

(2017) 03 AHC CK 0210  
ALLAHABAD HIGH COURT  
Case No: 80927 of 2016

U.P. State & Anr.

APPELLANT

Vs

Indra Raj Verma &  
Anr.

RESPONDENT

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Date of Decision: March 28, 2017

Acts Referred:

- Constitution of India, Article 136, Article 132, Article 225, Article 133 (3) - Special leave to appeal by the Supreme Court - Appellate jurisdiction of Supreme Court in appeals from High Court in certain cases - Jurisdiction of existing High Courts - Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters
- Code of Civil Procedure, 1908, Section 114, Order 47 Rule 5 - Review
- Motor Vehicles Act, 1988, Section 173, Section 173 - Appeals

Hon'ble Judges: Attau Rahman Masoodi

Bench: Single Bench

Advocate: Prabhakari Tiwari, Akhter Abbas, Amita Anand, J.B. Singh, Shikhar Anand

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### Judgement

1. Heard Sri Akhter Abbas, learned counsel for the review petitioner and Sri Shikhar Anand and Sri Anurag Shukla, learned counsel for the respondents.

2. Delay in moving the review applications is condoned.

3. The following three important questions of law have arisen in the present review petitions:

- (i) Whether the review petitions filed under Chapter V Rule 12 of the High Court Rules read with Order XLVII CPC are maintainable;

(ii) Whether valuation of appeal filed under Section 173 of Motor Vehicles Act, 1988 for the purposes of its appellate jurisdiction is to be construed having regard to the amount what it is set out in the claim petition or the amount allowed by the Tribunal in its award;

(iii) Whether the judgment passed by learned Single Judge of this Court even if the appeal is beyond its pecuniary jurisdiction by virtue of Chapter V Rule 2(c) of the High Court Rules, may be set aside as void.

4. Insofar as issue no. 1 mentioned above is concerned, learned counsel for the review petitioner inviting attention of this Court to Section 173 of the Motor Vehicles Act, 1988 has argued that the statute creates a right of appeal in favour of the aggrieved person against an award rendered by the Tribunal and High Court is the forum before which the appeal lies. As far as the procedure regulating the hearing of appeal and strength of Judges in a Bench is concerned, the Special Act does not provide any guidance. In such a situation, learned counsel for the review petitioner has drawn attention of this Court to Section 108 of CPC which reads as under:

"108:- Procedure in appeals from appellate decrees and orders:- The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals-

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided."

5. Undisputedly, right to appeal is created under the Special Statute i.e. Motor Vehicles Act, 1988 and for the purposes of hearing such an appeal the provisions of Part VII CPC would apply. Section-98 contained in Part VII CPC provides as under:

98. Decision where appeal heard by two or more Judges.

(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it."

6. In the present case, two appeals were filed before this Court which were registered as FAFO No. 338 of 2012 filed by the claimants for enhancement of compensation and FAFO No. 417 of 2012 filed by UPSRTC challenging the award rendered by Motor Accident Claims Tribunal in MACP No. 87 of 2010 decided on 30.1.2012 awarding a compensation of Rs. 4,90,050/-. The appeal for enhancement of compensation was moved prior in point of time and thereafter the appeal filed by UPSRTC challenging the same award of the Tribunal came to be filed. The appeal filed by the claimants sets out valuation of the appeal as under:

Valuation of Appeal : Rs. 45,09,950/-

FAFO filed by UPSRTC sets out valuation of appeal as under:

Valuation of the Claim : Rs. 50,00,000/-

Valuation of Present Appeal : Rs. 4,90,050/-

7. Both the appeals filed before this Court were reported by the registry to be

cognizable before a Division Bench. This position is evident from the stamp reporter's report marked on both the appeals. It is pointed out that at the relevant point of time, the pecuniary jurisdiction of Single Judge of this Court was up to an amount of Rs. 2 lakhs prior to 20.2.2013 whereafter by Notification No. 29/VIII-C-3(C.S. No. 246) dated 20.2.2013, the valuation of the appeals cognizable by Single Judge was enhanced to Rs. 5 lakhs. It appears that both the appeals, irrespective of the valuation set out, came to be listed before a learned Single Judge of this court on 5.11.2015. The same were heard and were decided by a common judgement rendered by the learned Single Judge on 5.11.2015. The appeal filed by UPSRTC was dismissed whereas the appeal filed by the claimant i.e. FAFO No. 338 of 2012 was partly allowed, awarding a total compensation of Rs. 9,87,000/- in place of the amount of Rs. 4,90,050/- as was awarded by the Tribunal alongwith an interest of 7% from the date of petition till actual payment.

