

(1984) 07 MAD CK 0021

In the Madras High Court

Case No : C.M.P. SR. 76358 of 1980 and A.A.O.S.R. 76357 of 1980

R. Govindarajulu Naidu and Another

APPELLANT

Vs

S. Dharman and Another

RESPONDENT

Date of Decision : 27-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 44 Rule 1

Motor Vehicles Act, 1939 — Section 110D, 111A

Tamil Nadu Motor Accidents Claims Tribunal Rules, 1961 — Rule 19, 20

Citation : (1986) ACJ 178 : AIR 1985 Mad 264

Hon'ble Judges : Nainar Sundaram, J;Gokulakrishnan, J

Bench : Division Bench

Advocate : R.S. Venkatachari, for the Appellant;

Judgement

Nainar Sundaram, J.—The matter comes before us on a note by the office of this Court regarding maintainability. The Additional Motor

Accidents Claim Tribunal, Madras has passed an order on 1-2-1980 in O. P. 182 of 1979, dismissing the said petition preferred under S. 110-A

of the Motor Vehicles Act IV of 1939, hereinafter referred to as the Act, by the appellants in the proposed civil miscellaneous appeal, for a

compensation of Rs. 75,000, relatable to the death of one Mohan in a motor accident on 7-12-1978. The proposed civil miscellaneous appeal is

directed against the order of the Claims Tribunal. Pleading that they are indigent persons the appellants have filed a petition under O. 44, R. 1 C.P.

Code, hereinafter referred to as the Code, for leave to file the appeal as indigent persons. The office of this court felt a difficulty and a doubt as to

the propriety of the appellants invoking the provisions of the Code and that too, O. 44 and the allied provisions of the Code, in the proposed

appeal before this court.

2. The Claims Tribunals under the Act get constituted by and they function and exercise powers within the ambit of the relevant provisions in the

Act found in Ss. 110, 110-A to 110-E, except S. 110-D which relates to appeals to this court. The State Government, under S. 111-A is invested

with powers to make rules to effectuate the provisions of Ss. 110 to 110-E We find that pursuant to this power, the Tamil Nadu Motor Accidents

Claims Tribunals Rules 1961, hereinafter referred to as the Rules, have been framed. The Rules so framed practically regulate the proceedings

before the Claims Tribunals. Rule 20 deals with fees for proceedings and sub-rule (2) thereof gives the discretion to the Claims Tribunals to grant

exemption from the payment of fees prescribed. Rule 18 enumerates certain provisions of the Code, which are to apply so far as may be to

proceedings before the Claims Tribunals. Sec. 110-C (2) should also be taken note of when it states that the Claims Tribunals shall have all the

powers of a civil court for specified purposes. In this appeal proposed, we are not concerned with the powers of the Claims Tribunals to invoke

the provisions of O. 33 of the Code and permit any person to institute proceedings before them as indigent person, that question does not arise for

consideration at all before us.

3. So far as this court is concerned, appeal against the award of the Claims Tribunal lies to it under S. 110D which runs as follows -

Appeals : (1) Subject to the provisions of sub-sec. (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, 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 two thousand rupees.

The ambit of the powers of this Court in appeal is not touched at all either by the provisions of the Act or the rules. Rule 19 merely speaks about

the form of the appeal and R. 20 lays down the Court-fees payable on appeal. The question that arises for consideration in such a contingency is

as to whether this court, in the exercise of its appellate powers, permit the

invocation of O. 44 and thereby O. 33 of the Code, to enable a person to prefer an appeal under the Act to this court as an indigent person. That is the question that has directly arisen before us for consideration.

