

Abhay Chand v. Ram Chand and others
 Mehar Singh, J.

would not be binding against him, and it was, therefore, not necessary in the suit to claim consequential relief in the shape of a money-decree. There a person, who was entitled under an agreement to half of the property for which compensation was being paid, was a person who had sought declaration that he was entitled to half of the amount. The learned Judge held that the suit for declaration alone was competent under section 42 of the Specific Relief Act. I, respectfully agree with the view of the learned Judge. In this approach, this revision application succeeds, the order of the learned trial Judge is reversed, and he is directed to proceed with the trial of the suit of the applicant according to law. There is no order in regard to costs. The parties, through their counsel, are directed to appear in the trial Court on November, 29, 1965.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, J.

HARBANS SINGH,—Petitioner

versus

GURMEET KAUR AND ANOTHER,—Respondents.

Civil Revision No. 671 of 1963.

1965
 November, 5th.

Motor Vehicles Act (IV of 1939)—Ss. 110-A and 110-B—Claims Tribunal—Whether persona designata and not a Court—Limitation Act (IX of 1908)—Ss. 22 and 29(1)—Whether apply to applications made to the Tribunal under S. 110-A—Claims Tribunal—Whether can make award against the owner and negligent driver of the motor vehicle.

Held, that the Claims Tribunal constituted under section 110 of the Motor Vehicles Act, 1939, is a *persona designata*, and, although it has been given a jurisdiction which has been taken away from an ordinary civil Court and it has been given some of the powers of a civil Court and the rules may give some other of those powers, but it is in itself not a Court. The application made under section 110-A to the Tribunal is an application to a *persona designata* and not to a Court, and so sections 29(2) and 22(1) of the Limitation Act, 1908, are not applicable to such an application.

Held, that the Motor Accidents Claims Tribunal can make the award against the owner and negligent driver of the motor vehicle involved in the accidents as well as against its insurer in case the vehicle is insured. The words 'in making the award

the Claims Tribunal shall specify the amount which shall be paid by the insurer in the last sentence of section 110-B of the Act only mean that when an award for compensation is made against those who are liable for the death in accident of, or personal injury to, a person, the share of liability that has to be borne by the insurer is to be specified by the Claims Tribunal in its award, and it does not mean that no award is to be made against the persons otherwise liable.

Petition under Section 115 of the Code of Civil Procedure, 1908, read with Article 227 of the Constitution of India, for revision of the order of Shri G. S. Gyani, Motor Accidents Claims Tribunal, Punjab, Chandigarh, dated 14th June, 1963, awarding a sum of Rs. 1,800 with costs in favour of the applicant Atma Singh against Shri Harbans Singh and Baldev Mitter, respondents and ordering that the amount of compensation with costs shall be paid within two months from the date of the award.

LALIT MOHAN SURI, ADVOCATE, for the Petitioner.

G. P. JAIN AND A. M. SURI, ADVOCATES, for the Respondents.

JUDGMENT

MEHAR SINGH, J.—This judgment will dispose of two revision applications Nos. 671 and 680 of 1963, first by the driver (Harbans Singh) and the second by the owner (Baldev Mittar Bijli) of a goods motor vehicle, which, when driven by Harbans Singh, applicant on March 13, 1960, overran Karam Kaur, wife of Atma Singh, respondent and mother of the other respondents, causing her death, from the award of the Motor Accidents Claims Tribunal, dated June 14, 1963, awarding Rs. 1,800 as compensation to Atma Singh, respondent. The children of the deceased were not granted any compensation because they were major.

The version of the accident in the evidence of Gurbachan Singh, Tirath Singh and Atma Singh witnesses that while the last-mentioned witness was sleeping under a tent at Anandpur Sahib along with his deceased wife and other companions, the goods vehicle of the applicants came loaded with flour and, while trying to enter Anandpur Sahib area, the driver (Harbans Singh, applicant) was not in a position to control it, while taking it up on the height towards the Gurdwara and it instead of going upwards came back on the reverse and ran over the tent causing the death of the wife of Atma Singh, respondent,

Harbans Singh is a version which was accepted by the Tribunal and of
 v. which the correctness has not been challenged in these
 Gurmeet Kaur revision applications.
 and another

There has been some objection to the competence of
 Mehar Singh, J. the revision applications under section 115 of the Code of
 Civil Procedure from the award of the Tribunal, but that
 need not affect these applications as the same can be con-
 sidered under Article 227 of the Constitution.