8. UPSRTC has come up by filing two review petitions against the common judgement passed by learned Single Judge as mentioned above. Both the review petitions were filed belatedly, therefore, application for condonation of delay under Section 5 of the Limitation Act supported with affidavits were filed. The limitation for filing a review petition, as provided for under the Limitation Act is 30 days but the present review petitions are clearly beyond time nearly by eight months. It is explained that the previous counsel Sri J.B. Singh who was assigned the matter was removed due to the dereliction of duty on his part. Delay of more than eight months is sought to be explained on the basis of a routine ground that the matter remained pending for seeking adequate legal advice.

9. This Court would have rejected the review petitions on the ground of inadequate explanation but looking to the legal questions involved in the matter, the Court proceeded to hear learned counsel for the parties on merit as well.

10. Insofar as the remedy of review against a judgement rendered by this Court in exercise of its appellate jurisdiction under Section 173 of the Motor Vehicles Act is concerned, reference has been made to Chapter V Rule 12 of High Court Rules which by reference makes Order XLVII Rule 5 CPC applicable. The power of review of the judgements passed by civil courts is provided under Section 114 CPC which reads as under:

"114. Review:- Subject as aforesaid, any person considering himself aggrieved,

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

11. Insofar as appeal against the judgement passed by the High Court in exercise of its appellate jurisdiction under Section 173 of the Motor Vehicles Act is concerned, the same would lie on a substantial question of law if certificate or leave envisaged under Article 132/133 or 136 of the Constitution of India is granted by the High Court or the Supreme Court, but appeal, as a matter of course, against a judgement passed by a Single Judge of the High Court would not lie as is provided under Article 133 (3) of the Constitution of India. In the present case, no appeal has been preferred by the review petitioner before filing these review petitions nor a certificate was prayed for or granted by this Court.

12. High Court of Judicature at Allahabad except to the extent of Article 228 of the Constitution of India or Section 24 CPC, does not enjoy original civil jurisdiction as it used to be the position in British India but to regulate its business, Allahabad High Court Rules have been framed in exercise of powers under Article 225 of the Constitution of India which are applicable since the year 1952. The composition of Benches as well as allocation of work is vested in the Chief Justice under Chapter V Rule 1 according to which the functioning of the Court is carried out. Chapter V Rule 2 (c) prescribes civil appellate jurisdiction of the High Court as under:

"2. Jurisdiction of a single Judge :-Except as provided by these Rules or other law, the following cases shall be heard and disposed of by a Judge sitting alone, namely--

(i) .....

(ii) (a) .....

(aa) .....

(b) .....

(c) any other civil appeal in which the value of the appeal does not exceed two lakh rupees :

Provided that where an ad valorem court-fee has been paid such value shall be deemed to be the amount on which such court-fee has been paid;"

13. It is clear from the above rule that any appeal of which value does not exceed Rs. 5 lakhs is cognizable by a Single Judge of this Court. Chapter V Rule 8 provides as to when a matter may be heard and disposed of by a Bench of two Judges. Chapter V Rule 8 is extracted below:

"8. Case to be heard by two Judges:- Save as otherwise provided by these Rules or other law or by any general or special order of the Chief Justice, every other case including writ petitions in which Special Appeals are not barred shall be heard and disposed of by a Bench of two Judges."

14. A conjoint reading of Chapter V Rule 2 (c) and Rule 8 of the High Court Rules read with Section 98 CPC would lead to a corollary that a matter cognizable by learned Single Judge may be decided as per the rules of procedure or other law or special order of the Chief Justice. Rules of procedure made by the High Court import the procedure what it is provided under Section 98 CPC.

