

**(1998) 03 J&K CK 0004**

**In the Jammu And Kashmir High Court**

**Case No :** Civil Revision No. 76 Of 1997 (with Civil Revision No.43 Of 1997) Civil Revision No.76 Of 1997

New India Assurance Company Limited

APPELLANT

Vs

Bashir Ahmad Wani

RESPONDENT

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**Date of Decision :** 19-03-1998

**Acts Referred:**

Constitution of Jammu and Kashmir, 1956 — Section 104

Jammu and Kashmir Civil Procedure Code, 1977 — Section 115

**Citation :** (1990) 2 ACC 185 : (1990) ACJ 177 : (1999) SriLJ 568 : (1999) 2 SriLJ 568

**Hon'ble Judges :** Arun Kumar Goel, J

**Bench :** Single Bench

**Advocate :** R.K.Gupta, B.S.Bali, Advocates appearing for the Parties

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**Judgement**

Arun Kumar Goel, Judge.

1. Both these revision petitions are being dealt with by a common judgment since common question of law regarding maintainability of a revision

under section 115 of the code of Civil Procedure against an order passed by the Motor Accident Claims Tribunal arises as well as identical

questions of fact, are involved in both the cases. In order to properly appreciate the submissions, brief facts need to be noticed in both the cases.

Civil Revision No.76/97.

2. A claim petition was filed by respondent no.1 (hereinafter referred to as claimant) before the Motor Accident Claims Tribunal at Ramban.

Averments made in the claim petition by the claimant were that he was employed as a driver with respondent no. 2 company (hereinafter referred

to as employer). Respondent No. 3 (hereinafter referred to as mixer driver) was

also employed as a driver by the said employer. Further case of the claimant that he was driving a DCM Toyota Bus No. JKO149 and mixer driver was driving Scania Concrete Mixer No.4342002. Accident took place on 11.01.1995 which resulted in the claimant sustaining injuries. From the impugned order it appears that an application dated 16. 10. 1996 for review of the order impugned was filed by the present petitioner (hereinafter referred to as Insurance Company). Since none had put in appearance on behalf of owner as well as mixer driver, therefore another application filed by the employer for impleading United India Insurance Company Limited as party was dismissed in default for appearance. Time was prayed for filing the objections. It appears that on 15.12.1995 interim award of Rs. 25,000/ under no fault liability was passed. For depositing this amount, time was granted till 13th March 1997 when it was ordered that the another application filed by the Insurance Company for impleading United India Insurance Company shall be considered after the amount had been deposited. It is against this order that the present revision petition has been filed by the Insurance Company.

Civil Revision No. 43/1997.

3. The petitioner (hereinafter referred to as owner) had initially filed the case as an appeal against the order dated 4.7.1996 passed by Motor Accident Claims Tribunal Kathua, whereby interim award of Rs. 50,000/ was passed in favour of respondents 1 to 4 (hereinafter referred to as claimants). On the failure of the owner to deposit this amount within a period of one month, it was further ordered to pay interest @ 12% per annum on this amount. According to claimants, Iqbal Singh was going on a Motor Cycle bearing registration number HR931036 which was being driven by one Balwinder Singh. Bus No: PBI OK/9747 belonging to the owner was coming from Ludhiana and was being driven in a rash and negligent manner without blowing horn by its driver Hardeep Singh, respondent no. 5 (hereinafter referred to as driver). Accident was caused by the driver with the Motor Cycle which resulted in both, Balwinder Singh and Iqbal Singh dying on the spot. According to owner the legal representatives of deceased Balwinder Singh have preferred a claim petition which is pending adjudication with the Tribunal at Ludhiana, whereas claimants 1 to 4, who are legal representatives of late Shri Iqbal Singh, preferred

a claim petition at Kathua in accordance with the provisions of Motor Vehicles Act, 1988 as amended upto date. It is during the course of these proceedings that the impugned order has been passed, hence this revision.

