
(2006) 09 GAU CK 0020
In the Gauhati High Court
Case No : Writ Appeal No. 03 of 2004

Rekha Paul and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 115, 151, 25, 3
Constitution of India, 1950 — Article 136, 14, 223, 226, 227
Contempt of Courts Act, 1971 — Section 3
Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 476, 476B
Family Courts Act, 1984 — Section 7
Motor Vehicles Act, 1988 — Section 165, 165(3), 166, 168, 169(1)
Representation of the People Act, 1951 — Section 33, 36

Citation : (2006) GLT 231 Supp

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : Somik Deb, for the Appellant; K. Bhattacharjee, for the Respondent

Judgement

I.A. Ansari, J.—The Appellants herein made an application u/s 166 of the Motor Vehicles Act, 1988 (in short, "the M.V. Act") sought for compensation for the death of Arun Kanti Paul, husband of the claimant-Appellant No. 1 and father of the claimant-Appellant Nos. 2 and 3, the death of the said deceased having occurred in a motor vehicle accident on 01.06.1997. This application gave rise to T.S. (MAC) No. 86 of 1998. By award, dated 12.05.2000, the learned Motor Accident Claims Tribunal, West Tripura, Agartala, granted, in all, compensation of Rs. 19,27,000/- in favour of the claimants. The insurer impugned the said award by making an application under Article 226 read with Article 227 of the Constitution of India seeking, inter alia, a writ of certiorari setting aside the award. This writ application gave rise to W.P.(C) No. 316 of 2000. When the claimants resisted the writ petition on the ground that the writ petition filed by the insurer was misconceived and not maintainable, the insurer sought for an order converting the said writ petition into a revision petition. By order, dated 24.11.2003, passed in W.P.(C) No. 316 of 2000, the writ petition was converted

into a revision petition and the same has accordingly come to be registered as CRP No. 81 of 2003. Dissatisfied with the order, so passed, on 24.11.2003, the claimants have preferred the present writ appeal.

2. We have heard Mr. Somik Deb, learned Counsel for the claimant-Appellants, and Mr. K. Bhattacharjee, learned Counsel for the insurer-Respondent.

3. At the time of hearing of the present writ appeal, it has been pointed out, on behalf of the claimant-Appellants, that in the face of the decisions of this High Court, in *Oriental Insurance Co. Ltd. Vs. Mustt. Rejina Begum and Others*, and *National Insurance Co. Ltd. v. Sukla Deb Nath and Ors.* reported in 2004(1) GLT 497, revision against final award of a Tribunal, constituted u/s 165 of the M.V. Act, is not maintainable.

4. Controverting the above submissions made, on behalf of the claimants-Appellants, Mr. K. Bhattacharjee, learned Counsel for the insurer-Respondent, has, relying upon a Division Bench decision, in *Oriental Insurance Co. Ltd. Vs. Abeda Begum and Others*, has submitted that the Claims Tribunal having been held, in *Mustt. Abeda Begum (Supra)*, as a Court subordinate to the High Court u/s 115 of the Code of the Civil Procedure, an award, passed by a Claims Tribunal, is amenable to the revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure.

5. Reacting to the submissions made, on behalf of the insurer-Respondent, Mr. Deb, learned Counsel for the claimants-Appellants, has contended that a Claims Tribunal is not a Court, subordinate to High Court within the meaning of Section 115 of the CPC and the decision of the Division Bench, in *Mustt. Abeda Begum (supra)*, needs to have a re-look by this Court so as to lay down the correct position of law in this regard. It is also contended by Mr. Deb that at any rate, when the award rendered, on an application made u/s 166 of the M.V. Act, is an appealable award u/s 173 of the M.V. Act, no revision, u/s 115 of the Code of Civil Procedure, lies against such an award.

6. From the submissions, as noted hereinabove, it is clear that three questions, broadly speaking, fall for determination in the present writ appeal, namely, whether a Claims Tribunal is a Court, subordinate to High Court, within the meaning of Section 115 of the Code of Civil Procedure; (ii) even if the Claims Tribunal is subject to the revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure, whether an award, which is appealable within the meaning of Section 173 of the MV Act, can be interfered with, in revision, by taking recourse to Section 115 of the Code of Civil Procedure; and (iii) even if the Claims Tribunal is subject to the revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure, whether a non-appealable order or award, passed by the Claims Tribunal would be revisable u/s 115 of the Code of Civil Procedure.

7. While examining the questions, which have fallen for determination in the present writ appeal, what we would like to point out, at the very outset, is that if this Court, for any reason whatsoever, forms the view that the decision, in *Mustt.*

Abeda Begum (supra), needs to be re-looked and re-examined, the appropriate course for this Court would be to refer the matter to a larger Bench for decision so as to enable this Bench to effectively dispose of the writ appeal. With this limitation in mind, let us, now, examine the most important issue raised in the present writ appeal, namely, whether a Claims Tribunal is a Court subordinate to High Court within the meaning of Section 115 of the Code of Civil Procedure?

8. Before we answer the question posed above, it is pertinent to note that with the modernization of human life and the problems, which life in the modern society threw up, a large number of administrative tribunals have come into existence. These Tribunals have the authority of law to pronounce decisions affecting valuable rights and though many a times, they may act in a judicial manner, they may not still be same as Courts. The Constitution Bench, in *Javer Chand and Others Vs. Pukhraj Surana*, has explained as to what the Courts and Tribunals are. As the dispute in *Harinagar Sugar Mills Ltd. (Supra)* was in respect of civil rights of the parties under the Companies Act, the question arose as to whether the Central Government has the obligation to act judicially. While deciding the appeal, Hidayatulla, J (as his Lordship then was), delivered a separate, but concurring judgment, and his Lordship's observations, made in *Harinagar Sugar Mills Ltd. (Supra)*, have been taken note of in many important subsequent decisions of the Supreme Court. It is pointed out, in *Harinagar Sugar Mills Ltd. (Supra)*, by Hidayatulla, J, that the Court is not defined in the Companies Act, 1956, and it has not been defined in the CPC and as far as the definition of the Court contained in the Evidence Act is concerned, the same is meant for the Evidence Act. It is also pointed out by Hidayatulla, J, in *Harinagar Sugar Mills Ltd. (Supra)*, that all Tribunals are not Court, though all Courts are Tribunals and that the word "Court" is used to designate those Tribunals, which are set up in an organized State for administration of justice, the administration of justice implying the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". It is further pointed out, in *Harinagar Sugar Mills Ltd. (Supra)*, that whenever there is an infringement of a right or an injury, the Courts are there to restore the *vinculum juris*, which is disturbed. Observed Hidayatulla, J, in *Harinagar Sugar Mills Ltd. (Supra)*, that the Tribunals are very similar to Courts, but are not Courts and when the Constitution speaks of "Courts" in Articles 136, 227 or 228 or in Article 223 or 237 or in the Lists, it contemplates Courts of Civil Judicature, but not tribunals other than such Courts, and it is for this reason that Articles 136 and 226 use both the expressions Tribunals and Courts, though Courts mean Courts of Civil Judicature and Tribunals denote those bodies of men, who are appointed to decide controversies arising under certain special laws. Broadly speaking, points out Hidayatulla, J, in *Harinagar Sugar Mills Ltd. (Supra)*, certain special matters go before tribunals and the residue goes before the ordinary Courts of Civil Judicature and though their procedures may differ, the functions are not essentially different. Having so observed in *Harinagar Sugar Mills Ltd. (Supra)*, Hidayatulla, J, concluded thus, "In my opinion, a Court in the strict sense is a tribunal which is a part of the

ordinary hierarchy of Courts of Civil Judicature maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction." The material aspects of the observations made by Hidayatulla, J, in *Harinagar Sugar Mills Ltd. (Supra)*, run as follows:

...But to ascertain what falls within the expression "Court of or tribunal", one has to begin with "Courts". The word "Court" is not defined in the Companies Act, 1956. It is not defined in the Code of Civil Procedure. The definition in the Indian Evidence Act is no exhaustive, and is for the purposes of that Act. All tribunals are not Courts, though all Courts are tribunals. The word "Court" is used to designate those tribunals which are set in an organized State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the *vinculum juris*, which is disturbed." When rights are infringed or invaded, the aggrieved party can go and commence a *querela* before the ordinary Civil Courts. These Courts which are instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or some Act of Legislature constituting them. Their number is ordinarily fixed and they are ordinarily permanent, and can try any suit or cause within their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent and go under the compendious name of "Courts of Civil Judicature." There can thus be no doubt that the Central Government does not come within this class.