15. Addressing on the question of maintainability of review petitions, learned counsel for the petitioner has argued that the statutory rules framed in exercise of power under Article 225 of the Constitution of India provide two special remedies; (i) the remedy of special appeal under Chapter VIII Rule 5; and (b) review under Chapter V Rule-12. The distinction in the two remedies, as pointed out by learned counsel for the review petitioner is that no special appeal lies, if a person is aggrieved against the judgement of Single Judge of the High Court which arises out of judicial/quasi judicial proceedings decided by a court/authority; but, there is no such restriction placed upon the jurisdiction of this Court insofar as the review of its own judgement passed by the High Court is concerned.

16. Whatever the distinction may be, it is well settled that the remedy of appeal, revision or review unless provided for under law cannot be exercised. In the present case, the question is whether review of its own judgement passed by the High Court

in exercise of civil appellate jurisdiction provided under Section 173 of the Motor Vehicles Act is permissible or not. The procedure provided under Chapter V Rule 12 of the High Court Rules is reproduced below:

"12. Application for review. :-

An application for the review of a Judgement shall be presented to the Registrar General, who shall endorse thereon the date when it is presented and lay the same as early as possible before the Judge or Judges by whom such judgment was delivered alongwith an office report as to limitation and sufficiency of court fees. If such Judge or Judges or any one or more of such Judges be no longer attached to the court, the application shall be laid before the Chief Justice who shall having regard to the provisions of Rule 5 of Order XLVII of the Code, nominate a Bench for the hearing of such applications :

Provided that an application for the review of a judgment of one Judge who is precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a single Judge, and that an application for the review of a judgment of two or more Judges, any one or more of whom is or are precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a Bench consisting of the same or a greater number of Judges."

17. The above Rule merely regulates the procedure as to how an application for review is to be dealt with.

18. It may be gainful to note that the provisions of Section 114 CPC are available to a court irrespective of the nature of civil jurisdiction it exercises; the conditions, however, subject to which the review jurisdiction can be exercised are that the decree or order must not be appealed against or there is absence of any such remedy under law. In the present case, the certificate under Article 134-A of the Constitution of India does not seem to have been prayed for nor the High Court of its own motion has granted any. The bar of Article 133 (3) also applies. Appeal under Article 136 of the Constitution of India has also not been filed. Thus, there is no impediment coming in the way of filing review petitions.

19. In my humble view, the jurisdiction of review of its own judgements by virtue of Section 114 CPC is inherent in a court and there is no doubt that the High Court being a court of record for this purpose would not be a court. The Tribunals unless such a jurisdiction is conferred cannot exercise the jurisdiction of review. The view taken by this Court finds support from a recent judgment rendered by the apex court reported in 2015 SCC ONLINE SC 1198 (Commissioner of Income Tax, Guwahati-I v. M/s Meghalaya Steels Ltd).

20. In view of what has been recorded above, the submission put forth by Sri Shikhar Anand, learned counsel for the other side that such a jurisdiction in absence of an enabling provision being made in the Motor Vehicles Act, 1988 cannot be exercised by the High Court, in my considered opinion, deserves to be rejected. The position does not alter even if the jurisdiction of civil court by virtue of Section-175 of the Motor Vehicles Act is excluded for the reason that the High Court nevertheless is empowered to exercise civil appellate jurisdiction.

21. From a plain reading of Chapter V Rule 12 of the High Court Rules, it is gathered that the Rules merely regulate the procedure so as to carry out the object of Section-114 CPC. In other words, the power of review being inherent in a Court necessitates laying down the procedure to deal with review applications and it is in this context that Chapter-V Rule 12 has come to be framed under Article 225 of the Constitution of India. The High Court being a court of record hence the power of review of its judgements is inherent by virtue of Section 114 CPC.