4. When both the cases were taken up, a serious contention was raised by the learned counsel for the claimants in their respective cases that the revision petitions are not maintainable as Section 115 of the code of Civil Procedure is not applicable to the facts of the present case and Section 104 of the Constitution of Jammu and Kashmir is also inapplicable. While further pressing the arguments, it was submitted on behalf of the claimants that Tribunal under the Motor Vehicles Act is not a court within the meaning of Section 115 of the Code of Civil Procedure, and being a Tribunal is not amenable to the powers of superintendence and control vested in this court as envisaged under Section 104 of the constitution of the State. Therefore, the revision petitions were liable to be dismissed. Reliance was placed on decided cases including two Division Bench decisions of this court.

5. On the other hand, the learned counsel appearing for Insurance Company and owner respectively in both the cases while controverting the submissions urged on behalf of the claimants pointed out that so far Tribunals are concerned, they are subject to appellate control of the High Court and further they have all the trappings of a civil court, in addition to the fact that under the Jammu and Kashmir Motor Vehicles Rules 1991 framed by the State Government and under the provisions of Motor Vehicles Act 1988, Tribunal exercises powers of civil courts while executing impugned award. Reliance in this behalf was also placed on Rules 324, 325, 329 and 330 of the said Rules besides a few decided cases.

6. In 1984 Kashmir Law Journal 310 Abdul Gafiar Guirde Vs. Mohammed Phaphoo and Others, a Division Bench of this court after examining the provisions of Section 115, 141 of code Civil procedure and order 33 together with Section 110C of the Motor Vehicles Act, 1939 held that Motor Accident Claims Tribunal is not amenable to revisional jurisdiction as it is not a civil court subordinate to High Court. In fact, it constituted as an Administrative Authority and had no trappings or attributes of a civil court.

7. Similarly, in 1992 Kashmir Law Journal 289, New Indian Insurance Company

Vs. Motor Accidents Claims Tribunal and Others, a learned

Single Judge of this court held that an appeal under Section 92A of the Motor Vehicles Act, 1939 is not maintainable. Amongst other things while

considering the applicability of the Articles 226 and 227 of the Constitution of India and Section 104 of the Jammu and Kashmir Constitution to

motor accident cases, it was held that these are not applicable and those cannot be made to hoodwink the law to circumvent statutory procedure

or allowed to be an appeal in disguise.

8. In this view of the matter, the preliminary objection regarding maintainability of the appeal was upheld by the learned Single Judge and the

appeal was held to be not maintainable as also the provisions of the constitution, both of State as well as of India were held to be not applicable.

9. In 1989 Accidents Claims Journal 1040, Oriental Fire and General Insurance Company Limited Vs. Maya Devi and Others. again Division

Bench of this court held that the order under Section 92A of Motor Vehicles Act, 1939 was not appealable as it being a piece of beneficial

legislation was required to be liberally interpreted aimed for the grant of interim relief on no fault liability to the survivors of the deceased who

dies in an accident caused by the motor vehicles. It was further held that object of this section could not be defeated by hyper-technicalities.

10. In 1988 Kashmir Law Journal 52 Amar Kour and Another Vs. Kulbir Singh and Others, a learned Single Judge of this court however took a

contrary view after placing reliance on AIR 1979 SC 855, State of Haryana Vs. Darshana Devi and Others as well as on 1983. Accidents Claims

Journal 123 Bhagwati Devi and Others Vs. M/S I.S. Goel and Others.

11. In the case of State of Haryana (supra), the matter related to the applicability of provisions of order XXXIII of the code of Civil Procedure

being applicable to the proceedings in Haryana under the Motor Vehicles Act, High Court held that it is applicable to such proceedings. This view

of the High Court was upheld by the Apex court and the appeal of the State was dismissed. In the case of Bhagwati Devi (supra) also Apex Court

found that for the purpose of transfer of cases pending from one Motor Accidents Claims Tribunal to another, it is a civil Court for the purpose of

Section 25 of Code of Civil procedure and after having held so, ordered the transfer of case from Moradabad tribunal to Delhi tribunal.