It was proved before the Tribunal that the goods
 vehicle owned by Baldev Mittar Bijli, applicant and driven
 on the date of the accident by Harbans Singh, applicant
 was not insured. It was the duty of the owner to insure
 it under section 94 of the Motor Vehicles Act, 1939 (Act 4
 of 1939), hereinafter to be referred as 'the Act', and, as he
 did not insure it, for that breach he has been liable to
 prosecution under section 125 of the Act, but it is not quite
 clear at this stage whether he has or has not been prose-
 cuted for that offence. In any event, the goods vehicles
 was allowed by Baldev Mittar Bijli, applicant to be driven
 by Harbans Singh, applicant without having been insured
 in accordance with the provisions of section 94 of the Act.

An application under section 110-A of the Act was
 made by Atma Singh, respondent, for compensation to the
 Tribunal on September 7, 1960. To that application he
 impleaded the driver as also the owner as parties. At that
 time he named the owner as one Bikram Singh, who
 appeared before the Tribunal and disclosed that the real
 owner of the goods vehicle was Baldev Mittar Bijli appli-
 cant. On that this applicant was impleaded as a party
 respondent to the application on May 24, 1961. According
 to sub-section (3) of section 110-A of the Act such an appli-
 cation for compensation is to be made within sixty days
 of the occurrence of the accident, but the proviso to that
 sub-section says that the Tribunal may entertain the
 application after the expiry of the said period of sixty
 days if it is satisfied that the applicant was prevented by
 sufficient cause from making the application in time. The
 application of Atma Singh, respondent was out of time
 both against the driver and the owner of the goods
 vehicle. The tribunal has under the proviso to sub-section
 (3) of section 110-A of the Act been satisfied that there
 was sufficient cause for making the application after delay
 so far as the driver is concerned and also there was suffi-
 cient cause for delay in the impleading of Baldev Mittar

Bijli, the owner, as a party to it. In so far as the cause shown for the delay in the making of the application against the driver is concerned, nothing has been said here, but with regard to the owner the contention of the learned counsel for him is that the application must be taken to have been made against him on the day he was impleaded, that is to say, on May 24, 1961, and it is, when taken from that date, barred by limitation on any consideration. Baldev Mittar Bijli, applicant had hired the goods vehicle to Harbans Singh, applicant and Bikram Singh, and this is how Atma Singh, respondent was misled into impleading Bikram Singh as the owner and, when he came to know of the true state of facts, he proceeded immediately to implead the real owner, Baldev Mittar Bijli applicant. In these circumstances, even if the application by Atma Singh, respondent against this applicant be treated to have been made on May 24, 1961, the Tribunal was justified in coming to the conclusion that there was sufficient cause which prevented Atma Singh, respondent from making the application against Baldev Mittar Bijli, applicant, and to that conclusion no exception can be taken, not at least in applications of this type, it being a matter of discretion with the Tribunal and it not having been shown that the discretion has not been exercised by the Tribunal in a judicial manner.

Harbans Singh
v.
Gurmeet Kaur
and another
Mehar Singh, J.

However, in so far as Baldev Mittar Bijli, applicant is concerned, what the learned counsel for him has contended is that according to section 29(2) of the Limitation Act, 1908, it is section 22(1) of that Act that applies to the application of Atma Singh, respondent under section 110-A of the Act, and so the application of Atma Singh respondent against this applicant be taken to have been made on May 24, 1961, the date on which this applicant was impleaded as a party respondent to the original application of Atma Singh, respondent. The learned counsel for Atma Singh, respondent contends that those provisions of the Limitation Act, 1908, are not attracted because that Act only applies, according to its preamble, to 'Courts' and the Accidents Claims Tribunal is not a Court, but is a *persona designata*. In this respect the learned counsel refers to two cases under Rent Acts to support his argument. The first case is *Baldeodas-Mahavir-Prasad v. G. P. Sonavalla* (1) and the second is *Gita Mitra v. S. P. Ghose*

(1) A.I.R. 1948 Bom. 385.

Harbans Singh (2). In those cases what the learned Judges have held is
 v. that a Rent Controller under a Rent Act is a *persona*
 Gurmeet Kaur *designata* and is not a 'Court', with the result that sections
 and another 29(2) and 22(1) of the Limitation Act, 1908, do not apply
 Mehar Singh, J. to proceedings before such a Tribunal. These cases
 support the contention of the learned counsel for Atma
 Singh, respondent. What I find is that the provisions of
 the Act in this respect also support that argument. No
 doubt a compensation claim arising out of an accident is a
 claim in tort and ordinarily within the jurisdiction of an
 ordinary civil Court, but by the statutory provisions in the
 Act it has been taken away from that jurisdiction and
 has been entrusted to the exclusive jurisdiction of the
 Tribunal under the provisions of the Act. Section 110
 of the Act provides that a State Government may consti-
 tute a Motor Accidents Claims Tribunal for a defined area
 'for the purpose of adjudicating upon claims for compen-
 sation in respect of accidents involving the death of, or
 bodily injury to, persons arising out of the use of motor
 vehicles'. Under sub-section (1) of section 110-A of the
 Act the form of the application is given. Sub-section (2)
 says that such an application must be made to the Claims
 Tribunal having jurisdiction over the area in which the
 accident occurred. Then comes sub-section (3) to which
 reference has already been made providing a period of
 limitation within which such an application has to be
 made with a power given to the Claims Tribunal to enter-
 tain an application after the expiry of such period on
 sufficient cause being shown. Section 110-B, then reads:—

