

(1999) 10 KAR CK 0030

In the Karnataka High Court

Case No : Civil Revision Petition No. 1502 of 1999

The General Manager, Karnataka State Road Transport
Corporation, Central Offices, Bangalore and Another

APPELLANT

Vs

Smt. Housamathi Shidramappa Saladagi and Others

RESPONDENT

Date of Decision : 27-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 24
Motor Vehicles Act, 1988 — Section 165, 166, 169, 173, 176

Citation : (2000) 2 ACC 138 : (2000) ACJ 1556 : (2000) ILR (Kar) 170 : (2000)
1 KarLJ 537

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri R.V. Jayaprakash, for the Appellant;

Judgement

1. Heard Sri Rajasekhar, learned Counsel for the petitioner regarding office objection. The objection is that the revision u/s 115 of the CPC directed against the order of the Motor Accidents Claims Tribunal is not maintainable in view of the decision of this Court in the The Oriental Insurance Company Limited, Bangalore Vs. Thibbegowda and Others, .

2. In this revision, respondents 1 and 2 in M.V.C. No. 413 of 1995 on the file of the II Additional Civil Judge (Senior Division) and M.A.C.T. at Dharwad have called in question the legality and correctness of the order dated 6-10-1998 awarding compensation of Rs. 9370/- to the claimant. Respondent 1 herein is the claimant.

In Thibbegowda's case, supra, a learned Single Judge of this Court has held that a revision u/s 115 of the CPC against an order/award of the M.A.C.T. is not maintainable for the reason that Motor Accidents Claims Tribunal is not a "Civil Court" or "Court subordinate to High Court" for the purpose of Section 115. In Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah and Another, , Division Bench of this Court while considering the scope and purport of Section 24 of the CPC has

held that Motor Accidents Claims Tribunal constituted and established under the Motor Vehicles Act is a Court subordinate to the High Court for the purpose of Section 24 of the Code. But the learned Single Judge while deciding the controversy in Thibbegowda's case, supra, declines to follow the said decision of the Division Bench in Noreen's case, supra, holding that the declaration of law by the Division Bench in that case is per incurium and it may be ignored as it has no binding force as a precedent. Learned Single Judge further holds that an aggrieved party in such matters could avail any other remedy which may be available to him under law, whether under Constitution or otherwise as advised by his Counsel and it will be open to the other side to raise such objections as well to the maintainability of those revisions.

3. Section 24 of the CPC empowers the District Court or the High Court to transfer any suit, appeal or other proceeding pending before it to any other Court subordinate to it and competent to try or dispose of the said matter. It also permits the District Court or the High Court to withdraw any suit, appeal or any other proceeding pending before any Court subordinate to it and try or dispose of the same or to transfer the same for trial or disposal to any other Court subordinate to it and competent to try or dispose of the same etc.

4. Section 115 of the CPC empowers the High Court to call for the record of any case which has been decided by any Court subordinate to it and in which no appeal is provided and on being satisfied that the said order suffers either from illegality or material irregularity and in certain other specified circumstances, make such order in the case as it thinks fit. In both the sections, it is significant to note that the "Court" referred to is the Court subordinate to the High Court. Besides Section 24 of the Code also empowers the District Court to withdraw and transfer the matters pending before the Court subordinate to it.

5. The Division Bench of this Court in Noreen's case, supra, after referring to all those decisions on the point as on that day including certain decisions of the Apex Court, High Court of Punjab and Haryana and this Court has held that Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act is Court subordinate to High Court for the purpose of Section 24 of the Civil Procedure Code. In view of the language or the phrase used in both Sections 24 and 115 of the Civil Procedure Code, and in view of the decision of the Division Bench, we can safely conclude that Motor Accidents Claims Tribunal established u/s 165 of the Motor Vehicles Act, 1988 is also a Court subordinate to High Court for the purpose of Section 115 of the Civil Procedure Code.