12. Learned Single Judge of this court in the case of Amar Kour (supra), thus held as under:

8. So far as the law laid down by a Division Bench of this court ( Bhat and Rizvi J ) in Abdul Gaffar Gujrde Vs. Moh'd Phaphoo and Others,

1984 KLJ 310, holding that the claims Tribunal is not a ""Civil Court"" subordinate to the High Court or subject to its revisional jurisdiction under

Section 115 C.P.C. is discussion in hand because under the Motor Vehicles Act, revisional jurisdiction has not been specifically vested in the High

Court unlike the appellate jurisdiction under Section 110D of the Act. Moreover, whether or not the Division Bench Judgment, holding 'broadly'

that the claims tribunal is not a ""Civil Court subordinate to the High Court"" is good law in view of the law laid down in 1983 A.C.J.123 and AIR

1979 SC 855 in Bhagwati Devi's case and Darshan Davi's cases respectively is a matter which may require consideration in an appropriate case at

an appropriate time and need not detain me in this case. It is, however, pertinent to notice here that both the above judgments of the apex court

have not been noticed by the Division Bench as presumably the same were not brought to its notice.. 9. Thus in view of the above discussion. I

hold that a Claims Tribunal constituted under the Motor Vehicles Act is a court subordinate to the High Court for the purposes of Section 104 of

the Constitution of Jammu and Kashmir and subject to its superintendence and control and that both by virtue of the provisions of Section 104 of

the State Constitution and Section 24 C.P.C. It is permissible for the High Court to withdraw a claims petition or proceedings from one tribunal in

the State and transfer it to another tribunal. Consequently, I allow the petitions and transfer the proceedings in the claim petitions titled Amar Kour

and anr. Vs. Kulbir Singh and Others and Claims petition titled Jaswant Kaur and others Vs. Kulbir Singh and others, pending before the Motor

Accidents Claims Tribunal, Srinagar to the Motor Accidents Claims Tribunal, Jammu for disposal in accordance with law. The tribunal at Srinagar

shall send the record to the tribunal at Jammu. Parties through their learned counsel, are directed to appear before the tribunal at Jammu on

20.2.1988.

13. In 1994 Accidents Claims Journal 987, New India Assurance Company Limited Vs. Ajay and Others, a learned Single Judge of Madhya

Pradesh High Court has held that revision against interim order was maintainable and Tribunal was further held to be a civil court subordinate to the High Court.

14. To similar effect is the judgment of Patna High Court reported in 1995 Accidents Claims Tribunal 942, Vidya Sagar Singh Vs. Shantj Devi and Others.

15. Rajasthan High Court also took identical view in a Division Bench Judgment of that court reported in AIR 1993 Rajasthan, 123 Darshan Singh

Vs. Ghewarchand and Others and held that a District Judge who functions as a Claims Tribunal is not only within the administrative control of the

High Court, but also subordinate to it under Section 115 of the code of Civil Procedure. After considering the provisions of Section 3 and Section

24 of the code of Civil Procedure which are parimateria to the corresponding provisions of code of Civil Procedure of the state held that an order

passed by the Tribunal was revisable under Section 115 of the code Civil Procedure. In this case AIR 1979 SC 855 (supra) was followed.

16. Whether something is required to be shown prima facie in order to enable the Tribunal below to pass an award on the principles of no fault

liability^ or merely because a petition had been filed, the tribunal is bound to grant compensation under no fault liability without looking into any

other thing, is also being examined in the present case. This court is of the considered view that though without going into elaborate enquiry as well

as getting involved into procedural aspect of the matter there must be enough motind primafacie to show that either on admitted facts or from the

documents as well as other material placed on the record it should be made out that the accident has arisen out of a motor vehicle resulting in

permanent disablement in case of an injured person or death of a person whose legal representatives come forth to make a claim. At the same

time, the claim is made against the owner as well as insurer of the vehicle involved in the accident,. On all these conditions being made out as

aforesaid, the tribunal is within its jurisdiction to pass an order under no fault liability.