With the growth of civilization and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights: they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Courts, but are not Courts. When the Constitution speaks of "Courts" in Article 136, 227 or 228 or in Article 233 or 237 or in the Lists. it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Articles 136 and 227. By Courts is meant Courts of Civil Judicature and by "tribunals" those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is

that Courts have "an air of detachment". But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient. Lord Sankey LC in *Shell Company of Australia v. Federal Commissioner of Taxation* (1931) AC 275 296

The authorities are clear to show that there are tribunals with many of the trappings of a Court, which nevertheless, are not Courts in the strict sense of exercising of judicial power. In that connection it may be useful to enumerate some negative propositions on the subject: 1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision, 2. Nor because it hears witnesses on oath, 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by Anr. body See *Rex v. Electricity Commissioners* (1924) 1 KB 171. In my opinion, a Court in the strict sense is a tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word "judicial", be it noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson* (1892) 1 QB 431 452 in these words:

The word judicial has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in Court, or to administrative duties which need not be performed in Court, but in respect of which it is necessary to being to bear a judicial mind- that is, a mind to determine what is fair and just in respect of the matters under consideration.

(Emphasis is supplied)

9. In *Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others*, the Apex Court, having taken note of what Hidayatulla, J, had pointed out in *Harinagar Sugar Mills Ltd.* (Supra), observed thus:

23. ...As the dispute between the parties related to civil rights and the Companies Act provided for a right of appeal and made detailed provisions about hearing and disposal according to law, it was impossible to avoid the inference that a duty was imposed upon the Central Government in deciding the appeal to act judicially. Hidayatullah, J. delivered a separate but concurring judgment. He said that all tribunals were not Court though all Courts were tribunals. The word "Courts" was used to designate those tribunals which were setup in an organized State for the administration of justice. By administration of justice was meant the exercise of the judicial power of the State to maintain and uphold rights and to punish wrongs. Whenever there was an infringement of a right or an injury, the Courts were there to restore the "vinculum juris". When rights were infringed or

invaded, the aggrieved party could go and commence a "querela" before the ordinary Civil Courts. These Courts were invested with the judicial power of the State, and their authority was derived from the Constitution or some Act of Legislature constituting them. Their number was ordinarily fixed and they were ordinarily permanent, and could try any suit or cause within their jurisdiction. Their numbers might be increased or decreased, but they were almost always permanent and went under the compendious name of "Courts of Civil Judicature." There could be no doubt that the Central Government did not come within this class. With the growth of civilization and the problems of modern life, a large number of administrative tribunals had come into existence. These tribunals had the authority of law to pronounce upon valuable rights: they act in a judicial manner and even on evidence on oath, but they were not part of the ordinary Courts of Civil Judicature. They shared the exercise of the judicial power of the State, but were brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They were very similar to Courts, but were not Courts. When the Constitution spoke of "Courts" in Article 136, 227 or 228 and in Article 233 or 237 and the Lists, it contemplated Courts of Civil Judicature but not tribunals other than such Courts. This was the reason for using both the expressions in Articles 136 and 227. By "Courts" was meant Courts of Civil Judicature and by "tribunals" those bodies of men who were appointed to decide controversies arising under certain special laws. Among the powers of the State was included the power to decide such controversies. This was undoubtedly one of the attributes of the State, and was aptly called the judicial power of the State. In the exercise of this power, a clear division was noticeable. Broadly speaking, certain special matters went before tribunals, and the residue went before the ordinary Courts of Civil Judicature. What distinguished them had never been successfully established. A Court in the strict sense was a tribunal which was a part of the ordinary hierarchy or Courts of civil judicature maintained by the State under its Constitution to exercise the judicial power of the State. These Courts performed all the judicial functions of the State except those that were excluded by law from their jurisdiction. The word "judicial" was itself capable of two meanings. It might refer to the discharge of duties exercisable by a judge or by justice in Court or to administrative duties which need not be performed in Court but in respect of which it was necessary to bring to bear a judicial mind to determine what was fair and just in respect of the matters under consideration. That an officer was required to decide matters before him judicially in the second sense did not make him a Court or even a tribunal because that only established that he was following a standard of conduct and was free from bias or interest. Courts and tribunals acted judicially in both senses and in the terms "Courts" were included the ordinary and permanent tribunals and in the terms "tribunals" were included all Ors. which were not so included.

(Emphasis is supplied)

10. From the observations made in Canara Bank (*supra*), it becomes evident that

when the Constitution speaks of Courts" in Articles 136, 227 and 228 and in Articles 233 to 237 and the Lists, it contemplates Court of Civil judicature, but not tribunals other than such Courts and that a Court, in the strict sense, is a tribunal, which forms part of the ordinary hierarchy of courts of civil judicature maintained by the State under its Constitution to exercise the judicial power of the State and these Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction.

11. Describing as to what the Courts are, the Constitution Bench, in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, speaking through Gajendragadkar, CJ, observed,

...The expression "Court" in the context denotes a tribunal constituted by the State as a part of the ordinary hierarchy of Courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our constitution, the judicial functions and powers of the State are primarily conferred on the ordinary Courts which have been constituted under its relevant provisions. The Constitution recognizes a hierarchy of Courts and their adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These Courts can be described as ordinary Courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers which these Courts exercise, are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions.

(Emphasis is supplied).

12. Delineating as to what the Tribunals are, the Supreme Court, in *Associated Cement Companies Ltd.*(Supra), observed,

...The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the Courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of Courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to

describe exhaustively the features which are common to the tribunals and the Courts, and features which are distinct and separate. The basic and the fundamental features which is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

(Emphasis is supplied)

13. From the above observations made in *Harinagar Sugar Mills Ltd.* (Supra), *Associated Cement Companies Ltd.* (Supra) and *Canara Bank* (supra), it is clear that the judicial functions and powers of the State are primarily conferred on the Courts, which are commonly described as ordinary Courts of Civil Judicature and these Courts fall within the hierarchy of Courts as conceived under the constitutional scheme of the State, though not only the Courts, but even the Tribunals may, if so empowered by the State, discharge judicial functions and exercise judicial powers, which inherently vests in a sovereign State.

14. Bearing in mind what we have indicated above, let us, now, determine whether a Claims Tribunal is or is not a Court? While considering this aspect of the matter, it may be noted that the Court, as indicated, in *Harinagar Sugar Mills Ltd.* (Supra), has not been defined in the CPC and the definition of the Court, contained in the Evidence Act, is meant for the Evidence Act and does not lay down as to what Courts, in general, are. The Apex Court had an occasion to deal, in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, with the questions as to whether (i) an Assistant Registrar of a Co-operative Society under the Bihar and Orissa Cooperative Societies Act, 1935, is a Court or not, (ii) what subordination of Courts mean and (iii) if the Assistant Registrar under the said Act is a Court, does it become a Court within the meaning of the Contempt of Courts Act, 1952. The observations of the Apex Court, made in *Thakur Jugal Prasad Kishore Sinha* (supra), throw sufficient light into the questions aforementioned. The relevant observations of the Supreme Court, in *Thakur Jugal Prasad Kishore Sinha* (supra), indicating as to how one can determine if an authority acting under a statute is or is not a Court run as follows:

It is not necessary to examine the question at any great length because of certain authoritative pronouncements of this Court. In *Brajanandan Sinha v. Jyoti. Narain* (1) the question was, whether a commissioner appointed under the Public Servants (Inquiries) Act, 1850 was a Court within the meaning of the Contempt of Courts Act, 1952. There, after referring to authorities like *Coke on Littleton and Stroud* and *Stephen*, the Privy Council decision in *Sheell Co. of Australia v. Federal Commissioner of Taxation* (2) and the earlier decisions in *Bharat Bank Limited v. Employees of Bharat Bank Ltd.* (3) *Maqbool Hussain v. The State of Bombay* (4) and *Cooper v. Wilson* (5) it was 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.