6. Further, a close examination of certain provisions in the Act, 1988 would also assist us in saying that the Claims Tribunal are Courts subordinate to the High Court both for the purpose of Sections 24 and 115 of the Civil Procedure Code. Motor Vehicles Act, 1939 was repealed by Act 59 of 1958, w.e.f. 14-10-1988. Chapter XII of the Act, 1988 consisting of Sections 165 to 176 deals with the constitution of Claims Tribunal, its power and jurisdiction and also the power of the Government to make rules regarding the procedure to be followed in the trial

of cases before the Tribunal. Section 175 of the Act, 1988, bars the jurisdiction of those Civil Courts within whose jurisdiction Claims Tribunals u/s 165 of the Act, 1988 have been constituted and established for entertaining and deciding applications for compensation u/s 166 of the Act. Section 173 provides for appeals to the High Court against the orders of the Motor Accidents Claims Tribunal. Sub-section (2) of Section 173 prohibits an appeal against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than Rs. 10,000/- but it does not say that in such matters, the decision of the Tribunal is final. Section 169 deals with the procedure and powers of the Claims Tribunal. Sub-section (2) of Section 169 reads thus:

"(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)".

Section 176 empowers the State Government to make rules in certain matters. Sub-section (c) of Section 176 empowers the State Government to make rules vesting certain powers with the Tribunal as in the case of a Civil Court. These provisions in the Act, 1988 are not referred to and considered by the learned Single Judge while deciding the controversy in Thibbegowda's case, supra.

7. Sri Rajasekhar, learned Counsel also brought to my notice the decision of a Full Bench of Patna High Court in Anirudh Prasad Ambasta and Others Vs. State of Bihar and Another, , in support of his contention that the Motor Accidents Claims Tribunal constituted under the Act is not only within the administrative control of the High Court but also subordinate to it u/s 115 of the Civil Procedure Code. Full Bench of Patna High Court dealing with the scope, purport and object of Sections 25 and 110 of the Motor Vehicles Act, 1939 has declared that the Claims Tribunal is a Court although with limited jurisdiction and not a mere Tribunal. Further, it has declared that a District Judge who functions as a Claims Tribunal is not only within the administrative control of the High Court but also subordinate to it u/s 115 of the Civil Procedure Code. Section 165 of the Motor Vehicles Act, 1988 is the corresponding section to Section 110 of the old Act. It is useful to refer to the observation in the said decision which reads:

"23. Apart from the principles noticed above, in view of the judgments of the Supreme Court in State of Haryana Vs. Smt. Darshana Devi and Others, and Smt. Bhagwati Devi v I.S. Goel , it must be held that the District Judge who functions as a Claims Tribunal is not only within the administrative control of the High Court but also subordinate to it u/s 115 of the Code. Observations and findings contrary to this recorded in C.W.J.C. No. 7492 of 1988 must be held to be incorrect".

The two decisions in Smt. Darshana Devi and Smt. Bhagwati Devi are referred to

and followed by the Division Bench of this Court which decided the controversy in Mrs. Noreen's case, supra. The Division Bench, referring to the decision in Bhagwati Devi's case, supra, has said:

"10.....

This pronouncement of the Supreme Court should now serve to put the controversy at rest. In view of this pronouncement, the view taken in State of Mysore v K.L. Subbanna and in Revannappa v Gunde Rao , that such a Tribunal is not a "Court" cannot continue to hold the field".

8. In view of the said decisions of the Division Bench of this Court and the Full Bench of the Patna High Court and the provisions contained in the Motor Vehicles Act, 1988 (referred to above in detail), there should not be any difficulty in holding that the Tribunal constituted u/s 165 of the Act 1988 is a Court subordinate to the High Court for the purpose of Section 115 of the Code.

9. Sri Rajasekhar, learned Counsel, inviting my attention to the decision of this Court in Panchaxari Shidramappa Yeligar Vs. Shiggaon Taluka Shikshana Samithi and Others, , contends that where there are two decisions, one by the Division Bench of the same Court and the other by a Single Judge, Division Bench Judgement has to be followed and Single Judge cannot ignore the Division Bench decision holding it as per incurium. I have read the two decisions carefully, I respectfully agree with the observations of the learned Single Judge in Panehaxari Shidramappa Yeligar's case, supra. Therefore, in a situation like this, I will have to follow only the decision of the Division Bench and not the one rendered by the learned Single Judge.