4. Mr. R. S. Venkatachari, learned counsel for the appellants, would submit that when once an appeal lies to this Court, all the practice, procedure

and provisions relating to the appellate jurisdiction of this Court will be attracted and there is no exclusion of the Code in the exercise of appellate

powers by this court in appeals against the awards of Claims Tribunals, under the Act. There is substance in this submission. This Court is not

constituted as a Special Tribunal to hear appeals under the Act. S. 110D merely states that any person aggrieved by an award of the Claims

Tribunal may within the time prescribed prefer an appeal to the High Court and the matter is left there. When the statute directs an appeal to an

ordinary civil Court without in any manner circumscribing the practice, procedure and powers of such court as a civil appellate Court, the court will

have to deal with the appeals with all the trappings and powers as an ordinary civil court of appeal. This is the fundamental rule that has been

uniformly countenanced and applied by courts.

5. As early as 1888, a Full Bench of this Court in *Kamaraju v. Secy. of State for India* ILR (1888) Mad 309, had occasion to consider the scope

of the appeal to the District Court under S. 10 of the Madras Forest Act V of 1882 and it found that it was a regular appeal to the District Court,

which is a court of regular jurisdiction from the decrees of which a second appeal ordinarily lay to this court.

6. In *National Telephone Co. Ltd. v. Postmaster General*, 1913 AC 546, the observations of the House of Lords run as follows

When a question is stated to be referred to an established court without more, it, in my opinion, imports that the ordinary incidents of the

procedure of that court are to attach, and also that any general right of appeal from its decisions likewise attaches.

(See *Government of Andhra Pradesh Vs. K. Padma Rani and Others*,

7. In *Secy. of State for India v. Chellikani Rama Rao*, ILR (1916) Mad 617: AIR 1916 PC 21 the proposition countenanced by the Privy Council

runs as follows -

Though an appeal from the District Judge to the High Court is not provided for in

the Madras Forest Act, in a claim to lands which have been notified as reserved forest lands under the Act, such an appeal will lie under the provisions of the Civil Procedure Code. Where in such proceedings the District Court is reached, the at court is appealed to as one of the ordinary courts of the country with regard to whose procedure, orders and decrees the rules of the CPC are applicable. In such a case, the ordinary incidents of litigation could only be excluded by specific provisions to that effect"".

Head note.

8. In AIR 1948 12 (Privy Council) , the principle has been set out in the following terms, and while doing so, the earlier pronouncements of the

Privy Council, the one already referred to above in Secy. of State for India v. Chellikani Rama Rao, ILR 39 Mad 617: AIR 1916 PC 21 and the

other in AIR 1936 93 (Privy Council) were relied on -

.....The true rule is that where a legal right is in dispute and the ordinary courts of the country are seized of such disputes the courts are

governed by the ordinary rules of procedure applicable thereto as an appeal

lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of

appeal."" -Page 14

9. In National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), after stating that a decision given by

a single Judge of a High Court in an appeal preferred under S. 76 of the Trade Marks Act, constitutes a judgment within the meaning of Cl. 15 of

the Letters Patent, it has been held as follows -

Ordinarily after an appeal reaches the High Court,, it has to be determined according to the rules of practice and procedure, of that court and in

accordance with the provisions of the Charter under which that court is constituted and which confers on it power in respect to the method and

manner of exercising that jurisdiction. Thus, S. 76, Trade Marks Act, confers a right of appeal to the High Court and says nothing more about it.

That being so, the High Court being seized as such of the appellate jurisdiction conferred by S. 76 it has to exercise that jurisdiction in the same

manner as it exercises its other appellate jurisdiction and when such jurisdiction

is exercise by a single Judge, his judgment becomes subject to

appeal under Cl. 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act.

Head note

The pronouncement of the House of Lords in *National Telephone Co. Ltd. v. Postmaster General*, - 1913 AC 546 and those of the Privy Council

in *Secy. of State for India v. Chellikani Rama Rao*, ILR (1916) Mad 617: AIR 1916 PC 21 and AIR 1948 12 (Privy Council) have been relied

on.