Reference may also be made to the decision of this Court in *Shri Virindar Kuram Satyawadi v. The State of Punjab* (7). There the question was, whether a returning officer acting under Sections 33 and 36 of the Representation of the People Act, 1951 and deciding on the validity or otherwise of a nomination paper was not a court within the meaning of Sections 195(1)(b), 476 and 476-B of the Code of Criminal Procedure. Here, too, the authorities which were cited in the case of *Brajnandan Sinha's case* (1) were reviewed and it was said:

It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

(Emphasis is supplied)

15. From the above observations made in *Thakur Jugal Prasad Kishore Sinha* (supra), what becomes transparent is that whether an authority created by an enactment is a Court or not can be determined by deciding the question as to whether the authority concerned has all the attributes of a Court or not and this determination has to be based on the provisions of the statute, whereunder the authority has been created.

16. In fact, in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, having found that the Assistant Registrar exercised the same very powers as were exercised by the ordinary Civil Courts, the Apex Court observed,

In conclusion, therefore, we must hold that the Assistant Registrar was functioning as a Court in deciding the dispute between the bank and the Appellant and Jagannath Jha.

(Emphasis is supplied)

17. In *Thakur Jugal Prasad Kishore Sinha* (supra), the Apex Court, having concluded that the Assistant Registrar under the said Act, was a Court, further observed,

Then comes the question as to whether the Assistant Registrar was a Court subordinate to the High Court.

(Emphasis is supplied)

18. From the conclusions reached and the question posed by the Apex Court itself, in *Thakur Jugal Prasad Kishore Sinha (supra)*, it becomes abundantly clear that under a given enactment, there may be an authority, exercising powers of an ordinary Civil Court, and though such an authority may be regarded as a Court, yet it may or may not be a Court subordinate to the High Court under the scheme of a given statute or Code.

19. Having analysed the scheme of the statute under consideration in *Thakur Jugal Prasad Kishore Sinha (supra)*, the Apex Court concluded,

In our view, the subordination for the purpose of Section 3 of the Contempt of Courts Act means judicial subordination and not subordination under the hierarchy of Courts under the CPC or the Code of Criminal Procedure.

(Emphasis is supplied)

20. From what has been concluded above by the Apex Court, in *Thakur Jugal Prasad Kishore Sinha (supra)*, it becomes abundantly clear that however subtle maybe, there is, indeed, a fine and firm distinction between "subordination of Courts" in the context of the Contempt of Courts Act and the "subordination of Courts" under the Scheme of the CPC or the Code of Criminal Procedure. From what has been concluded in *Thakur Jugal Prasad Kishore Sinha (supra)*, it also becomes transparent that there may be a Court, exercising powers same as those of the ordinary Civil Courts, yet it may still not be a Court subordinate to the High Court under the hierarchy of Courts as envisaged by the CPC or the Code of Criminal Procedure, though the Court, conceived under the given statute, may be a Court subordinate to the High Court under the Contempt of Courts Act. To put it differently, there may be a Court exercising powers of an ordinary Civil Court, it may not be subordinate to the High Court under the Code of Civil Procedure, though it may, at the same time, be a Court subordinate to the High Court for the purpose of Contempt of Courts Act.

21. Thus, the two noticeable aspects of law, which prominently surface from what have been observed and pointed out in *Thakur Jugal Prasad Kishore Sinha (supra)*, are that (i) In order to determine as to whether an authority is a Court or not, it is the given statute, whereunder the authority has been created, which needs to be examined and analysed and that (ii) although an authority may be exercising the same powers as those of the ordinary Civil Court, such an authority may or may not be a Court subordinate to the High Court under the hierarchy of Courts as envisaged by the CPC or the Code of Criminal Procedure.

22. In *Canara Bank (Supra)* too, same as in *Thakur Jugal Prasad Kishore Sinha (supra)*, the Apex Court made it clear that the Court must be read in the context in which it is used in the statute concerned and that depending upon the provisions contained in a given statute, a Tribunal may be regarded as Court exercising curial or judicial powers or the Tribunal may be regarded as Court of civil judicature. The observations made, in this regard, in *Canara Bank (supra)*, are of great value and may, therefore, be quoted as follows:

26. In our view, the word "Court" must be read in the context in which it is used in statute. It is permissible, given the context, to read it as comprehending the Courts of civil judicature and Courts or some tribunals exercising curial or judicial powers.

(Emphasis is supplied)

23. From what has been observed and laid down in *Canara Bank (Supra)*, too, it clearly emerges that in order to answer the questions as to whether a Tribunal is a Court or not and/or, if it is a Court, whether it is a Court, which falls under the compendious name of "Courts of Civil judicature", it is the statute, which is the ultimate settler of such controversy, and it is in the context of the scheme of the statute concerned that the question as to whether a Tribunal is a Court or not and if it is a Court whether, it is a Court, within the expression "Courts of Civil judicature" or not that one has to determine.

24. Moreover, when the observations made in *Associated Cement Companies Ltd. (supra)* are read, in the light of the decisions in *Thakur Jugal Prasad Kishore Sinha (supra)* and *Canara Bank (Supra)*, it becomes transparent that a Tribunal may be exercising sovereign judicial power of the State, which might have been, at one stage, exercised by ordinary Civil Courts, but it may still not be a Court within the meaning and scheme of the CPC and that for the purpose of determining as to whether a Tribunal is or is not a Court within the meaning of the CPC or the Code of Criminal Procedure, as the case may be, it is the enactment, whereunder the Tribunal is created, which needs to be examined and analyzed.

25. In short, what have been laid down, in *Thakur Jugal Prasad Kishore Sinha (supra)* and *Canara Bank (supra)*, make it abundantly clear that there may be a Tribunal, which may have all the trappings of Civil Court, or there may even be a Special Court, exercising all the powers of a Criminal Court, but it may still not be a Civil Court or Criminal Court within the hierarchy of the Courts as envisaged by the CPC or the Code of Criminal Procedure, as the case may be.

26. It is also worth noticing that having taken note of the observations made in *Harinagar Sugar Mills Ltd. (Supra)*, the Supreme Court, in *Canara Bank (supra)*, speaking through SP Bharucha, J, made it explicit that a Court, exercising the powers of an ordinary Civil Court, may not be a Court of Civil Judicature in the hierarchy of Courts, though such a Tribunal may nevertheless be subject to the jurisdiction of the Supreme Court under Article 136 or of the High Court under Article 227. The observations made, in this regard, in *Canara Bank (supra)*, at para 25, run thus:

25. ...The judgment is, therefore, determinative in deciding whether a tribunal is subject to the jurisdiction of this Court under Article 136 or of the High Court under Article 227, but it does not hold that a "Court" is only a Court of civil judicature in the ordinary hierarchy of Courts.

27. From a microscopic reading of what has been laid down in *Canara Bank* (supra), it is clear that in order to be subordinate to the High Court under Article 227, a Court need not necessarily be a Court of Civil judicature in the ordinary hierarchy of Courts meaning thereby that though a Tribunal or an authority, acting under a given statute, may be regarded as a Court, yet it may not still be a Court in the ordinary hierarchy of Courts and though a Tribunal may not be a Court in the ordinary hierarchy of Courts, such a Tribunal would nevertheless be subordinate to the High Court under Article 227.

28. It is, thus, clear that subordination of Courts may have different shades and different facets. A Court may not be subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, even though such a subordinate Court may be exercising powers, which are, ordinarily, exercisable by a Court of civil judicature. One such instance can be subordination of Courts in the context of the Contempts of Courts Act, 1971.

29. There may be subordination of a Court for the purpose of a particular statute and such subordination may be judicial subordination or administrative subordination. For instance, while Article 227 speaks of judicial subordination, Article 235 denotes administrative subordination. That the judicial subordination, as envisaged under Article 227, is different from administrative subordination, as envisaged by Article 235, becomes clear, when one carefully reads the Apex Court's observations, in *Thakur Jugal Prasad Kishor Sinha* (supra), which run thus, "It may not be out of place to note that "Subordinate Courts have been dealt with in Chapter VI of the Constitution and Article 235 of the Constitution gives the High Court "the control over District Courts and Courts subordinating thereto" by providing for powers like the posting and promotion, and the grant of leave to person belonging to the judicial service of a State. Such control is not judicial control and a Court may be subordinate to High Court for purposes other than judicial control.