10. A learned Single Judge of this Court in an earlier decision held that a revision u/s 115 of the Code against the order of an Educational Apex Tribunal constituted under the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, is not maintainable for the reason that the Tribunal is not a Court subordinate to High Court. In deciding the controversy, learned Judge declined to follow the decision of Full Bench in Excellent Education Society v Shahida Begum , declaring that it was rendered per incurium and therefore incorrect and not binding.

The same issue came up for consideration before another learned Single Judge of this Court in Panehaxari Shidramappa Yeligar's case, supra, the learned Single Judge considering the whole issue held that a revision u/s 115 of the Code against an order of the Educational Appellate Tribunal is maintainable. The relevant observation in Panehaxari Shidramappa Yeligar's case, supra, reads thus:

"14. Hence a Single Judge of the High Court can not refuse to follow the decision of a Division Bench or a Full Bench of the same Court, by holding that such decision was rendered per incurium. Consequently, with great respect to the learned Single Judge, who rendered the decision in The Hungund Taluka Ranjara

Vidyavardhaka Sangha Vs. Rachappa Chanamallappa and Others, , it has to be held that the decision of the Full Bench in Excellent Education Society can not be avoided and the Single Judge will have to follow the said decision.

15.2.

But, I have only decided whether I should follow the decision of the Full Bench or follow the decision of the learned Single Judge. In other words, I am neither examining the question afresh, nor proposing to take a view different from that of a co-ordinate Bench. The only question that arises before me, as stated above, is whether I should follow the decision of the Full Bench, or the decision of the learned Single Judge. The discussion above, will amply demonstrate that I am bound to follow the decision of the Full Bench".

(emphasis supplied)

11. In view of the reasons hereinabove stated and in a situation where there is a decision of the Division Bench and a contrary decision by the learned Single Judge, what is required to be followed by another Single Judge in deciding the controversy is the judgment of the Division Bench. I therefore, hold that the revision filed u/s 115 of the Code against the order/award of Claims Tribunal is maintainable.

12. The matter is then taken up for hearing on admission. Heard Sri Rajasekhar. Perused the papers. Respondent 1 approached the Tribunal for grant of compensation for the injury sustained in the motor accident that occurred on 17-9-1989 on public road between Arugeri to Sharavanbelgol involving a tempo bearing No. CND 1316 and KSRTC bus bearing No. MEF 3378. Revision petitioners are the General Manager and Deputy Manager of KSRTC. KSRTC disputed the claim contending that the accident was not due to rash or negligent driving of the driver of the bus and it was totally due to the negligence of the driver of the tempo. The Tribunal after considering the evidence both oral and documentary holds that the accident was due to rash and negligent driving of the driver of the bus. Further, considering the evidence of P.W. 2 the claimant, wound certificate Ex. P. 4 and the medical bill Ex. P. 6 holds that the claimant is entitled to a sum of Rs. 3,870/- towards medical expenses, Rs. 5,000/- towards pain and sufferings and Rs. 500/- towards miscellaneous expenses, in all Rs. 9,370/-. In arriving at the conclusion that the accident was due to rash and negligent driving of the bus, Tribunal has taken into consideration the evidence of not only P.Ws. 1 and 2 but also spot mahazar Ex. P. 3. Accident has occurred on the national highway. In these circumstances, I hardly find any ground to fault the finding of the Tribunal more particularly in the absence of evidence of either the driver of the bus or the tempo.

Secondly, having regard to the age of the claimant, it is also rather difficult to say that the amount awarded towards the pain and suffering is on the higher side. Ex. P. 4 is the certificate and it would reveal that the claimant sustained injuries on her chin and certain teeth were broken. Medical expenses incurred is

about Rs. 3,870/- as per Ex. P. 6. In these circumstance and as the Tribunal has declined to grant any amount as compensation under the head "permanent disablement", I hardly find any ground to interfere with the order impugned. I therefore decline to admit. Accordingly, this revision petition is dismissed.