cannot be assailed or set aside. According to the learned counsel for the petitioner(s), two grounds have been argued for assailing the award(s). First being application under Order 6, Rule 17 read with Order 1, Rule 10, CPC has been disposed of illegally and secondly the evidence has not been properly appreciated. I think both these grounds cannot be considered in a petition of present nature inasmuch as the inherent jurisdiction is laid with the Tribunal to dispose of the matter. To hear the petitioner(s) on the aforesaid grounds on merit would amount to decide the petition(s) just like an appeal which would be going against the statutory provision of Section 173(2) of the Act.

(13) Similar question arose in Mittar Singh Vs. Ashish Kumar and Others, , before another Bench of this court, wherein it has been held that the provisions of Section 173(2) of the Act have to be read or construed in the manner so that the object of the provisions is not diverted. It has been further held that this court while exercising extraordinary jurisdiction under Article 227 of the Constitution of India is not to sit as a Court of Appeal or a revisional court so as to correct errors of law or of fact committed by the subordinate authorities. It was further observed that the provisions of the Motor Vehicles Act being a social legislation for the welfare of the citizens, should be interpreted harmoniously so as to achieve the object for which the provision has been made.

In Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, , the Apex Court in paras 9 to 13 said:

(9) 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 adjudications. Right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

(10) Counsel referred us to the decision of this court in Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, . There this court found that Section 35 of the Central Excise & Salt Act, 1944 (Excise Act) gave a right to appeal. u/s 12 of the Act, the Central Government was authorised to apply to appeals under the Excise Act, the provisions of the Sea Customs Act, 1878 dealing with the procedure relating to appeals. In exercise of that power, the provisions of Section 129 of the Act were made applicable to appeals under the Excise Act. The section required an appellant to deposit, pending the appeal the duty or penalty imposed and empowered the appellate authority, in his discretion to dispense with such deposit pending the appeal in any particular case. The respondent therein filed an appeal against the duty imposed on him under the Excise Act and prayed for dispensation of the deposit. The Collector, who was the appellate authority, rejected the prayer and when no deposit was made within the time fixed, dismissed the appeal. The respondent filed a petition in the High Court which was allowed and the Collector was directed to hear the appeal on merits. This court held that Section 35 of the Excise Act gave a right of appeal and Section 129 of

the Act whittled down that substantive right and as such Section 129 could not be regarded as ''procedure relating to appeals'' within Section 12 of the Excise Act.

(11) These observations cannot be applied to the facts of this case. Here, we are concerned with the right given u/s 129A of the Act as controlled by Section 129E of the Act, and that right is within a condition and thus a conditional right. The petitioner in this case has no absolute right of stay. He could obtain stay of realisation of tax levied or penalty imposed in an appeal subject to the limitations of Section 129E. The proviso gives a discretion to the authority to dispense with the obligation to deposit in case of ''undue hardships''. That discretion must be exercised on relevant materials, honestly, bona fide and objectively. Once that, position is established it cannot be contended that there was any improper exercise of the jurisdiction by the appellate authority. In this case, it is manifest that the order of the Tribunal was passed honestly, bona fide having regard to the plea of ''undue hardship'' as canvassed by the appellant. There was no error of jurisdiction or misdirection.

(12) Though in a different context the public policy involved in not granting interim stay has been explained by this court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, .

(13) 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 these conditions that the right becomes vested and exercisable to the appellant. The proviso to Section 129E of the Act gives a discretion to the Tribunal in cases of undue hardships to condone the obligation to deposit or to reduce. It is a discretion vested in an obligation to act judicially and properly.