10. In *Collector of Varanasi Vs. Gauri Shankar Misra and Others*, , the question arose as to whether, while acting under S. 19(l)(f) of the Defence

of India Act 1939, the High Court functions as a Court and not as designated person, and it has been laid down as follows -

The High Court of a State is at the apex of a State's judicial system. It is a court of record and it is difficult to think of a High Court as anything

other than a Court. No judicial power was ever entrusted to the High Court except as a "Court" and whenever it decides or determines any

dispute that comes before it, it "invariably does so as a court. That apart, when S. 19(l)(f) specifically says that an appeal against the order of an

arbitrator lies to the High Court, there was no justification for thinking that the legislature said something which it did not mean. Furthermore,

neither the Act, nor the rules framed there under prescribe any special procedure for the disposal of appeals under S. 19(l)(f) and appeals under

that provision have to be disposed of in the same manner as other appeals to the High Court according to its own rules of practice and procedure.

Headnote

11. In *Manjula Devi Bhuta v. Manjuri Raha*, 1968 Acc CJ 1, a Bench of the High Court of Madhya Pradesh observed as follows; while upholding

the competency of cross objections under O. 41, R. 22 of the Code in an appeal under the Act

.....as soon as this court becomes seized of an appeal, even where an appellate jurisdiction is conferred under a special statute, the rules of

practice and procedure of this Court applicable to a civil appeal, will, in the absence of any specific rule to the contrary govern such appeal

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While doing so, the Bench relied on Secy. of State for India v. Chellikani Rama Rao, ILR (1916) Mad 617 : AIR 1916 PC 21 and National

Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), .

12. In Municipal Corporation of Delhi Vs. Kuldip Lal Bhandari and Others, , a Full Bench of the High Court of Delhi had occasion to consider the

nature of jurisdiction of the Claims Tribunal and of the High Court under the Act. The Headnote in the report has practically brought out the ratio

laid down by the Full Bench and the relevant passages therefrom stand extracted as follows -

A decision given by a single Judge of the High Court in appeal under S. 110D of the Motor Vehicles Act, against an award of the Motor

Accident Claims Tribunal, is a judgment within the meaning of clause 10 of the Letters Patent.

The question, whether a particular decision of the High Court is a judgment or is only a determination turns on the connected question whether the

decision is given by the High Court acting as a High Court or whether it is given by it acting as a Tribunal or a persona designata.

The theory that an appeal takes colour from the original proceeding is not to be carried too far. Three aspects to be considered are -- (1) the

nature of the Tribunal, (2) the nature of the proceeding before it, and (3) the nature of the decision given by it. It would not be correct to say that

merely because the Tribunal was not a court or the proceeding before it was not a suit or its decision was not a judgment but an award, the High

Court hearing appeal against its decision would not be a court or the proceedings before the High Court would not be in its ordinary jurisdiction or

that the decision of the High Court on such appeal would not be a judgment. Therefore, even if the original proceeding took place before the

Arbitrator, resulting in an award, the appeal to the High Court will not turn the High Court itself into a persona designata or an Arbitration Tribunal

and will not, therefore, make the judgment of the High Court an award

In hearing the appeal under S. 110D of the Motor Vehicles Act, the High Court must be held to be acting as a High Court and not as a Tribunal,

inasmuch as the claim for compensation for negligence is a common law right not created by a statute and the claim is considered by the Tribunal in

its entirety without limitation, with the result that an appeal to the High Court is made in its ordinary civil jurisdiction. In fact, "an appeal by special

leave under Art. 136 lies to the Supreme Court, against the determination or order of a Tribunal. The High Court also has the superintendence

over other Courts and Tribunals under Art. 227 of the Constitution. It has never been doubted that the Supreme Court and the High Court act as

the Supreme Court and the High Court in functioning under Arts. 136 and 227 of the Constitution respectively and do not act as an Arbitrator or a

Tribunal in doing so. For the same reason, the High Court would also act as the High Court and not as a Tribunal in hearing the appeal under S.

110D of the Act.

13. In *Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others*, a Full Bench of the High Court of Punjab and

Haryana, following *Collector, Collector of Varanasi Vs. Gauri Shankar Misra and Others*, , held as follows --

The High Court while hearing appeals under S. 110D of the M. V. Act, acts as a "court" and a proceeding even if at its inception has semblance

of an arbitration proceedings, does not retain its character as such in appeal.