(Emphasis is supplied)

30. From what have been pointed out in *Thakur Jugal Prasad Kishor Sinha* (supra), it clearly transpires that howsoever subtle may be, there, indeed, lies a distinction between the subordination of Courts for the purpose of exercise of revisional jurisdiction, on the one hand, and Article 227, on the other. While the revisional jurisdiction of the High Court is exercisable in respect of hierarchy of Courts functioning directly under the CPC or the Code of Criminal Procedure, Article 227 does not remain confined to the hierarchy of Courts under the CPC or the Code of Criminal Procedure, but covers all such Courts or Tribunals, which may fall beyond the ambits of its supervisory jurisdiction under the CPC or the Code of Criminal Procedure.

31. What emerges from the above discussion is that all the Courts and Tribunals, which come under the territorial jurisdiction of a High Court, are, in the light of the provisions of Article 227 of the Constitution of India, under the power of

superintendence of the High Court concerned. This power of superintendence, however, excludes the Courts or Tribunals, constituted by or under any law, relating to the Armed Forces. Thus, every Court and Tribunal, except those Courts and Tribunals relating to Armed Forces, functioning under the territorial jurisdiction of a High Court, is under the High Court's power of superintendence and can be, loosely speaking, regarded as subordinate to the High Court. While considering, however, the question as to whether a Court or a Tribunal is subordinate to the High Court under a particular statute, it is the statute, which has to be examined to ascertain and trace the source of revisional power of the High Court vis-a-vis the Court, or the Tribunal, which is sought to be treated as a subordinate Court to the High Court for the purposes of the statute concerned.

32. Having, thus, concluded that a Tribunal, which may have all the trappings of a Civil Court, or that a Tribunal, which may, for a limited purpose, be regarded as a Civil Court, such a Tribunal may still not be a Civil Court within the hierarchy of the Courts as envisaged by the Code of Civil Procedure, we may, now, revert to the question posed above, namely, whether a Claims Tribunal is or is not a Court, subordinate to the High Court, within the meaning of Section 115 of the Code of Civil Procedure?

33. When we revert to the question posed above, we notice that in *State of Haryana v. Darshana Devi* reported in 1979 ACJ 205, the Apex Court observed that Claims Tribunals have the trappings of the Civil Courts and, hence, the provisions, of Order XXXIII, which relate to suits by indigent persons, are applicable even to the Claims Tribunals. The relevant observations made, in this regard by the Apex Court, in *Darshana Devi* (supra), run as follows:

The poor shall not be priced out of the justice market by insistence on Court-fee and refusal to apply the exemptive provisions of Order XXXIII, Code of Civil Procedure. So we are distressed that the State of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of our Republic, expressed in Article 14 and stressed in Article 39-A of the Constitution, has sought leave to appeal against the order of the High Court which has rightly extended the "pauper" provisions to auto-accident claims. The reasons of the High Court in holding that Order XXXIII will apply to tribunals which have the trappings of the civil Court finds our approval. We affirm the decision.

34. Following the decision in *Darshana Devi* (supra), the Apex Court, in *Bhagawati Devi v. IS Goel* reported in 1983 TAC 332 (SC), has held that the power of the Supreme Court to transfer cases, u/s 25 of the Code of Civil Procedure, is applicable to the cases pending in Claims Tribunals. The conclusion, so reached, may be quoted as follows:

In view of the observations of this Court in *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 purpose of Section 25 of the Code of Civil Procedure. We are satisfied that the cases before

us are fit cases for being transferred from the file of the Motor Accidents Claims Tribunal, Moradabad to the file of the Motor Accident Claims Tribunal, Delhi. The transfer petitions are accordingly allowed and Compensation Application Nos. 3 to 15 of 1982 pending before the Motor Accident Claims Tribunal, Moradabad are transferred to the file of the Motor Accident Claims Tribunal, Delhi.

35. In the face of the decisions in *Darshana Devi* (supra) and *Bhagawati Devi* (supra), it becomes clear that a Claims Tribunal has all the trappings of a Civil Court and the Claims Tribunals are, therefore, Civil Courts for certain purposes, such as, Order XXXIII and Section 25 of the Code. The question, however, remains as to whether the Claims Tribunal is a Court, subordinate to the High Court, within the meaning of Section 115 of the Code?

36. We may, in this regard, point out that we have not been able to lay our hands on any decision indicating that the question as to whether a Claims Tribunal is a Court, subordinate to High Court, within the meaning of Section 115, has come up, specifically, for consideration before the Supreme Court. In fact, there is no dispute before us that there is no reported decision of the Apex Court on the point, which we are in seisin of.

37. Bearing in mind what have been indicated above, we, now, come to Section 3 of the CPC (in short, "the Code"), which lays down as to what subordination of Courts, under the scheme of the Code, means or conveys. Section 3 of the Code is, therefore, reproduced hereinbelow:

3. "Subordination of Courts.- For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

38. A careful and cautious reading of Section 3 of the Code shows that every Civil Court of a grade inferior to that of a District Court and every Court of small causes is subordinate to the District Court; whereas not only every Civil Court of a grade inferior to that of a District Court, but even the District Court is subordinate to the High Court. In other words, while the Courts, which are of a grade inferior to the Court of the District Judge, are subordinate to the Court of the district Judge, not only such Courts, which are inferior in grade to the Court of the District Judge, but even the District Judge's Court is subordinate to the High Court. It is, thus, clear that every Civil Court functioning under the scheme of the Code, is a Court subordinate to the High Court under whose territorial jurisdiction such Courts exercise their powers.

39. As a corollary to what have been indicated hereinabove, it becomes abundantly clear that if a Court is treated as a Court subordinate to the High Court, within the scheme of the Code, such a subordinate Court has to be a Court, which falls within the meaning of the expression, "subordination of Courts", appearing in Section 3 of the Code.

40. To put it differently, a Court, exercising some specified powers of a Court akin to a Civil Court, may not necessarily be a Court subordinate to the High Court unless it is a Court, which is conceived and functions as a Civil Court and exercises power of trying suits u/s 9 of the Code, for, a careful reading of Section 9 of the Code would show that those Courts, which are subject to the provisions of the Code, have the jurisdiction to try all suits of civil nature except the suits of which their cognizance is, either expressly or impliedly, barred meaning thereby that it is only those Courts to which the provisions of the Code apply, as whole, which have the jurisdiction to try all suits of civil nature except when the law, expressly or impliedly, bar these Courts from taking cognizance of a particular class or classes of suits of civil nature.

41. Thus, the Courts, subordinate to the High Court, within the meaning of Section 3 of the Code, are those Courts, which fall within the hierarchy of Civil Courts under the scheme of the Code. A Claims Tribunal and the District Court or the District Judge's Court is not interchangeable. Though a Claims Tribunal, same as a District Court, is, generally, presided over by an officer of the grade of District Judge, the fact remains that the Claims Tribunal is not a Civil Court like the Court of the District Judge, for, in order to be a subordinate Court, within the meaning of Section 3, the subordinate Court has to be a regular Civil Court, which exercises power of trying, unless barred, all civil suits as conceived in Section 9 of the Code.

42. In respect of subordinate Courts, as indicated hereinabove, the High Court exercises the power of revision, for, Section 115 reads as follows:

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 proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(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.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

43. While considering the expression "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court", we have to appreciate that the expression "subordinate to such High Court" is not to be read in the light of Article 227 of the Constitution, but in the light of the scheme of the Code, in question. When so construed, it becomes abundantly clear that once a Court is held to be subordinate to the High Court u/s 115 of the Code, then, such a subordinate Court would be nothing, but a Court u/s 3 of the Code too. In other words, a Court, which is not, within the meaning of Section 3 of the Code, subordinate to a High Court, would not be a Court subordinate to the High Court within the meaning of Section 115 of the Code. Thus, when the Claims Tribunal has been treated, in the light of the decision in *Mustt. Abeda Begum (supra)*, as a Court subordinate to the High Court within the meaning of Section 115, it is but natural to infer that according to what *Mustt. Abeda Begum (supra)* lays down, the Claims Tribunals fall within the hierarchy of Courts, which are constituted and envisaged under the Code.