"110-B. On receipt of an application for compensa-
 tion made under section 110-A, the Claims
 Tribunal shall, after giving the parties an oppor-
 tunity of being heard, hold an inquiry into the
 claim and 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 shall be paid; and in
 making the award the Claims Tribunal shall
 specify the amount which shall be paid by the
 insurer."

The last sentence in the section enjoins upon the Claims
 Tribunal to specify the amount that the insurer has to
 pay. Section 110-C deals with matters of procedure, and
 sub-section (1) of that section says that in holding any

inquiry under section 110-B, the Claims Tribunal may subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. This is a provision parallel to the provision in the Rent Acts usually giving the Rent Controller the same power to follow summary procedure as he thinks fit subject to rules. Then sub-section (2) refers to certain defined powers of a Civil Court which are given to the Claims Tribunal, but not all powers of a civil court have obviously been given to it. Sub-section (3) says that the Claims Tribunal may obtain assistance of one or more persons possessing special knowledge of any relevant matter to the inquiry before it while it is holding the inquiry. The rule-making power is given to the Government under section 111-A, in which it may make rules, among others, on these matters "(a) the form of application for claims for compensation and the particulars it may contain; and the fees, if any, to be paid in respect of such applications; (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter; and (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal." When all these provisions are considered together then it is obvious that a Claims Tribunal is a *persona designata*, and, although it has been given a jurisdiction which has been taken away from an ordinary Civil Court and it has been given some of the powers of a Civil Court and the rules may give some other of those powers, but it is in itself not a Court. Its position is somewhat exactly parallel to the Rent Controller under a Rent Act, and according to the decisions, upon which reliance has been placed by the learned counsel for Atma Singh, respondent, to such a Tribunal the provisions of sections 29(2) and 22(1) of the Limitation Act, 1908, do not apply because such Tribunals are not Courts. The learned counsel for Baldev Mittar Bijli, applicant refers to *Imperial Bucket Co. v. Bhagwati Basak* (3) to show that even under a Rent Control Act the provisions of sections 29(2) and 22(1) of the Limitation Act, 1908, may be attracted, but that was a case of an appeal and not directly in point. The other case to which the learned counsel for this applicant refers is *Mahendra Kumar Tewary v. Chota-nagpur Regional Transport Authority* (4). This case does lend support to his contention, but was again a case of an appeal. In these cases the learned Judges seem to take the view that there

Harbans Singh
v.
Gurmeet Kaur
and another
Mehar Singh, J.

(3) A.I.R. 1954 Cal. 520.

(4) A.I.R. 1963 Pat. 406.

Harbans Singh is no need to refer to the preamble of the Limitation Act, 1908, because in section 29(2) the words to be taken into consideration are 'any suit, appeal, or application', and the learned Judges are of the opinion that an appeal under a Rent Control Act is within the scope of that word as used in sub-section (2) of section 29 of the Limitation Act, 1908. So far as the present matter is concerned, an application under section 110-A of the Act is, in my opinion, not a suit and as it is an application to a *persona designata*, it is not an application to a Court, and so sections 29(2) and 22(1) of the Limitation Act, 1908, are not attracted to the present case to support the argument of the learned counsel for Baldev Mittar Bijli, applicant. I have already pointed out that the Tribunal has found sufficient cause for condoning the delay in the making of application by Atma Singh, respondent, even with regard to this applicant and that there is no substantial reason whatsoever for differing from the Tribunal in this respect. So the application for compensation under section 110-A of the Act by Atma Singh respondent against neither applicant in these revision applications is barred by time.

There is only one other argument that has been canvassed by the learned counsel for the applicants and that is that in view of the last sentence in section 110-B of the Act, which sentence reads 'in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer', the Claims Tribunal can only make an award against the insurer and not against the negligent driver and the owner of the goods vehicle. This argument is misconceived. The reason is that this sentence only means that when an award for compensation is made against those who are liable for the death in accident, or personal injury to, a person, the share of liability that has to be borne by the insurer is to be specified by the Claims Tribunal in its award, and it does not mean that no award is to be made against the persons otherwise liable. Third party insurance is compulsory under sub-section (1) of section 94 of the Act and non-compliance with that is punishable under section 125. An owner who is in breach of that provision has been held to be liable to pay compensation: *Corfield v. Groves* (5). Apart from this, sub-section (1) of section 110 of the Act provides:—

"110. Claims Tribunals. (1) A State Government may, by notification in the Official Gazette,

constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles.”

