

(2005) 06 GAU CK 0032

Gauhati High Court

Case No: None

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Abeda Begum and Others

RESPONDENT

Date of Decision: June 16, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 25, 3, 9
- Constitution of India, 1950 - Article 136, 227, 228, 233, 234
- Criminal Procedure Code, 1973 (CrPC) - Section 173, 195
- Evidence Act, 1872 - Section 3
- Government of India Act, 1935 - Section 165, 169, 224
- Limitation Act, 1963 - Section 14
- Motor Vehicles Act, 1988 - Section 110, 168, 169, 175

Citation: (2006) 2 ACC 620 : (2007) ACJ 743 : (2005) 2 GLT 571

Hon'ble Judges: B.K. Roy, C.J; P.G. Agarwal, J

Bench: Division Bench

Judgement

B.K. Roy, C.J.

Following question has been referred to by a learned single Judge for our decision:

Whether the Motor Accidents Claims Tribunal is a court within the meaning of Section 115 of the Civil Procedure Code?

While making reference the learned single Judge has noted that there are following two conflicting decisions of the learned single Judges: (1) [State of Assam Vs. Pranesh Debnath and Others](#), and (2) United India Insurance Co. Ltd. v. Dilip Chakraborty (1995) 2 GLJ 107. It appears that the attention of the learned single Judge was not drawn to a Division Bench decision in National Insurance Co. Ltd. v. Gurbox Singh 2003 (1) GLT 349, categorically answering the question posed in the affirmative.

We have heard at length Mr. S.K. Goswami, learned Counsel for the petitioner and Mr. B.K. Jain, learned Counsel for the caveator. The learned Counsel could not satisfy us that the Division Bench judgment in Gurbox Singh's case 2003 (1) GLT 349, which is binding on us, requires reconsideration by a larger Bench. Be that as it may, still we proceed to consider the question referred to by the learned single Judge.

2. The word "court" has been defined under the CPC (hereinafter referred to as "the C.P.C). Section 3 of the Code merely states about the subordination of courts.

3. In the case of [Brajnandan Sinha Vs. Jyoti Narain](#), the Apex Court held that the expression "courts subordinate to the High Court" would prima facie mean the courts of law subordinate to the High Court in the hierarchy of courts established for the purpose of administration of justice throughout the Union.

3.1. In this case it was also held as follows:

The pronouncement of a definitive judgment is thus considered the essential sine qua non of a court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that or they constitute a court.

4. In Black's Law Dictionary, 5th Edn., the court means:

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. The presence of a sufficient number of the members of such a body regularly convened in an authorised place at an appointed time, engaged in the full and regular performance of its functions. A body in the government to which the administration of justice is delegated. A body organised to administer justice and including both Judge and Jury. An incorporeal, political being, composed of one or more Judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. An organised body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings.

5. So far the definition of "court" in Section 3 of the Evidence Act is concerned, the Apex Court was of the view that the definition is not exhaustive but framed only for the purpose of that Act and is not to be extended where such an extension is not warranted.

6. In order to define the court the Apex Court considered the definition of "court" available elsewhere. The Supreme Court, therefore, 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.

7. The question under reference was earlier examined by a Division Bench of this Court in the case of Gurbox Singh 2003 (1) GLT 349. Upon consideration of the provisions of the Motor Vehicles Act, the Division Bench held:

(9) There has been divergence of judicial opinion on the point whether Claims Tribunal is a civil court? One view is that it is a civil court for all intents and purposes; whereas the other view is that it cannot be considered as a civil court. However, in view of the decision in P. Sarathy (supra) the words "civil court" need not detain us as the applicability of Section 14 of the Limitation Act is not confined in respect of "civil court" only.

(10) Chapter 12 of the Motor Vehicles Act provides for constitution of the Claims Tribunal in respect of claims arising out of the use of motor vehicles and laid down a detailed procedure. Section 175 of the Motor Vehicles Act reads as follows:

175. Bar on jurisdiction of Civil Courts. - Where any Claims Tribunal has been constituted for any area, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the civil court.

(11) Thus, we find that where a Claims Tribunal has been constituted, the jurisdiction of the civil court is ousted to consider any plea for compensation arising out of the use of motor vehicle. Admittedly, in the present case the said Tribunal refused to decide the matter on merits for lack of jurisdiction and referred the parties to approach the civil court. At this stage, we may look into the provisions of Section 169 of the Motor Vehicles 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.