44. To our mind, Section 3 is of utmost importance for the purpose of determining if the Claims Tribunal can be regarded as a Court subordinate to the High Court within the meaning of Section 115. The Division Bench, in *Mustt. Abeda Begum (supra)*, has, however, we may point out, completely ignored the relevance of Section 3 by observing. "Section 3 of the Code merely states about subordination of Courts." (Emphasis is added).

45. With utmost reluctance and greatest of respect, we may point out that even when a Tribunal exercises civil jurisdiction and is regarded as a Court, it may still not fall within the expression "subordination of Court", as contemplated in Section 3 of the Code, if it does not fall within the hierarchy of Courts under the Code. A Tribunal, which has the trappings of the Civil Courts, but does not fall within the hierarchy of Courts under the Code, cannot be regarded as a Court subordinate to the High Court for the purpose of Section 115 of the Code.

46. The Division Bench, in *Abeda Begum (supra)*, has also pointed out that the question as to whether a Claims Tribunal is or is not a Court within the meaning of Section 115 stands answered in *National Insurance Co. Ltd. and Others Vs. Gurbox Singh and Others*, in the affirmative. We respectfully express our inability to agree to the views so expressed in *Abeda Begum (supra)*. In *Gurbox Singh (supra)*, the limited question, which the High Court was concerned with was as to whether the provisions of the Limitation Act were applicable to Claims Tribunal or not. The question as to whether a Claims Tribunal is or is not a Court within the meaning of Section 115 of the code was not a question raised or decided in *Gurbox Singh (supra)*.

47. It, now, needs to be carefully noted that the Claims Tribunal, constituted u/s 165, has a very limited role to play. It decides essentially cases of tortious liability, which arise out of motor vehicular accidents. A very limited provisions of the Code have been made applicable to a Claims Tribunal so as to prevent its proceedings from becoming long and protracted ones as in the ordinary Civil

Courts. It is precisely because of this reason and in order to give quick, but meaningful relief to the victims of motor vehicular accidents that the legislature has made applicable very limited provisions of the Code to the Claims Tribunals. Unless, therefore, a clear legislative intent transpires from the scheme of the MV Act, 1988, the Claims Tribunals should not be readily inferred to be Courts subordinate to the revisional jurisdiction of the High Court u/s 115 of the Code.

48. Bearing in mind what is mentioned above, we, now, turn to Section 169 of the M.V. Act, which reads as follows:

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 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

49. A careful reading, as a whole, of Section 169 of the M.V. Act makes it clear that a Claims Tribunal shall not exercise all the powers of the ordinary Civil Courts contained in the Code except, of course, those provisions of the Code, which have, specifically, been made applicable to such Tribunals under the MV Act or would be made available to such Tribunals by the rules framed thereunder. Sub-section (1) of Section 169 further makes it clear that the Claims Tribunal has the power, subject to the rules that may be framed under the MV Act, to evolve its own summary procedure for holding, in terms of Section 168, enquiry into the claims for compensation. In other words, except when the rules framed under the MV Acts specifies otherwise, a Claims Tribunal is competent to evolve its own summary procedure for determination of the claim for compensation.

50. Coupled with the above, Sub-section (2) of Section 169 of the M.V. Act shows that the Claims Tribunal has been vested with some limited powers of an ordinary Civil Court and such powers are for the purpose of enabling the Tribunal to take evidence on oath, enforcing the attendance of witnesses, compel discovery and production of documents and material objects. Section 169(2) also makes it clear that a Claims Tribunal may exercise any such power of a Civil Court as may be prescribed by the Rules, which may be framed under the M.V. Act. If the Rules, framed under the Motor Vehicles Act, do not give a particular power available to an ordinary Civil Court under the Code of Civil Procedure, logical it would be to hold that the Tribunal would not be able to exercise such a

power. For instance, the Motor Vehicles Act does not provide the power of review to the Claims Tribunals. Such a power of review cannot, therefore, be exercised by the Claims Tribunals by drawing support from the provisions of Section 114 of the Code. However, if the Claims Tribunal is held to be a Court subordinate to High Court within the meaning of Section 115, then, the consequence would be that the Tribunal would be able to exercise the power of review vested in the ordinary Civil Courts u/s 114 of the Code, for, it would be inconceivable to have a Court, which is subordinate to High Court within the meaning of Section 115, but would not have the power to review its own order by deriving strength from the provisions of Section 114.

51. Sub-section (1) of Section 169 of the Motor Vehicles Act has permitted the Claims Tribunal to evolve their own procedure of summary nature for disposal of the claims proceedings. The provisions contained in Sub-section (1) of Section 169 relate to only procedural part and, for this purpose, the Tribunal may draw support from the procedural part of the Code, but cannot usurp the powers of the ordinary civil Courts given to the ordinary Civil Court under various Sections of the Code. That such is not the legislative intent is clear from the fact that an ordinary Civil Court can grant interest on a sum due by invoking the provisions of Section 34, or compensatory cost by making use of Sub-Section 35A of the Code; but the legislature has made specific provisions u/s 171 empowering the Tribunal to grant interest on the amount of compensation awarded and also compensatory cost in certain cases u/s 172. Had the Claims Tribunal been at par with the ordinary Civil Courts, specific provisions for awarding of interest, such as, the one, as we find u/s 171 of the M.V. Act, or provisions for compensatory cost, such as, the one, as we notice u/s 172 of the MV Act, need not have been made or would not have been necessary. In short, had the Claims Tribunal been Court on the same footing as the Civil Courts, no specific provisions of awarding of interest on the amount of compensation or for compensatory cost were required to be made, when the provisions of Section 34 or Section 35A would have taken care of such situation. Making of the provisions of interest and compensatory costs u/s 171 or 172 of the MV Act mean that the Claims Tribunal cannot exercise the substantive powers vested in the ordinary Civil Courts by various Sections of the code, such as, Section 34 or Section 35A. If it be so, the Claims Tribunal cannot be said to have the power to review its own order u/s 114; but if the Claims Tribunal is held to be a Court, subordinate to the High Court within the meaning of Section 115 of the Code, it would have the power to review its orders u/s 114.

52. We may pause here to point out that the Code, broadly speaking, stands divided into two parts. In short, while the main body of the Code, which consists of Sections, creates jurisdiction for the Civil Courts, the rules framed under various Orders indicate the procedure for exercise of such jurisdiction. In other words, the rules framed under various Orders of the Code lay down the procedure for exercise of the powers conferred on such courts. Taking note of this prominent feature of the Code, observed the Supreme Court, in *Vareed*

Jacob Vs. Sosamma Geevarghese and Others, thus,

The main feature of the Code is the division into two parts. The main body of the Code consists of Sections which create jurisdiction while the rules indicate the manner in which the jurisdiction has to be exercised.

While the various Sections, appearing in the Code, contain substantive powers of the Civil Court, the Rules, framed under various Orders, contain the procedural part of the Code and the Rules, so framed, indicate as to how a Civil Court has to exercise its substantive powers, vested in it by various Sections in the Code. Taken to logical conclusion, the effect of the decision, in *Mustt Abeda Begum* (supra), is that the Claims Tribunal would be able to pass all such orders, which can be passed by an ordinary Civil Court, and exercise all such powers, which are exercisable by an ordinary Civil Court. The ultimate effect of such a conclusion would be that, if need be, the Claims Tribunal would be able to grant injunction by deriving its powers from Section 94 of the Code, it would be able to review its own order, which it has not, otherwise, been vested by the M.V. Act, so on and so forth.