22. The next vital question is as regards the valuation of appeals for determination of pecuniary jurisdiction of learned Single Judge exercising appellate powers under Section 173 of Motor Vehicles Act. Reference may be made to Chapter VIII Rule 40 of the High Court Rules which for ready reference is extracted below:

"40. Court fee to be paid in cases coming up before the Court :-

Court fees shall be payable in cases coming before the Court in the exercise of its ordinary original civil jurisdiction or in the exercise of its jurisdiction as regards appeals from judgment passed by it in the exercise of its ordinary civil jurisdiction to the extent to, and the manner in which they are payable in similar classes of cases coming before it, under the provisions of Section 4 of the Court Fees Act, 1870."

23. The aforesaid rule by reference makes Section 4 of the Court Fees Act, 1870 applicable insofar as the money claims are concerned. Right to claim compensation is essentially a money claim, therefore, the Court would hasten to refer to the Court Fees Act, 1870. The relevant part of Section 7 of the Court Fees Act which relates to money claims, is reproduced as under:

"7. Computation of fees payable in certain suits.--

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:--

for money.-- (i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)--according to the amount claimed."

24. The aforesaid provision clearly demonstrates that a money claim read in the Statutes for damages or compensation etc. is to be valued according to the main claim. Insofar as the valuation of appeals is concerned, reference may also be made to Section 8 of the Court Fees Act, 1870, which is reproduced hereunder: "8. Fee on memorandum of appeal against order relating to compensation.--The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant."

25. A plain reading of Section 8 of Court Fees Act, 1870 demonstrates that the same would apply only in relation to the matters of claim of compensation under Land Acquisition Act but guidance insofar as the valuation of appeals filed before this Court is concerned, can be derived from the above provision so far as money claims whether in a suit or appeal before this Court is concerned.

26. This Court in view of the provisions quoted above, is of the considered opinion that the valuation of appeals filed before this Court would be determinable on the amount as it is set out in the claim filed before the Tribunal. The court fee under the Motor Vehicles Rules, 1998 is fixed, therefore, nothing turns on the question of payment of court fee but pecuniary jurisdiction of this court has to be viewed in the light of valuation of appeal mentioned therein. The appeal for enhancement of compensation clearly mentions the valuation of appeal at Rs. 45,09,950/- after

deduction of the amount allowed by the Tribunal. Thus, even if the appeal subsequently filed by UPSRTC was valued at Rs. 4,90,050/-, the same ought to have been heard alongwith the appeal for enhancement and the two appeals were thus cognizable by a Division Bench. The position in money claims would be different, if the appeal was filed by UPSRTC alone. A respondent against whom a money claim is allowed, would maintain an appeal on the quantum of amount allowed, being it cause arising against the judgement.

27. Once it is held that the two appeals ought to have been heard together and were cognizable by a Division Bench, the last question that calls for an answer is as to whether the review petition filed before this Court solely on the ground of lack of pecuniary jurisdiction is to be sustained or may be set aside as void.

28. Learned counsel for the petitioner placing reliance upon a Full Bench judgement of this Court in the case of Dinesh Kumar Yadav v. State of U.P. and another (Criminal Revision No. 582 of 2016) decided on 27.10.2016, argued that procedure rules of this Court are mandatory thus, the judgement rendered by learned Single Judge of this Court is liable to be set aside. Pecuniary jurisdiction of this Court as per the limit provided under High Court Rules is, of course, a relevant jurisdictional criteria but unless the objection is raised at the threshold of proceedings, such an objection at this stage and that too without raising a ground of manifest error of law apparent on the face of record in the impugned judgement on merit, in my humble view, is impermissible. The Court taking such a view is fortified by an apex court judgement reported in (1955) 2 SCR 1140 [Willie (William) Slanley v. The State of Madhya Pradesh]. This Court would further take note of the aspect that no intra court appeal lies against the judgement rendered by a Single Judge in exercise of appellate jurisdiction, thus, even a remedial prejudice is not caused to the petitioner.

29. Even if there is any illegality which the impugned judgement suffers from, the remedy of appeal would nevertheless be available to the review petitioner.

30. Review petitions being devoid of merit, are accordingly rejected.