(12) Considering the facts and circumstances of the case we have no manner of doubt that the proceedings before the Tribunal is a civil proceeding and the provisions of Section 14(1) of the Limitation Act shall be applicable. Accordingly it is held that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, 1988 are "courts" and proceedings before the Motor Accidents Claims Tribunals are civil proceedings. In view of the above, the time spent by the respondent plaintiff before the Motor Accidents Claims Tribunal is to be excluded as provided u/s 14(1) of the Limitation Act. Hence, the suit is not barred by limitation.

8. Section 107 of the Government of India Act, 1915 gave power of superintendence to the High Courts over all courts in India. This power was similar in terms to Section 15 of the High Court Act, 1861. This power of superintendence was interpreted to be as administrative as well as judicial superintendence. This section was reproduced in the Government of India Act, 1935 as Section 224 which is as follows:

(1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction and may do any of the following things, that is to say:

Call for returns;

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(d) Settle Tables of fees to be allowed to the Sheriff, attorneys and all clerks and officers of courts:

Provided that such rules, forms and Tables shall not be inconsistent with the provision of any law for the time being in force and shall require the previous approval of the Governor.

9. A brief history as to how Tribunal came into existence may be noted:

Sometimes the State, in exercise of its sovereign power by a legislation, takes out certain matters from the ordinary courts and invest the same to special adjudicatory body created under the Act to deal with those matters and give a decision thereon. These special adjudicatory bodies are called Tribunals and they follow a procedure laid down in the Act itself. But nonetheless there is no essential difference between the two. Both the courts and the Tribunals are constituted by the State and are invested with the State's inherent judicial power. Both of them have their power to

pass authoritative judgment and as such there is basically no difference between the two. The only difference that can be seen is that the procedure followed by court is regularly prescribed and in discharging their functions, the courts have to conform to that procedure. But the procedure which the Tribunals have to follow is prescribed in the Act itself and the prescribed procedure applicable to courts may or may not be applicable to the Tribunals. However, the approach adopted by both the courts and the Tribunals in deciding the dispute is substantially the same both exercise the inherent judicial power of a sovereign State.

10. As to the definition of court and Tribunal, the leading case is [Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others](#), which was decided by a five-Judge Bench. A separate judgment was written by Hon'ble Hidayatullah, J., as his Lordship then was, wherein it was observed:

All Tribunals are not courts, though all courts are Tribunals. The word courts is used to designate those Tribunals which are set up in an organised 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, courts are there to restore the *vinculum juris*, which is disturbed. Judicial power, according to Griffith, C.J. in *Huddart, Parker and Co. Proprietary Ltd. v. Moorehead* (1909) 8 CLR 330 means:

the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some Tribunal which has power to give a binding and authoritative decision (whether to appeal or not) is called upon to take action.

(31) 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 or 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.

(32) 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 Articles 136, 227 or 228 or in Articles 233 to 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.

11. The observations of the Hon'ble Hidayatullah, J. has subtle implications also - it implies that some Tribunals may be considered or deemed to be court.

12.2. In [Shri Kihota Hollohon Vs. Mr. Zachilhu and others](#), the observations in the case of [Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjunwala and Others](#), were quoted with approval and it was said that where there was a Us an affirmation by one party and denial by another, the dispute involved the rights and obligations of the parties to it and the authority was called upon to decide it, there was an exercise of judicial power. That authority was called a Tribunal if it did not have all the trappings of a court.

12. The decision was reiterated in the case of [Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others](#), and it was held as follows:

Broadly speaking certain special matters went before the 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 of 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 to two meanings. It might 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 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 term courts were included the ordinary and permanent Tribunals and in the term Tribunals were included all other which were not so included.

13. The distinction between Tribunal and court was explained by the Supreme Court in the case of [Associated Cement Companies Ltd. Vs. P.N. Sharma and Another](#), in following words:

Tribunals which fall within the purview of Article 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the court one common characteristic; both the courts and Tribunals are constituted by the State and are invested with judicial as distinguished from purely administrative or

executive functions. [Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others](#), They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and to discharging their functions and exercising their powers, the courts have to conform to that procedure. 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 that 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 feature 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.

14. We may now examine the matter in the light of the parameters laid down by the Apex Court in Brajanandan Sinha AIR 1956 SC 66. Under the provisions of the Motor Vehicles Act the Tribunals constituted under the Act are required to pronounce judgment as regards the claim and said judgment is binding. The Tribunal is not empowered to change or alter its decision like an administrative order except to the limited actions of correcting clerical, typographical or other similar mistakes apparent from the face of the record.