53. The effect of the conclusion, reached in *Mustt. Abeda Begum* (supra), is that the claims Tribunal, being a subordinate Court within the meaning of Section 3 of the Code, has also such substantive powers, which the Code vests in the Courts subordinate to the High Court, i.e., the Courts of Civil Judge, Junior as well as Senior Division, and also the court of the District Judge. Viewed from this angle, it is inconceivable that if a Court is subordinate to the High Court within the meaning of 115 the Code, such a subordinate Court would not have the power of review as conferred on the subordinate Court as well as the High Court u/s 114 of the Code. This apart, if the Claims Tribunal is treated as a Court subordinate to the High Court within the meaning of Section 115 of the Code, the inherent power given u/s 151 of the Code to all the Courts, constituted and established under the Code, would be available to the Claims Tribunal, though no such power has been vested in the Claim Tribunals under the M.V. Act and/or the Rules framed thereunder.

54. It, thus, clearly follows that the Claims Tribunal has not been conceived as a regular Civil Court. This impression receives support from the fact that by incorporating Section 173, the M.V. Act has made awards of the Claims Tribunals appealable to the High Court. Had the Claims Tribunal been conceived as regular Civil Court, or a Court, subordinate to the High Court, within the meaning of Section 115 of the Code, there would have been no reason for making specific provisions for appeal against the award of the Tribunal, for, in such a case, appeals could have been preferred against the awards of Claim Tribunal to the High Court under the provisions of Section 96. To put it differently, every original decree is appealable in terms of the Section 96 of the Code. If the Claims Tribunal had been a Court, subordinate to the High Court, within the meaning of Section 3 and/or u/s 115, no specific provision for appeal was necessary to be made under the M.V. Act. The fact that the provisions for appeal had to be made

and have, in fact, been made, in the M.V. Act, indicates that without a specific provision for appeal having been made against the award of the Claims Tribunal to the High Court, no appeal would have lied to the High Court and no appeal could have been entertained by the High Court by taking recourse to Section 96 of the Code. When the High Court, for the purpose of entertaining an appeal, depends not on the powers vested on it u/s 96 of the Code, but on the powers conferred on the High Court u/s 173 of the M.V. Act, the logical conclusion will be that but for the fact that Section 173 makes a specific provision for appeal against an award of the Claims Tribunal to the High Court, the High Court would not have been able to entertain appeal against such awards. It is, we may, with utmost respect, observe inconceivable and, if we may say, incongruent to infer that a Tribunal will be a Court, subordinate to the High Court within the meaning of Section 115 and amenable to the revisional jurisdiction of the High Court, but the High Court will not have the power to entertain appeal u/s 96 of the Code. More harmonious, perhaps, would be to construe that if a specific provision conferring revisional jurisdiction on the High Court is not made under the M.V. Act, the High Court, taking resort to Section 115, cannot entertain revision against any order or award of a Tribunal. Since the M.V. Act does not make any provision conferring revisional jurisdiction on the High Court against an order or award made by the Claims Tribunal, it would be, we are constrained to observe with, of course, greatest of respect, illogical to treat or hold a Claims Tribunal as a Court subordinate to the High Court within the meaning of Section 115.

55. While constituting a Tribunal, a right of appeal may be provided to the High Court by the statute creating the Tribunal. Such a statute may even make provisions for revision to the High Court. There are enactments, in abundance, making provision for appeal as well as revision to the Court of the District Judges. The appellate and revisional powers, in such cases, are exercised by the District Judge not by virtue of the provisions of Section 96 or Section 115 of the Code, but by virtue of the powers conferred on the District Judge by the statute concerned. Such appeals are, therefore, not appeals u/s 96 of the Code nor such revisions are revisions u/s 115 of the Code.

56. While dealing with the present revision petition, it is imperative to note that unlike the power of judicial review and of superintendence, which Articles 226 and 227 confer on the High Courts, the appeal or revision is a creature of legislature and it is up to the legislature to provide or not to provide the right of appeal against a judicial decision or order and, similarly, it is for the legislature to decide whether the High Courts should be given revisional jurisdiction or not in any adjudicatory process.

57. What is, now, of paramount importance to note is that two prominent reasons assigned by the Division Bench in *Mustt. Abeda Begum* (supra) for treating the Claims Tribunal as a Court subordinate to the High Court within the meaning of 115 of the Code a Civil Procedure are that the Claims Tribunal is manned by a judicial officer of the rank of the District Judge and an appeal is

provided against the Claim Tribunal's decision to the High Court.

58. While considering the two reasons, which have been assigned, in *Mustt. Abeda Begum (supra)*, for treating the Claims Tribunal as a Court subordinate to High Court within the meaning of Section 115 of the code, it needs to be noted that a cautious reading of Sub-section (3) of Section 165 of the MV Act shows that a Claims Tribunal may have, as member, not only a sitting District Judge, but even a sitting High Court Judge or a person, who is qualified for appointment as a High Court Judge. Thus, in practice, though the officers of the grade of the District Judge function as the members of the Claims Tribunals, the fact remains that even a High Court Judge can function as a member of the Claim Tribunal. Thus, while acting as member of the Claims Tribunal, an officer of the grade of District Judge or a District Judge is a *persona designata*. Contrary to, therefore, what the Division Bench, in *Abeda Begum (Supra)*, has observed that it is the officer of the grade of a District Judge, who functions as members of the Claims Tribunals, the fact remains that the Claims Tribunal can be presided over by even a sitting High Court Judge. The Court, subordinate to the High Court, as mentioned in Sub-section (1) of Section 115, denotes a regular Civil Court and not a Tribunal or Court to which some specific provisions of the Code have been made applicable. Thus, the mere fact that the Claims Tribunals are presided over by judicial officers of Grade I would not make any difference in this regard inasmuch as the District Judges, while functioning as the members of the Claims Tribunals, would be acting under the MV Act and not as a Court under the Code, though some provisions of the Code have been made available to the Claims Tribunals too.

59. Had the legislative intent been to make the Claims Tribunals subordinate to High Court within the meaning of Section 115, there were two ways in which this object could have been achieved. One way was to make provisions of Section 96 and/or 104 of the Code applicable to the Claims Tribunal and provide thereby appeals to the High Court from the awards and orders of the Claims Tribunals, for, with the making of such provisions for appeal, one could have inferred, with some justification, perhaps, that as a corollary to the fact that Section 96 and/ or Section 104 of the Code have been made applicable to the Claims Tribunals, the awards or orders, passed by the Claims Tribunal, which are non-appellable, can be revised by taking recourse to Section 115 of the Code. The Ors. course open to the legislature was to make specific provisions in the MV Act itself, making the orders and/or awards of the Claims Tribunal revisable by the High Court. The legislature, it appears, chose to do neither. What it did was to make special provisions in the form of Section 173 of the MV Act and gave right of appeal against the awards of the Claim Tribunal to the High Court except when the award is for a sum of rupees less than ten thousand. Had no such provisions been made in the MV Act, the High Court would not have been able to entertain an appeal from any award or order of the Claims Tribunal on the ground that the Claims Tribunals fall within the appellate jurisdiction of the High Court u/s 96. When the legislature could make the provisions for appeal in the form of Section

173, nothing prevented the legislature from making similar provisions for revision to the High Court if the legislature so wanted. When the legislature has not made Section 115 applicable to the proceedings of the Claims Tribunal and when it has, consciously, not made any special provisions in the MV Act providing for revisional jurisdiction of the High Court in respect of the awards of the Claims Tribunals, this legislative intent cannot be defeated or should not be defeated by a process or interpretation by the High Court, particularly, when the High Court may, in an appropriate case, exercise powers under Article 227 and correct jurisdictional errors committed by a Claims Tribunal under its power of superintendence under Article 227.

60. What crystallizes from the above discussion is that the Division Bench, in *Abeda Begum (Supra)*, has assigned two prominent reasons for treating a Claims Tribunal as a Court subordinate to the High Court within the meaning of Section 115, namely, that (i) the Claims Tribunals are presided over by officers of the grade of District Judge and (ii) appeals are provided against the awards rendered by the Claims Tribunal. Both these reasons, as already indicated hereinabove, are, perhaps, not correct reasons for treating Claims Tribunal as a Court subordinate to High Court within the meaning of Section 115.

61. While determining the parameters of the powers of a Claims Tribunal, regard must be had to the principle that the construction and meaning to be given to a statute, or to provision contained therein, should be such as would advance the object of the legislation and suppress the mischief sought to be cured by it.