Harbans Singh
v.
Gurmeet Kaur
and another
Mehar Singh, J.

This sub-section does not limit the adjudication of the claim for compensation only as against the insurer. It deals with the adjudication of such a claim as a whole, which obviously means against whomsoever it is. Sub-section (1) of section 98 of the Act says—

“98. Duty to give information as to insurance.—(1)

No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.”

This sub-section makes it clear beyond question that a claim as under section 110-A is made against a person who is liable for the same and then he is statutorily enjoined to disclose information about the insurance of the vehicle and the name of the insurer. Again, section 102 of the Act is in these terms—

“102. Effect of death on certain causes of action.—

Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (XXXIX of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the

Harbans Singh said event against his estate or against the in-
 v. **Gurmeet Kaur** surer."
 and another

Mehar Singh, J. This section keeps alive any cause of action arising out of an accident and leading to a claim for compensation even against the estate of a deceased person to whom a certificate of insurance had been issued. This could only be if a claim for compensation lies against such a person. An award is made by the Claims Tribunal under section 110-B and, under sub-section (1) of section 110-D, any aggrieved person by an award of the Claims Tribunal may prefer an appeal to the High Court. It is not stated that the insurer may prefer an appeal against the award to the High Court, for that would be the effect if the argument of the learned counsel for Baldev Mittar Bijli applicant was to prevail. The provision says that 'any person aggrieved by an award' may appeal. The expression 'any person' in this provision includes not only the insurer against whom the claim is made but also all others liable for the claim. When all these provisions are taken together it becomes clear that there is no substance in this argument of the learned counsel for the applicants. This is particularly so because in regard to such a claim under section 110-F of the Act the jurisdiction of a civil Court is barred. That section read—

"110-F. Bar of jurisdictions 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 Claims for compensation shall be granted by the Civil Court."

This section says in clearest terms that where a Claims Tribunal has been constituted having jurisdiction over an area, no civil Court can entertain any question relating to any claim for compensation which may be adjudicated by such a Tribunal. If the argument of the learned counsel for the applicants were to prevail, an injured person or those who are entitled to compensation on the death of a near kindred would have nowhere to go to make a claim for compensation against the negligent driver and the

owner of the vehicle, and, in a case like the present, where the vehicle has not been insured, they would have no compensation whatsoever. This argument is obviously without substance. In *Shri Ram Partap v. General Manager, Punjab Roadways, Ambala* (7), Dua J. repelled the argument on behalf of the General Manager of the Punjab Roadways that because of the negligence of the driver, the owner, the Punjab Roadways, was not liable, and in *Nand Singh Virdi v. Punjab Roadways and others* (8) P. C. Pandit J. held that the insurer only incurs the liability of the assured and that also to the extent to which the vehicle is insured. Therefore, the third party has first of all to establish the liability of the assured and it is only then that it can recover the amount of compensation awarded against the assured from the insurer. If he is unable to prove his claim against the assured, then he cannot get any compensation from the insurer. The provisions of the Motor Vehicles Act, 1939, have not, in any way, changed the general law under which compensation is claimed by one person from another. These two cases lend support to the conclusion that in an application under section 110-A, the applicant can claim compensation for death of, or bodily injury to, persons arising out of an accident because of the use of a motor vehicle from the negligent driver and owner of the vehicle. So this argument that Atma Singh respondent cannot claim compensation against the applicants before the Claims Tribunal is not tenable.

Harbans Singh
v.
Gurmeet Kaur
and another

Mehar Singh, J.

There is no other argument that has been urged. So these revision applications fail and are dismissed with costs, counsel fee being Rs. 32 in each application.

B.R.T.

CIVIL ORIGINAL

Before A. N. Grover, J.

IN re MUKTSAR ELECTRIC SUPPLY CO. LIMITED (IN LIQUIDATION) AND PETITION OF S. P. CHOPRA & CO. AND ANOTHER.

Civil Original No. 32 of 1964.

Companies Act (VII of 1913)—S. 281(2)—Companies Act (I of 1956)—S. 633(2)—Relief against a possible Criminal prosecution—Whether can be granted by High Court—Relief to the liquidator—Whether can be granted after the company has been dissolved.

1965
November, 5th

(7) A.I.R. 1962 Punj. 540.

(8) I.L.R. (1962) 2 Punj. 887=A.I.R. 1963 Punj. 214.