15. In Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 ACJ 934, it was held that a provision of law providing for compensation is presumed to be final in nature unless a contra indication therefore is found to be in the statute either expressly or by necessary implication. There is no such express or implied provisions in the relevant provisions of the Act and hence it must be held that decision of the Tribunal is final and binding.

16. Sub-section (3) of Section 165 of the Act reads as follows:

A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a High Court Judge or as a District Judge.

17. Hence, we find that a Tribunal is required to be manned by Judicial Officer and that too not below the rank of District Judge.

18. Section 169(2) of the Act reads as follows:

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).

19. u/s 173 of the Act an appeal against an award of the Claims Tribunal lies to the High Court. The provisions of appeal is thus relevant to hold that the Tribunals are subordinate to the High Court. Moreover, the government has no power to review the order of Tribunal.

20. In the case of *State of Haryana v. Darshana Devi* 1979 ACJ 205, the Apex Court affirmed the decision of the High Court that the pauper provisions in Order XXXIII, CPC is applicable to proceedings before Claims Tribunal.

21. In the case of *Bhagwati Devi v. I.S. Goel* 1983 ACJ 123, the Apex Court further observed as follows:

In view of the observations of this Court in *State of Haryana v. Darshana Devi* 1979 ACJ 205, we are of the view that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, is a civil court for the purposes of Section 25 of the Civil Procedure Code. We are satisfied that the cases before us are fit cases for being transferred from the file of Motor Accidents Claims Tribunal, Moradabad to the file of Motor Accidents Claims Tribunal, Delhi.

22. In the case of [Ratri Parjuni Vs. S.K. Pradhan and Another](#), Orissa High Court also held that Motor Accidents Claims Tribunal is a court subordinate to the High Court and also subordinate to it u/s 115, Civil Procedure Code. In case of [Darshan Singh Vs. Ghewarchand and Others](#), Rajasthan High Court held that Motor Accidents Claims Tribunal was a civil court and it is subordinate to the High Court and a revision u/s 115, CPC lies against an order passed by it. In the case of [Jayaben Jivrajbhai Vs. Karsanbhai K. Rathod and Others](#), Gujarat High Court held that a Motor Accidents Claims Tribunal is a civil court, subordinate to the High Court and the orders passed by such a Tribunal, if other conditions of Section 115, CPC are satisfied, could be revised by High Court under that section. In the case of [Sarjubai Vs. Gurudip Singh and Others](#), a Division Bench of Madhya Pradesh High Court had held as follows (para 13):

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, Civil Procedure Code.

In coming to the above conclusion, the Division Bench also noted the following:

(7) The distinction between the courts of general jurisdiction and courts of special jurisdiction was noted by their Lordships of Privy Council in *Rajah Nilmoni Singh Deo Bahadur v. Taranath Mookerjee* 9 IA 174 and the observations of that case were interpreted by Madras High Court in the case of [Kalavagunta Sriramarao Vs. Kalavagunta Suryanarayanamurthi and Others](#), to mean thus : "Courts constituted for deciding on purely civil questions between persons seeking their civil rights must be considered to be civil courts, notwithstanding that they are created by a special statute and are mentioned in that statute as distinct from civil courts. The true import of such a distinction is that while special courts have jurisdiction over a limited class of suits specified in the statute the jurisdiction of the civil courts is not limited to any class of suits. To this extent there is a distinction between the two classes of courts but in respect of the class of suits actually entrusted to the jurisdiction of special courts they perform in relation to the functions which but for the special Act would have been performed by civil courts and to that extent the special courts can be said to be civil courts in a different attire".

The question posed in this reference was also considered by a Full Bench of Patna High Court (Ranchi Bench) in the case of [Anirudh Prasad Ambasta and Others Vs. State of Bihar and Another](#), and it was held that in view of the provisions of Section 110 of the Motor Vehicles Act the Claims Tribunal is a court although with limited jurisdiction and not a mere Tribunal. The Full Bench has placed reliance on a decision of the Apex Court in the case of [Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another](#), a . The High Court of Patna also held that a M.A.C.T. is a court of record and, as such, it is a court in the hierarchy of courts.

