

Oriental Insurance Co. Ltd. Vs Smt. Saraswati Bai and Others

Court: Madhya Pradesh High Court

Date of Decision: Sept. 28, 1994

Acts Referred: Motor Vehicles Act, 1939 " Section 110B, 110D

Citation: (1995) JLJ 11 : (1995) 40 MPLJ 291 : (1995) MPLJ 291

Hon'ble Judges: U.L. Bhat, C.J; Rajeev Gupta, J; M.V. Tamaskar, J

Bench: Full Bench

Advocate: T.C. Naik and N.C. Jain, for the Appellant; S.L. Kochar, Arun Kochar and Sanjay Seth, Amicus Curiae, for the Respondent

Judgement

U.L. Bhat, C.J.

These appeals have been placed before the Full Bench for determination of the question whether the appeals are maintainable under Clause 10 of

the Letters Patent (Nagpur). We have heard learned counsel appearing for both sides as well as Shri Seth, Advocate who assisted as Amicus

Curiae.

These appeals arise out of proceedings initiated before the Motor Accidents Claims Tribunal seeking compensation for death or injury suffered in

motor vehicle accidents. In one case, the Tribunal dismissed the claim petition while in other cases, Tribunal passed awards directing payment of

compensation specified in the awards to the claimants. The claimant in one case and the Insurance Companies in the latter two cases filed appeals

in this Court which were heard and dismissed by the learned Single Judges. These LPAs are filed against decisions of learned Single Judges.

Registry has raised objections in all the cases regarding maintainability and they have been placed before the Full Bench.

Our attention is invited to two decisions of Division Bench of this Court, in Rajmata Vijayaraje Scindia and Ors. v. Maharaja Madhavrao Scindia

1988 MPLJ 78 : 1988 JLJ 86 , and Uttam Singh and Others Vs. National Insurance Co. Ltd. and Others, The question which arose in the former

decision was regarding maintainability of Letters Patent Appeal against the decisions of learned Single Judge in Miscellaneous Appeals against the

order passed by the Trial Court under Order 59, Rules 1 and 2, Civil Procedure Code. The Court held that in view of Sections 104 and 105 read

with Order 43, Rule 1, Civil Procedure Code, Letters Patent Appeal under clause 10 of the Letters Patent is not competent. That decision has no

relevance in the context of the present cases except that in paragraph 9 of the judgment, Dr. T. N. Singh, J., speaking for the Bench and dealing

with appeals and other jurisdictions referred to two categories of cases and stated -

Now, the second category of cases. u/s 30 of the Workmen's Compensation Act and Section 110-D of the Motor Vehicles Act, an appeal

against an "award" passed by the "Commissioner" in one case and the "Tribunal" in the other case lies to "High Court". Even if the High Court

rules provide for such appeals being heard by a single Judge, the judgment or order passed by such Judge in exercise of appellate jurisdiction of

the High Court will not create a right of a second appeal merely because the Letters Patent contemplate an intra-court appeal. Once the appellate

power is exercised by the High Court, whether by a Single Judge or a Division Court, the power contemplated u/s 30, Workmen's Compensation

Act, in one case and u/s HOD of Motor Vehicles Act is exhausted.

The matter dealt with in the above observation did not really arise for consideration in the case. However, in the latter decision, the same Division

Bench merely followed the above observations and held that L.P.A. would not lie. It was on the strength of these decisions that the Registry has

raised the objection regarding maintainability.

It may be necessary in this connection to advert to the relevant provisions of the Motor Vehicles Act, 1939. Section 110 of the Act empowered

the State Government to constitute Motor Accidents Claims Tribunals for purposes of adjudicating upon claims for compensation. Section 110A

dealt with application for compensation. Section 110-B stated inter alia, that the Claims Tribunal after giving the parties an opportunity of being

heard and holding enquiry into the claim may make an award determining the amount of compensation which appears to it to be just and specifying

the person or persons to whom compensation is to be paid. Section HOD stated that subject to the provisions of sub-section (2) any person

aggrieved by an award of the Claims Tribunal, may within 90 days from the date of award, prefer an appeal to the High Court. Where the Tribunal

dismissed the claim or allowed it to any extent, the same is incorporated in what is referred to in section HOB and section HOD as an "award". In

other words, the award represents the decision which effects the rights of the parties and against such award, an aggrieved person may file an

appeal. According to the division of jurisdiction effected by the High Court rules, such appeals upto a particular valuation can be heard by Single

Judge and appeals beyond the particular valuation are required to be heard by Division Benches. The appeals in the present cases were within the

jurisdiction of the Single Judges and therefore were heard and disposed of by them.

We will now refer to the relevant part of Clause 10 of Letters Patent (Nagpur) which is relevant for the purpose of these cases. According to this

clause :

(i) An appeal shall lie to the said High Court of Judicature at Nagpur from the judgment of one Judge of the said High Court or one Judge of any

Division Court, pursuant to Section 108 of the Government of India Act, and that

(ii) Notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court

or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made in exercise of appellate jurisdiction in respect of

a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge

who passed the judgment declares that the case is a fit one for appeal.