Having given serious consideration to the question involved in this matter, it can be said that the Claims Tribunals are constituted under a special Act, which provides for licensing of drivers of motor vehicles, licensing of conductors of stage carriages, registration of motor vehicles, control of the transport vehicles, special provisions relating to the State transport undertakings, construction equipment and maintenance of motor vehicles; control of traffic; motor vehicles temporarily leaving or visiting India, liability without fault in certain cases, insurance of motor vehicles against third party risks; Claims Tribunal; offences, penalties and procedure and miscellaneous provisions under various Chapters. The Claims Tribunals are civil courts, since they determine civil rights and liabilities. They are not civil courts constituted under Civil Procedure Code. It provides for appeal against order(s) and award(s) of the Claims Tribunal in certain circumstances. Where appeal is not provided recourse to revision u/s 115 of the CPC or writ petition under Article 227 of the Constitution of India would not be justified. The right to appeal is neither an absolute right nor an ingredient of natural justice. It is a statutory right and it can be circumvented by the conditions in the grant. If a statute gives a right to appeal under certain conditions that right becomes vested and exercisable by the appellant. [See: Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, . It may or may not provide for further remedy against order passed in appeal. Since it has not provided for revision, legislative intent cannot be set at naught by challenging the order or award of the Claims Tribunal u/s 115 of the CPC or petition under Article 227 of the Constitution of India. Doing so would tantamount to mock at law enacted by the legislature. The Apex Court in Chinnama George and Others Vs. N.K. Raju and Another, , held that the insurance company can challenge the award only on the ground u/s 149(2) and it cannot bypass the bar while including insured or driver since that may amount to mock at the law enacted by the legislature. It cannot defeat the claim by resorting to such a mode. In para 6, the Apex Court said:

(6) Admittedly, none of the grounds as given in Sub-section (2) of Section 149 exist for the insurer to defend the claim petition. That being so, no right existed in the insurer to file appeal against the award of the Claims Tribunals. However, by adding N.K. Raju, the owner as co-appellant, an appeal was filed in the High Court which led to the impugned judgment. None of the grounds on which the insurer could defend the claims petition was the subject-matter of the appeal as far as the insurer is concerned. We have already noticed above that we have not been able to figure out from the impugned judgment as to how the owner felt aggrieved by the award of the Claims Tribunal. The impugned judgment does not reflect any grievance of the owner or even that of the driver of the offending bus against the award of the Claims Tribunal. The insurer by associating the owner or the driver in the appeal when the owner or the driver is not an aggrieved person cannot be allowed to mock at the law which prohibits the insurer from filing any appeal except on the limited grounds on which it could defend the claims petition. We cannot put our stamp of approval as to the validity of the appeal by the insurer merely by associating the insured. Provision of law Cannot be undermined in this way. We have to give effect to the real purpose of the provision of law relating to the award of compensation in respect of the accident arising out of the use of the motor vehicle and cannot permit the insurer or give him the right to defend or appeal on grounds not permitted by law by a backdoor method. Any other interpretation will produce unjust results and open the gates for the insurer to challenge any award. We have to adopt the purposive approach which would not defeat the broad purpose of the Act. The court has to give effect to true object of the Act by adopting a purposive approach.

Further in para 9, it is said:

(9) The question that arises for consideration is: can the insurer join the owner or the driver in filing the appeal against the award of the Claims Tribunal as driver or owner would be the person aggrieved as held by this court in Narendra Kumar v. Yarenissa 1998 ACJ 244 (SC). This court has held that appeal would be maintainable by the driver or the owner and not by the insurer and thus, a joint

appeal when filed could be maintainable by the driver or the owner. This is how the court held:

For the reasons stated above, we are of the opinion that even in the case of a joint appeal by insurer and owner of offending vehicle if an award has been made against the tortfeasors as well as the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the appeal after the cause-title is suitably amended by deleting the name of the insurer.