23. In the case of [State of Assam Vs. Pranesh Debnath and Others](#), a learned single Judge of this Court relying on decisions of the Apex Court in the case of *State of Haryana v. Darshana Devi* 1979 ACJ 205 (SC) and in [Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another](#), a held that Claims Tribunal constituted under the Motor Vehicles Act is subordinate to the High Court within the meaning of Section 115, CPC and revision, therefore, lie to the High Court against any order passed by such Tribunal.

24. In a later case of *Dilip Chakraborty* (1995) 2 GLJ 107, another single Judge of this Court held that the Claims Tribunal constituted under the Motor Vehicles Act is not a civil court subordinate to the High Court for the purpose of Section 115, CPC and the orders passed by the Claims Tribunal are not amenable to the revisional jurisdiction of the High Court. We find that in *Dilip Chakraborty* (supra) the learned single Judge

did not notice or consider the earlier decision of this Court in [State of Assam Vs. Pranesh Debnath and Others](#), We also find that an earlier decision of this Court in the case of [Raju Das Vs. Sushil Kumar Das and Others](#), , was not brought to the notice of the learned single Judges.

25. A contrary view was taken by a five-Judge Full Bench of Karnataka High Court in the case of [Union of India \(UOI\) and Others Vs. Mysore Paper Mills Ltd. and Others](#), . As per the majority, it was held as follows:

The Motor Accidents Claims Tribunal (M.A.C.T.) established under the Motor Vehicles Act, the Education Appellate Tribunal (E.A.T.) established under the K.P.E.I. (D & C) Act, 1975, now the Karnataka Education Act, 1983 and Railway Claims Tribunal (R.C.T.) established under Railway Claims Tribunal Act, 1987 are not courts subordinate to High Court for the purpose of Section 115, Civil Procedure Code. 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 Civil Procedure Code. 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 Civil Procedure Code.

This Full Bench considering the provisions of Articles 323-A and 323-B of the Constitution, which came into existence by the 42nd Amendment with effect from 3.1.1977, held that above Articles do not consider Tribunal to be courts subordinate to the High Court under Chapter VI in Part VI.

The reasons given are that the provisions of Motor Vehicles Act and rules constitute a self-contained code for determination of dispute and, therefore, the Tribunal cannot be considered to be a court subordinate to the High Court.

26. Recently, a large number of family courts were established all over the country to adjudicate the matrimonial matters, including divorce, maintenance, etc., etc. Self-contained rules are framed to regulate the proceedings in such courts and the appearance of the advocates is barred. The reconciliation proceedings taken up by the family courts even allows interference by the NGO's, i.e., persons not party to the dispute before the court. Only because there is a separate self-contained rules, it cannot be said that such Tribunals or courts are not ordinary courts of civil judicature. Payment of compensation to the victim of negligence is a civil adjudication or a civil dispute, which is required to be considered by the courts. However, considering the difficulties faced and the time taken by the regular civil courts, the Motor Accidents Claims Tribunals for the purpose of giving speedy

justice to the victims of motor accidents were created. The procedure to be followed by the Tribunal is also as per the Civil Procedure Code. Merely because a separate set up has been provided, such Tribunals cannot remain outside the administrative or judicial superintendence of the High Court. In order to further the underlying object in the creation of the Tribunal the jurisdiction of the civil courts have been excluded to achieve uniformity of approach and predictability of the decisions. For the reasons mentioned above, we are unable to agree with the view taken by Karnataka High Court.

27. On consideration of the provisions of the Motor Vehicles Act and the judicial pronouncements, we find that Motor Accidents Claims Tribunal have the authority of law to adjudicate the dispute between the claimants and opposite parties. They are to follow the procedure laid down in the CPC and they have to act in a judicial manner and they are manned by Judicial Officer not below the rank of District Judge and an appeal is provided against their decision before the High Court. They are not administrative Tribunals which are constituted to implement administrative policy or determine administrative controversies. Claims Tribunals are permanent body under the statute and as such, they cannot be said to be anything other than a court for the purpose of Section 115, Civil Procedure Code.

28. In view of the aforesaid observations of the Apex Court, we agree with the views of Patna High Court (Full Bench), Rajasthan High Court, Madhya Pradesh High Court, Gujarat High Court and Orissa High Court and hold that Motor Accidents Claims Tribunal is a court subordinate to the High Courts and is amenable to the revisional jurisdiction u/s 115, Civil Procedure Code.

Let the records be sent down.