62. The object underlining creation of Tribunals, such as Claims Tribunals, is to provide an alternative institutional mechanism. Such Tribunals adjudicate upon all class of disputes, which would, otherwise, have fallen for determination in an ordinary Civil Court. It was to relieve the Civil Courts of their burden and, at the same time, ensuring speedy justice, uniformity of approach and predictability of decisions that some provisions of the Code were made applicable to such Tribunals and some provisions, which are akin to the provisions contained in the Code, were specifically incorporated in the MV Act so that the Claims Tribunals need not, for such purposes, take recourse to substantive provisions of the Code.

63. It may be carefully noted that Subsection (2) of Section 173 of the MV Act bars appeal against award of a Claims Tribunal if the amount of compensation granted by the award is less than ten thousand rupees. The legislative intent of making the awards, which are for sum or sums less than ten thousand rupees, is clear and explicit. The legislative intent is to give finality to such awards and the legislature has, therefore, made no provision for any further appeal or revision against such awards.

64. When a special enactment creates a special class of Tribunal, it, ordinarily, excludes the jurisdiction of the ordinary Courts of civil judicature. No wonder, therefore, that Section 175 bars jurisdiction of the Civil Courts to entertain any question relating to any claim for compensation, which may be adjudicated upon

by the Claims Tribunal for that area. In the face of such clear exclusion of jurisdiction of the Civil Courts, we would be, perhaps, defeating the object of the MV Act and we would be, inadvertently, making such provisions of the exclusion of the Civil Court otiose and meaningless if, notwithstanding such provisions demanding exclusion, we, nevertheless, make the order or awards, which are non-appellable, amenable to the revisional jurisdiction of the High Court u/s 115,. If a specially created Tribunal, such as Claims Tribunal, is treated, by a process of interpretation, as a Civil Court of ordinary jurisdiction so as to enable the High Court to entertain revision against the orders passed by such Tribunal, it would be patently unreasonable and lead to somewhat anomalous situation. The exclusionary provisions, which Section 175 embody, and the object, which Section 175 seek to achieve, would be rendered nugatory, otiose and meaningless, for, even when the MV Act excludes the jurisdiction of the Civil Court, the High Court would still be treating the Claims Tribunals as the ordinary Civil Courts and, inadvertently, rewrite thereby the provisions of the MV Act in a manner, which would defeat the legislative intent and object behind making only some specified provisions of the Code applicable to Claims Tribunals.

65. A Civil Court, let us remember, cannot depart from the procedure prescribed by the Code, while a Tribunal is not bound to follow any specified procedure and can evolve its own procedure of summary nature for adjudication of disputes. The special statute, such as, MV Act, makes some provisions of the Code applicable to such Tribunals for the limited purpose. This makes the legislative intent behind creation of such Tribunals clear and the legislative intent, undoubtedly, is to liberate the Claims Tribunals from the constraints of the procedure prescribed by the Code so that the Claims Tribunals do not become and function as Civil Courts and they be deemed to be Civil Court for the limited purpose and to the limited extent as the MV Act itself envisages. For the purposes other than those specified in the MV Act itself, the Claims Tribunals cannot, to our mind, be regarded as Civil Courts so as to become amenable to the revisional jurisdiction of the High Court.

66. We may pause here to point out that while enacting the Family Court Act, 1984, the legislature, u/s 7 of the Family Court Act, 1984, laid down that a Family Court shall (a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. Having given such vast jurisdiction to the Family Court and having also made specific provisions, in the form of Section 10, clarifying that a Family Court shall be deemed to be a Civil Court, the legislature still made specific provisions u/s 19 providing for an appeal to the High Court and also for revision to the High Court. In short, even after treating by legal fiction a Family Court to be a Civil Court and after having vested, in the Family Court, all the powers of the Civil Court, the

legislature made specific provisions for appeal and revision to the High Court u/s 19. It may, now, be noted that MV Act, 1988, is an enactment subsequent to the Family Court Act, 1984. Had the legislative intent been that the Claims Tribunals' orders or awards shall be revisable by the High Court, it could have made similar provisions as existed in the Family Court Act, 1984; but while specifically providing for appeal, the legislature, under the MV Act, has chosen not to give revisional jurisdiction to the High Court. In such circumstances, to read into the provisions of the MV Act, the revisional jurisdiction of the High Court u/s 115 of the Code may, perhaps, not be wholly correct.

67. We may also, at this stage, to point out that the Full Bench of Karnataka High Court, in *Union of India (UOI) and Others Vs. Mysore Paper Mills Ltd. and Others*, has held thus:

Motor Accident Claims Tribunal (MACT) established under the Motor Vehicle Act, the Education Appellate Tribunal (EAT) established under KPEI (D&C) Act, 1975, now the Karnataka Education Act, 1983 are not Courts subordinate to High Court for the purpose of Section 115, Code of Civil Procedure. Court referred to in Sub-section (1) of Section 115 of the CPC is a regular Civil Court as contemplated in Sections 3 and 9 of Code of Civil Procedure. It is also seen that the jurisdiction, which has been taken away from the Civil Court, has been given to the Tribunal to exercise in the capacity of Tribunal and not as regular Civil Courts. It is also seen that even if the Tribunals are presided over by the Judges of regular Courts and exercising the judicial power and discharging judicial function, that does not make any difference on principle as they still remain as Tribunals only. Since the three respective Tribunals are excluded from exercising jurisdiction of ordinary Civil Court by separate enactments, the orders passed by them are not amenable to the revisional jurisdiction u/s 115 of Code of Civil Procedure

(Emphasis is supplied)

68. The observations made, in *Maharashtra Paper Mills Ltd. (Supra)*, show that according to Karnataka High Court, the Courts spoken of in Sub-section (1) of Section 115 CPC are regular Courts as contemplated in Section 3 of the CPC and since the Claims Tribunal is not one of such regular Civil Court, it does not fall within the purview of the revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure. This decision has not been agreed to by the Division Bench, in *Mustt. Abeda Begum (Supra)*, meaning thereby that the Claims Tribunal is, indeed, a regular Civil Court functioning within the meaning of Section 115 of the CPC as a subordinate Court and, therefore, orders, emanating from such a tribunal, are amenable to revisional jurisdiction of the High Court.

69. The above inference gets strengthened from the fact that in *Mustt. Abeda Begum (Supra)*, the Division Bench has agreed with the views, expressed in *Darshan Singh Vs. Ghewarchand and Others*, *Sarjubai Vs. Gurudip Singh and Others*, *Jayaben Jivrajbhai Vs. Karsanbhai K. Rathod and Others*, and *Ratri Parjuni v. S.K. Pradhan and Anr. 2004 (3) TAC 420*, which go contrary to what

has been held in Maharashtra Paper Mills Ltd. (Supra). In no uncertain words, the Madhya Pradesh High Court has held, in Sarjubai (supra), thus:

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 High Court u/s 115 of the Code of Civil Procedure.

70. From what has been observed in Sarjubai (supra), it becomes transparent that according to the Madhya Pradesh High Court, the Claims Tribunal is a Civil Court and it is for this reason that its orders are amenable to revisional jurisdiction of the High Court u/s 115 of the Code. We may, however, hasten to point out that while we, contrary to what the Karnataka High Court has concluded in Maharashtra Paper Mills Ltd. (Supra), hold the view that the Claims Tribunals are Courts, we find ourselves unable to agree with the views, expressed in Sarjubai (Supra), that the Claims Tribunals are Civil Courts subordinate to the High Court, u/s 115 of the Code.

71. Now, in view of the fact that a Division Bench of this High Court, in Mustt. Abeda Begum(Supra), has decided that the Claims Tribunal is a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, the effect is that the Claims Tribunal becomes a subordinate Civil Court within the meaning of Section 3 of the Code and all the powers, which are vested in the subordinate Courts, referred to, and envisaged in, Section 3 of the Code would be available to the Claims Tribunals. Such a conclusion, as we have already indicated hereinabove, run contrary to the Legislative intent as reflected by the provisions contained in the MV Act.