According to the appellants, the appeals are maintainable under the first of the above two provisions.

Under the provisions referred to above appeal shall lie to the High Court from the judgment of a Single Judge u/s 108 of the Government of India

Act. Section 108 of the Government of India Act, 1915 dealt with exercise of jurisdiction by Single Judges or Division Courts. Each High Court is

enabled by its own rules to provide for its exercise by a Bench of two or more Judges in the original or appellate jurisdiction vested in the High

Court. The power of constituting benches was left to the Chief Justice of each High Court. When a single Judge hears appeal against the awards of

the Tribunal, he does so in pursuance of the provisions in the High Court Rules which are made pursuant to the provisions of the Constitution or

Government of India Act, 1935 or Government of India Act, 1915.

"Judgment" in the popularly understood sense is the statement given by a Judge of the grounds of a decree or order. "Decree" as defined in

Section 2(2) of the Civil Procedure Code, 1908 means a formal expression of an adjudication which, so far as regards the Court expressing it,

conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or

final. The word "judgment" occurring in clause 10 of Letters Patent (Nagpur) and parallel provisions in Letters Patent of other High Courts has

been dealt with by Courts. The word "judgment" has not been defined in Letters Patent. The leading decision on the point is Manohar Damodar

Bhaot v. Baliram Ganpat Bhaot 1953 NLJ 58 : AIR 1952 Nag 357, where it has been held by Hidayatullah, J. as he then was, that the word

judgment"" as used in clause 10 of Letters Patent means a decision in an action whether final, preliminary or interlocutory which decides either

wholly or partially, but conclusively in so far as the Court is concerned, the controversy which is the subject of the action. It does not include a

decision which is on a matter of procedure, nor one which is ancillary to the action even though it may either imperil the ultimate decision or tend to

make it effective. An award passed by the Tribunal, whether it be one in favour of the claimant or against the claimant is one which decides wholly

and conclusively in so far as the Tribunal is concerned, the controversy which is subject matter of action. The award which finally disposes of the

claim application must be regarded as a judgment within the meaning of clause 10 of the Letters Patent. That being so, the first appeal against such

a judgment or award, when it is finally determined, also determines the controversy between the parties effectively and conclusively. Therefore, the

decision of the learned single Judge is also to be regarded as a judgment for the purpose of clause 10 of the Letters Patent and an appeal would lie

to the Division Bench under clause 10. The two Division Bench decisions of this Court referred to earlier do not consider the relevant aspects of

the matter and in our opinion, with great respect, do not lay down the correct law.

We may now refer to a few decisions placed before us where the other High Courts have taken a similar view. In The Municipal Corporation of

Municipal Corporation of Delhi Vs. Kuldip Lal Bhandari and Others, the Full Bench of Delhi High Court held that the decision of a single Judge in

an appeal against the award of the Tribunal is judgment and Letters Patent Appeal would lie. A similar view was taken by Full Benches of the

Punjab and Haryana High Court and Patna High Court respectively in Shanti Devi and Ors. v. General Manager, Haryana Roadways, Ambala and

others AIR 1972 P & H 65 , and Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others, The latter decision has

adverted to a catena of decisions having some bearing on the aspect under consideration. Reference has been made to the decision of the Supreme

Court in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), where the Court considered the

question whether Letters Patent Appeal is maintainable under clause 15 of the Letters Patent (Bombay) when it exercises appellate jurisdiction u/s

76 of the Trade Marks Act when order is passed by the Registrar of Trade Marks. The Court held that Section 76 confers right to the High Court

of appeal and says nothing more and that being so, the High Court being seized as such of the appellate jurisdiction has to exercise the jurisdiction

in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes

subject to appeal under Clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act. Reference is also made to a

decision of Constitution Bench of the Supreme Court in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, the Court observed :

A statute may give a right of appeal from an order of Tribunal or a Court to the High Court without any limitation thereon. The appeal to the High

Court will be regulated by the practice and procedure obtaining in the High Court. Under the rules made by the High Court in exercise of the

powers conferred on it u/s 108 of the Government of India Act, 1915, an appeal u/s 39 of the Act will be heard by a single Judge. Any judgment

made by the single Judge in the said appeal will, under clause 10 of the Letters Patent, be subject to an appeal to that Court. If the order made by

a single Judge is a judgment and if the appropriate legislature has, expressly or by necessary implication, not taken away the right of appeal, the

conclusion is inevitable that an appeal shall lie from the judgment of the single Judge under clause 10 of the Letters Patent to the High Court: It

follows that, if the Act had not taken away the Letters Patent Appeal, an appeal shall certainly lie from the judgment of the single Judge to the High

Court.

The observations of the Supreme Court in the above decisions support the view we have taken in the matter, namely, Letters Patent Appeal does

lie. The reference is answered accordingly.