17. What is to be primafacie shown before a tribunal enabling it to pass an award under no fault liability has been examined in detail by a Division

Bench of Himachal Pradesh High Court in case Himachal Road Transport

Corporation and Another Vs. Garji Devi and Others. 1993 Accidents

Claims Journal 804 After placing reliance on 1991 ACJ777. Shivaji Davanu Patil Vs. Vatshala Uttam More sc it was held as under: ""26. Reading

of the aforementioned provisions shows that as and when an accident takes place in a public place, involving death or bodily injury, certain

information is required to be submitted and it is the duty of the police to obtain such information, which includes particulars of the insurers,

particulars of owners, etc. and information thereof is further required to be given by the police officer to the Claims Tribunal. Neither under the

Himachal Pradesh Motor Vehicles Rules, nor the Punjab Motor Vehicles Rules, both of which are applicable, there is any procedure prescribed

for filing any application under the special provision contained under section 140 of the Act, since such rules were framed prior to the introduction

of similar provisions in 1939 Act, though these rules provide for the manner and procedure of filing a regular claim petition. In the absence of any

procedure for deciding a claim made u/s 140 of the Act we are of the view that in the light of the observations made in Shivaji Dayany Patil's case,

1991 ACJ 777(SC) and the aforementioned vital changes effected in the Act, before an order is passed, the Tribunal must on the basis of material

on record, *prima facie*, satisfy itself that:

- i) the accident has arisen out of a motor vehicle;
- ii) the said accident has resulted in permanent disablement of the person, who is making the claim of death of the person, whose legal representative(s) is/are making the claim;
- iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident;
- iv) the claim is made, in the case of the death of a person by his legal representative;

27. Without forming an opinion on the essential requirements, or in the absence of any material on record to enable the Tribunal to come to a

conclusion that essential requirements *prima facie* exist, the order directing a respondent to make deposit of the amount under Section 140 of the

Act will be without jurisdiction, since in order to clothe the Tribunal with jurisdiction to make an order, it is essential that basic factor must exist.

18. When the submission urged on behalf of the claimants is examined in the

light of the legal position discussed hereinabove and if it is upheld, the consequences would be disastrous. In case High Court is not in a position to rectify the wrong committed by the tribunal below simply on the basis it is not a court being a tribunal, thus not amenable to High Court either under Section 115 of the code of Civil Procedure or Section 104 of the Constitutions of the State. This view would lead to the consequences that whatever orders are passed by the tribunal below, just/unjust, proper/improper being not subject to judicial review and thus, confer unbridled powers upon the tribunal. This can never be the intention of any provision of the law. In a given situation, once it comes to the notice of this court that the order passed by the tribunal below is manifestly wrong and patently illegal being not sustainable in the background of the case, this court would not remain a silent spectator. Rather in exercise of its powers of superintendence and control, the order needs to be rectified, even if it be assumed for the sake of argument that Section 115 of the code of Civil Procedure is not attracted.

19. No doubt, the purpose of enacting provision for the grant of compensation under no fault liability is to grant immediate relief after the death of bread winner of a family or to an injured as the case may be without going into the respective pleas but still for arriving at such a conclusion there has got to be some material in the absence whereof the tribunal would not be justified in passing an order for the grant of compensation under no fault liability.

20. It appears that when the matter came up before this court in the cases reported in 1989, ACJ 1040, 1992 KLJ 289 as well as 1984 JKL 310

(supra), two decisions of the Hon'ble Supreme Court reported in A.I.R. 1979 S.C. 855 and 1983 ACJ 123 (supra) were not brought to its notice.

21. On the other hand, the reasoning adopted in the cases including two decisions of the Supreme Court and in a one of this court, holding that the tribunal is a court subordinate to the High Court, supports the view being taken on this aspect of the matter.

22. Another reason for accepting this line of decisions is that there is no doubt that under the Motor Vehicles Act, even the tribunals are subject to the appellate jurisdiction of High Court. Therefore, on this count, it can also be held to be a court subordinate to the High Court for the purpose of

Section 104 of the Constitution of State. Thus in exercise of powers vested in this court under Section 104 of the Constitution of State. The

tribunal is amenable to the powers of superintendence and control of this court as such in order to keep the same within the bounds of its limits this

court can certainly rectify the error committed by the tribunal below, such a power is in addition to the power of revision under Section 115 of the

Jammu and Kashmir Code of Civil Procedure as already hereinabove.