72. The case of Vishesh Kumar Vs. Shanti Prasad, is one of the classic cases, which indicate how purposive construction of a statute may lead to ousting of revisional jurisdiction of the High Court even against the orders, which are passed by ordinary Civil Courts. To put it differently, Vishesh Kumar (Supra) is one of those cases, which indicate that the legislature may not vest in the High Court's revisional jurisdiction in respect of even final orders, which might have been, otherwise, revisable by the High Court. For the purpose of a clear understanding of the case of Vishesh Kumar (Supra) and the law laid down thereunder, it is pertinent to note that same as in many other States, the High Court of Allahabad had, u/s 115 of the Code, exclusive revisional jurisdiction over the subordinate Courts, which fall within the hierarchy of Courts under the Code of Civil Procedure. By the U.P. Civil Laws (Amendment) Act, 1970, exclusive revisional jurisdiction was conferred on the High Court u/s 115 for the cases arising out of suits, the original value whereof was rupees twenty thousand and above and in respect of other cases, i.e., the cases, where the suit value was less than rupees twenty thousand, the High Court as well as the District Court were given concurrent revisional jurisdiction. The idea behind making these amendments was that the average litigants prefer the less expensive and more convenient forum of the District Court in revisional matters, which arise out of suits valued at less than rupees twenty thousand. As the measures, so adopted,

did not yield the desired result, the State Legislature enacted U.P. Civil Laws (Amendment) Act, 1972, to make exclusive revisional jurisdiction to the High Court, in cases arising out of original suits of the value of Rs. 20,000 and above, and exclusive jurisdiction, u/s 115 to the District Courts, in other cases. There was a sharp bifurcation of revisional jurisdiction, and the High Court and District Courts, thus, enjoyed mutually exclusive revisional powers. A controversy, however, arose whether a revisional order u/s 115 made by the District Court was final or was such an order amenable to the revisional power of the High Court.

73. Setting at rest the controversy as to whether the orders passed by the District Court was amenable to the revisional jurisdiction of the High Court u/s 115, the Apex Court held that the legislative history shows that the legislative object of the exclusionary provision was to divide the workload of revision petitions between the High Court and the District Court and thereby decentralize the revisional jurisdiction and this object was sought to be achieved by classifying all cases into two mutually exclusive categories depending upon the valuation of the suit out of which orders, sought to be revised, arose. The Supreme Court also made it clear that in order to determine if the legislature intended a further revision petition to the High Court, regard must be had to the principle that the construction given to a statute should be such as would achieve the object of the legislation and suppress the mischief sought to be cured by it. The classic observations made by the Apex Court, in *Vishesh Kumar* (Supra), run thus:

8. The controversy whether it is open to the High Court to exercise revisional power in respect of a revisional order u/s 115 of the District Court presents little difficulty. The basis for determining that question flows from the principle incorporated in the bifurcation of the revisional jurisdiction. And legislative history comes to our aid. The consistent object behind the successive amendments was to divide the work-load of revision petitions between the High Court and the District Court and decentralize that jurisdiction. That purpose was sought to be achieved by classifying all cases into two mutually exclusive categories depending on the valuation of the suit out of which they arose. In determining whether the legislature intended a further revision petition to the High Court, regard must be had to the principle that the construction given to a statute should be such as would advance the object of the legislation and suppress the mischief sought to be cured by it. It seems to us that to recognize a revisional power in the High Court over a revisional order passed by the District Judge would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction to reduce the number of revision petitions filed in the High Court-would be frustrated. The scheme would, in large measure lose its meaning. If a revision petition is permitted to the High Court against the revisional order of the District Court arising out of a suit of a value less than Rs. 20,000 a fundamental contradiction would be allowed to invade and destroy the division of revisional power between the High Court and the District Court, for

the High Court would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation below Rs. 20,000. That was never intended at all.

(Emphasis is supplied)

74. In the face of the decision in Vishesh Kumar (Supra), there can be no escape from the conclusion that when the legislature has made successive amendments with regard to the laws relating to providing of compensation to the victims of motor vehicular accidents and, for this purpose, has taken out of the jurisdiction of the ordinary Civil Courts the cases of tortious liability arising out of motor vehicular accident and brought the same under the jurisdiction of the Claims Tribunal and while constituting the Claims Tribunals, when the legislative has specifically vested, in the High Court, appellate jurisdiction against the awards of the Claims Tribunals and made no provision for exercise of revisional jurisdiction by the High Court in respect of awards of less than rupees ten thousand, desirable, rather imperative, it is that the High Court does not readily infer the existence of revisional jurisdiction u/s 115 of the Code, particularly, when there is absolutely nothing in the Motor Vehicles Act, 1988, to indicate, even remotely, that the provisions of Section 115 are applicable to the awards or orders passed by the Claims Tribunal. The interpretation, which we seek to give to the scheme of the MV Act, will serve the object with which the MV Act has been enacted making the awards of sums of less than rupees ten thousand final.

75. Made it more than explicit the Apex Court, in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, that the provisions of law providing for compensation is presumed to be final in nature unless a contraindication therefore is found to be present in the statute either expressly or by inherent implication. Thus, when Section 175 of the MV Act makes it clear that no appeal would lie against the awards of less than rupees ten thousand, intention of the legislature is more than explicit, the intention being that such awards must be treated as final and no appeal shall be allowed to be preferred against such awards. By not providing revisional jurisdiction of the High Court against such awards, the legislature made it clear that against the awards, which are non-appellable u/s 173 of the MV Act, no revision to the High Court would lie.

76. It is trite that a Court of law should not, under the guise of interpretation, amend the existing law usurping the power of the legislature. A statute is an edict of the legislature. The language employed, in a statute, is the means to determine the legislative intent. The object of interpreting the statute is to ascertain the intention of the legislature enacting the statute and not as to what the Court feels the statute ought to have been. The legislative intent has to be primarily gathered from the language used in the statute meaning thereby that the attention should be paid to what has been said as also to what has not been said. Thus, a construction, which needs, for its support, the addition or substitution of words or which results in rejection of the scheme or make the

words of the statute meaningless, has to be avoided. Rules of interpretation do not permit the Courts to read into a statute something, which does not exist in the statute unless the provisions of the statute, in the absence of what the Court intends to supply, remains meaningless or of doubtful meaning. A statute needs to be read as a whole for the purpose of its interpretation. It is also established principle of construction of statute that *casus omissus* cannot be supplied by the Court except in the cases of absolute clear necessity. (See *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*,

77. We have read and re-read carefully, with great attention, the decision in *Abida Begum (Supra)*, but we do not find that the Court has given any indication in *Abida Begum (supra)* that unless Court revisional jurisdiction of the High Court is inferred to exist, the scheme of the MV Act or the purpose of its enactment would stand defeated. Far from this, if the revisional jurisdiction is inferred, it will lead to prolonging of the litigation, which does not appear to be the legislative intendment expressed by providing a summary procedure for adjudication of controversies under the MV Act. It may also be noted that the MV Act envisages constitution of State Transport Appellate Tribunal and by virtue of Section 89 of the MV Act, appeals have been provided to such appellate Tribunals against the orders of the State transport authority or a regional transport authority. In fact, Section 90 vests, in the State Transport Appellate Tribunal, revisional jurisdiction against those orders of the State transport authority or the Regional transport authority, which are not appealable u/s 89. When the legislature could make provisions for revision against non-appealable orders of the State transport authority or the regional transport authority, it could have very well made provisions for revision in respect of awards, which are non-appealable, if the legislature had so intended. When the legislature has not done so, we may, perhaps, not be able to read the existence of such a provision under the MV Act.

78. Because of what have been discussed and pointed out above, it clearly follows that the conclusions reached by us that a Claims Tribunal is not a Civil Court, subject to the High Court within the meaning of Section 115 of the Code, runs contrary to what has been decided in *Abida Begum (Supra)*. The matter, therefore, needs to be looked into, and decided, by a larger Bench.

79. In the above view of the matter, it is hereby directed that this Writ Appeal be laid before the Hon"ble Chief Justice for consideration if this Appeal needs to be laid before an appropriate Bench for deciding the question as to whether a Claims Tribunal is a Civil Court, subject to the jurisdiction of High Court, within the meaning of Section 115 of the Code.

80. We, therefore, direct the Registry to lay the matter before the Hon"ble Chief Justice for consideration and order.