Headnote

14. A Bench of this Court in *The Union Co-operative Insurance Society Ltd., Madras Vs. Lazarammal Ravel and Others*, observed as follows,

and upheld the competency of entertaining cross-objections in an appeal before this court under the Act:-

.....It must be remembered that when once an appeal is entertained by this court, all the provisions relating to the appellate jurisdiction to this

court are attracted. It is true that all the provisions of the CPC are not applicable to the Tribunal, because, it is a creature of the Statute, but the

appeal against the order of the Tribunal is to the High Court and not to any other Tribunal constituted under the statute.

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15. In *K. Chandrashekara Naik and Another Vs. Narayana and Another*, , the competency of cross-objections to the High Court in an appeal

under the Act was upheld by a Full Bench of the High Court of Karnataka and it has been countenanced as follows :

Except providing for an appeal to the High Court under S. 110D, the Act does not

expressly lay down the procedure to be followed by the High Court in dealing with appeals filed before it. The Karnataka Motor Vehicles Rules also do not contain any provisions as to such procedure. In such a contingency the Special Act being silent in regard to the procedure by the appellate Court, such an appellate jurisdiction has to be exercised in the same manner as the High Court exercises its general appellate jurisdiction and that the appeal so filed must be regulated by the practice and procedure of the High Court".

Headnote

16. A Bench of the High Court of Punjab and Har. in *Triloki Nath Bhargava and Another Vs. Smt. Jaswant Kaur and Others*, recapitulated the principle and held that in an appeal against an award of the Claims Tribunal under the Act, there could be cross-objections and the principle taken

note of runs as follows :-

As soon as the High Court becomes seized of an appeal under S. 110D the rules of practice and procedure of the High Court becomes

applicable to the appeal as there is no special rule to the contrary in the Act or the rules framed there under and, therefore, cross-objections under

O. 41, R. 22 C.P.C. can be filed." --Headnote

17. In *Government of Andhra Pradesh Vs. K. Padma Rani and Others*, a Bench of the High Court of Andh. Pra. also upheld the competency of

cross-objections in an appeal before the High Court under the Act. Equally, a Bench of the High Court of Calcutta, in *Smt. Gurdev Kaur Vs. Rash*

Behari Das, countenanced the competency of filing cross-objections in appeal to the High Court under the Act.

18. Thus, we find that uniformly it has been countenanced that the High Court, while hearing an appeal under the Act, exercises its ordinary

appellate powers and should follow its practice and procedure as are normally attributable to it as an ordinary appellate Court; and in the absence

of any circumscription or regulation of the said powers, the rules of practice and procedure, and power as per the provisions of the Code can be

legitimately invoked for the purposes set out therein in the matter of dealing with such an appeal. Order 33 of the Code deals with institution of

proceedings by indigent persons. O. 44 deals with appeals by indigent persons and it contemplates, that appeals by indigent persons shall be dealt

with in the same manner as institution of original proceedings by indigent persons. In this view, we have to hold that it will be competent for the appellants to invoke the aid of Order 4.4 and thereby O. 33 of the Code.

19. Our attention has been drawn to a pronouncement of the High Court of Punjab and Haryana in *Darshna Devi v. Sher Singh*, 1979 Acc CJ

442: AIR 1978 Punj & Har 265, wherein Koshal C. J. as he then was, held that the Claims Tribunal is -a civil court for the purposes of Order 33

of the Code. In *State of Haryana Vs. Smt. Darshana Devi and Others*, , the Supreme Court approved the reasoning of Koshal C. J. as he then

was in *Darshna Devi v. Sher Singh*, 1979 Acc CJ 442: AIR 1978 Punj & Har 265, that O. 33 will apply to Tribunals which have the trappings of

the civil Court. This question does not strictly arise for consideration before us, as we stated above, and there is no need to express any opinion

about the same in this matter.

20. The office of this Court will first number the application for permission to prefer the appeal under the Act as indigent persons if the said

application is strictly in order with the concerned provisions of the Code, and post the same for orders.

21. Order accordingly.