23. Rule 324 (1a) of Motor Vehicles Rules, 1991 is to the following effect:

ii) for the purpose, other than those specified in subrule (1), the Claims Tribunal may exercise all or any of the powers of a Civil Court as may be,

necessary in any case for discharging its functions under the Act and the rules made thereunder.

24. Similarly Rule 325 (1b) is to the following effect:

1b) In so far as the Act and these rules make no provision or make insufficient provision, the relevant provisions of the code of Civil Procedure,

Svt. 1977, shall so far as may be, apply to the proceedings before the Claims Tribunal.

25. A perusal of these Rules shows that where the rules make no provision or make insufficient provision, the relevant provisions of code of Civil

Procedure shall so far as may be, apply to the proceedings before the Claims Tribunal. Regarding the supervision and control over the functions of the tribunal

as well as to rectify a palpable mistake, there is no specific provision either in the Motor Vehicles Act or the Rules framed by the State.

26. In Section 115 of the Jammu and Kashmir Code of Civil Procedure, 1977, (1920 AD) there is subclause (d) whereby the High Court can call

for the record on any case which has been decided wherein it appears to have caused failure of justice and to pass such order as this court may

deem just and proper.

27. For the aforesaid reasons, instead of following two Division Bench decision as well as another decision' of a learned Single Judge, detailed in

this judgment, the judgment passed by the learned Single Judge of this court and two decisions of the Hon'ble Supreme Court clearly hold the field

and thus, it is held that Tribunal is a court subordinate to the High Court and is amendable to the provisions of Section 115 of the code of Civil

Procedure as well as to its authority under Section 104 of the Constitution of

Jammu and Kashmir.

28. So as the facts of Civil Revision No. 76/ 97 are concerned, the order impugned cannot be sustained. There is nothing to suggest nor could

anything be shown during the course of hearing of this case by learned counsel for the claimants that there was any such material so as to enable

the tribunal below to have passed the order impugned. In fact. Tribunal below has failed to exercise jurisdiction vested in it according to law and in

order to keep the same within the bounds of its limits, the impugned order is hereby set aside.

29. So far Civil Revision No.43/97 is concerned, no infirmity could be pointed out by the learned counsel for the owner with the impugned order

of the tribunal below so as to take a contrary view from the one taken by the tribunal holding it liable for payment of compensation under no fault

liability. It may be appropriate to mention here that only ground urged in support of this revision petition was that number of Motor Cycle which

met with the accident was fake and therefore, owner could not; be held liable for payment of compensation as ordered by the tribunal below, copy

of FIR is there on record which clearly prima facie shows that the accident did take place when bus in question was being driven by its driver on

the fateful day. It is not the case of the owner that the bus in question did not belong to it.

30. As a result of the aforesaid discussion, Civil Revision No. 76 of 1997 is hereby allowed. The order directing the Insurance Company to

deposit the amount under no fault liability is hereby set aside with a direction to the tribunal below to examine the whole case on the objections of

the parties as well as on the basis of the documents which may be before it at the time of consideration of objections, including those which are

filed against the prayer for grant of compensation under no fault liability. Amount deposited by the Insurance Company in Civil Revision No. 76/97

is ordered to be refunded to it alongwith interest if any, accrued thereon.

Similarly, for the reason recorded thereinabove, Civil Revision No.43/97 is hereby dismissed.

31. All interim orders passed in both these cases are hereby vacated. It is hoped that the tribunals concerned would make endeavor to dispose of

the cases with expedition. No costs.

32. Parties present in court in Civil Revision No. 76/97 are directed to appear before Motor Accidents Claims Tribunal, Ramban on 30.4.98 and similarly parties in Civil Revision No. 43/ 97 shall appear before the Tribunal below at Kathua on 30.4.98. Registry will send copy of this judgment to both concerned tribunals for compliance.