Thereafter in para 10, the Apex Court said:

(10) There is no dispute with the proposition so laid by this court. But the insurer cannot maintain a joint appeal along with the owner or the driver if defence on any ground u/s 149(2) is not available to it. In that situation, a joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of appellants. The appellate court must also be satisfied that a defence which is permitted to be taken by the insurer under the Act was taken into pleadings and was pressed before the Tribunal. On the appellate court being so satisfied the appeal may be entertained for examination of correctness or otherwise of the judgment of the Tribunal on the question arising from relating to such defence taken by the insurer. If the appellate court is not satisfied that any such question was raised by the insurer in the pleadings and/or was pressed before the Tribunal, the appeal filed by the insurer has to be dismissed as not maintainable. The court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co-appellant in the appeal filed by it. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of Sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer.

By now, in series of decisions, courts have said that unless permission u/s 170 of the Act is obtained by the insurance company during enquiry before the Claims Tribunal, it cannot avail defences other than those mentioned in Sub-section (2) of Section 149 of the Act. The contention of Mr. Sanjay Agrawal that restricted defences available to the insurance company u/s 149(2) and Section 170 seeking permission of the court for availing other defences, are confined to trial stage and once the award is passed, the insurance company has right to challenge legality, propriety and correctness of the award in the appellate court without any restrictions u/s 173 of the Act, cannot, therefore, be accepted. Similarly, contention that the Apex Court in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR''s., and U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., , the High Court of New India Assurance Co. Ltd Vs. Jagdish Prasad Pandey and Another, , interpreting ''person interested'' should include ''person aggrieved'' by award under the Act, therefore, no restriction is intended by Section 173 of the Act, cannot be accepted. The Apex Court was considering the provisions of the Land Acquisition Act, 1984 and not Section 173 of the Act. Section 173 of the Act has to be read along with Sections 149(2) and 170 of the Act. Their operation is not confined to trial stage, as contended. It continues and in case, the insurer has obtained order from the Claims Tribunal at the trial stage, only then he can assail the award on all available grounds before the appellate court otherwise limited defences u/s 149(2) are available to it. Reading of Section 173 of the Act with other two provisions would demonstrate that ''any person aggrieved by an award'' is not same thing as ''person interested''. Former has restricted meaning than the latter. The claimant can be aggrieved by the award, if it is less or his claim petition is rejected. The insurer, insured and driver may be aggrieved where claim is allowed and responsibility fixed for payment of compensation. But they can appeal after satisfying the conditions mentioned in Section 173 of the Act and in case of insurance company, further restriction is that it cannot challenge the award except on grounds mentioned in Section 149(2) of the Act unless reasoned order from the Claims Tribunal for taking up other defences is obtained during the trial stage. [See: British India Genl. Ins. Co. Ltd. v. Captain Itbar Singh 1958 ACJ 1 (SC); Oriental Fire & Genl. Ins. Co. Ltd. v. Rajendra Kaur 1989 ACJ 961 (Allahabad); New India Assurance Co. Ltd Vs. Jagdish Prasad Pandey and Another, ; and Shanharayya v. United India Insurance Co. Ltd. 1998 ACJ 513 (SC)].

Decision of the court in United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, , runs counter to the five Judges Bench decision of this court. The question before the Division Bench was not whether revision would lie u/s 115 of the CPC where compensation awarded is below Rs. 10,000 but the issue posed before the Division Bench was whether insured could take resort to revision where compensation awarded is shockingly high. It has been found in the preceding part of the judgment that the Tribunal is a civil court as distinguished from the criminal court, discharging functions assigned to them under the special Act, though subordinate to the High Court. The order(s)/award(s) passed by them can be questioned in the superior court only on grounds and in circumstances available under the Act and the provision of CPC has application only to the extent provided in Section 169 of the Act read with rules framed by the State Government u/s 111A.

Therefore, where appeal is provided, revision u/s 115 of the CPC or petition under Article 227 of the Constitution of India is not available. In the circumstances, where insurance company cannot file appeal, it cannot file revision u/s 115 of the CPC or a petition under Article. What emerges out of the aforesaid discussion is that this civil revision is not maintainable and the same is dismissed. However, parties are left to bear their own cost. Article 227 of the Constitution of India.

