

(2010) 08 MP CK 0076
In the Madhya Pradesh High Court
Case No : M.A. No. 858 of 2009

Sharad Kumar Mishra

APPELLANT

Vs

Shriram Transport Finance Company Ltd. and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 18, Order 16 Rule 19, Order 16 Rule 2, Order 16 Rule 20, Order 16 Rule 21
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1988 — Section 169 , 169(3)

Citation : (2010) ILR (MP) 2170

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : S. Dwivedi, for the Appellant; G. Jain, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gupta, J.—This is an appeal preferred by the claimant under Order 43 Rule 1 of the Code of Civil Procedure, 1908 challenging the order dated 03/12/2008 passed by Motor Accident Claims Tribunal, Raies, wherein tribunal has rejected the application under Order 9 Rule 9 of the Code of Civil Procedure.

2. Learned Counsel appearing on behalf of the Respondent raised a preliminary objection that the present appeal is not maintainable under Order 43 Rule 1 of the Code of Civil Procedure.

3. In the present case, It is to be seen that there is no dispute that by virtue of Section 169 of the Motor Vehicle Act, 1988, wherein procedure and powers of Claims Tribunals are enumerated and accordingly the claims tribunal shall have all the powers of a Civil Court for the purposes 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. Sub-section (3) of Section 169 of the CPC further stipulates that 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.

4. The State of M.P. has framed the rules regulating the procedure before the claim tribunal and accordingly Rule 240 prescribes that a procedure to be followed by claims tribunal in holding inquiries, wherein the application of certain provisions of Code of Civil Procedure, 1908: Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), namely those contained in Order v. rules 9 to 13 and 15 to 20. Order IX, Order XVIII, rules 3 to 10 Order XVI, rules 2 to 21, Order XVII, Order XXI and Order XXIII, rules 1 to 3 shall apply to proceedings before a claim tribunal insofar as they may be applicable thereto.

5. On the basis of the aforesaid now it is clear that the Motor Accident Claims Tribunal is constituted by virtue of the provision is contained under the Motor Vehicle Act, 1988 and has to be regulated under the provision of Act, 1988. Thus the provision of whole of CPC has not been made applicable to the claims tribunal. So far as the Order 43 of CPC is concerned, nowhere the same has been adopted to regulate as a procedure by the counts constituted under the Motor Vehicle Act, 1988. Order 43 cannot be read in isolation, but it is to be read along with Section 104 of the CPC which provide that an appeal shall lie from certain orders and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders enumerated in Section 104 of the Code of Civil Procedure.

6. In view of the aforesaid, the question with reference to the preliminary objection is raised for consideration is that when the claims tribunal is constituted under the special law i.e. Motor Vehicle Act, 1988 and Section 104 of CPC prescribed with save as otherwise expressly provided in the body of this Code or by any law for the time being in force? So far as the Motor Vehicle Act, 1988 is concerned it does not adopt that order passed Motor Accident Claims Tribunal, the appeal shall lie to the High Court by virtue of Section 104 of the CPC along with Section 43 of the Code of Civil Procedure.

7. In view of the aforesaid, I am of the view that the order passed by the MACT rejecting the application filed before it, no appeal under Order 43 shall lie.

8. During the course of the arguments, learned Counsel for the Appellant sought oral permission that the present appeal may be converted into a revision according Section 115 of the Code of Civil Procedure. In this reference it is to be seen that this Court has still doubts with regard to the applicability of Section 115 of the CPC against such orders and accordingly the permission cannot be granted.

9. This Court records and appreciate for the and guidance extended to this Court by Shri Ravish Agrawal, Senior Advocate for determining the objection raised by the Respondent.

10. Shri Agrawal, Senior Advocate who assisted the Court brought to the notice of this Court in the matter of National Insurance Company Ltd. v. Shrikant Vinod Tiwari, 2007 (3) MPLH 130.

11. Office is directed to return the certified copy of the impugned order to the Counsel for the Appellant.

12. Accordingly, the Appeal stands dismissed.