The Appellate Authority was not thus, from any angle, justified in reaching the conclusion that the compromise between the parties arrived at on January 7, 1964, is to be almost treated as an application for withdrawal of the appeal by the landlord. Further, even if the compromise could be treated as an application by the landlord for withdrawal of the appeal, the Appellate Authority could only take cognizance of it and proceed to act upon it if it was presented to it by the landlord and not on the fact of it having been brought to its notice by the tenant. The landlord has not taken any step to withdraw the appeal and so the Appellate Authority was wrong in dismissing his appeal. What are the consequences according to the terms of the compromise on the landlord not having withdrawn the appeal before the Appellate Authority in view of their compromise, is a matter which the parties can, if so advised, have settled in a proper forum. So the order of the Appellate Authority is set aside and the direction is that it shall re-enter the appeal of the landlord in its register of appeals and then set it down for hearing on merits at an early date. There is no order in regard to costs in this revision application.

K.S.K.

LETTERS PATENT APPEAL

Before S. B. Capoor and Shamsher Bahadur, JJ.

THE FAZILKA-DABWALI TRANSPORT COMPANY (PRIVATE) LTD., *Appellant*

versus

MADAN LAL,—*Respondent*

Letters Patent Appeal No. 301 of 1967

November 9, 1967.

Motor Vehicles Act (IV of 1939)—S. 110-D—Order passed by Single Judge of the High Court in appeal against the award of the Claims Tribunal—Letters Patent Appeal against that order—Whether competent.

Held, that a Letters Patent Appeal under clause X of the Letters Patent is not competent against the order passed by a learned Single Judge of the High Court in an appeal under section 110-D of the Motor Vehicles Act, 1939, against the award made by the Claims Tribunal under section 110-B of the said Act. The Claims Tribunal has been invested with status different from a Civil Court and

likewise the appeal to the High Court must take its colour and complexion from the original proceedings and subject to special conditions of the statute. The Claims Tribunal or the High Court do not hear the matters referred to them as established Court without more. The proceedings in appeal under section 110-D of the Act emanate with an award given by a Tribunal which has not got the appurtenances of a Court and enjoy the powers of a Civil Court to a limited and specified extent, and further, that the right of appeal can be exercised only in respect of awards giving compensation exceeding Rs. 2,000.

Letters Patent Appeal under Clause X of the Letters Patent against the order of the Hon'ble Mr. Justice D. K. Mahajan, passed in F.A.O. Nos. 70 *and* 141 *of* 1965, *dated the* 11*th April,* 1967.

B. R. Tuli, Senior Advocate with S. K. Aggarwal and N. L. Dhingra Advocates for the Appellants.

N. N. Goswami and R. M. Suri, Advocates, for the Respondent.

ORDER

Shamsher Bahadur, J.—In this appeal under Clause 10 of the Letters Patent, a preliminary objection has been raised that such an appeal does not lie from the order of the learned Single Judge (D. K. Mahajan, J.) who on 11th of April, 1967, partially allowed the appeal preferred from the order of Shri Gyani as a Claims Tribunal constituted under the provisions of the Motor Vehicles Act, 1939.

A transport vehicle carrying passengers and belonging to the appellant, the Fazilka—Dabwali Transport Company (Private) Limited, struck two boys, Pardeep Kumar and Devinder Singh, riding on a bicycle on 27th April, 1962. One of the two boys, Pardeep Kumar, received serious injuries resulting in amputation of one leg and damage to the foot of the other side. The father of Pardeep Kumar claimed a sum of Rs. 25,000 and the Motor Accidents Claims Tribunal allowed damages to him to the extent of Rs. 7,000. Devinder Singh was awarded a sum of only Rs 700. These damages were payable by the appellant, which is the owner of the vehicle. The owner preferred an appeal to the High Court which was heard by Mahajan, J., on 11th of April, 1967. The amount of compensation awarded to Pardeep Kumar was enhanced from Rs. 7,000 to Rs. 12,000. Against this order of the learned Single Judge, the Fazilka—Dabwali Transport Company has preferred this appeal and a preliminary

objection has been taken by the respondent Madan Lal, father of Pardeep Kumar, that no such appeal lies under Clause 10 of the Letters Patent.

The preliminary objection on which this appeal is being dismissed has been argued with ability both by Mr. Goswami, who has raised it and Mr. Tuli who contends that the appeal is maintainable. The arguments addressed by the counsel are the result of considerable labour and industry. It is pointed out by Mr. Goswami that the Motor Vehicles Act, 1939, (hereinafter called the Act) was extensively amended by the Central Act 100 of 1956 to bring about speedy adjudication of claims for compensation by the Claims Tribunal constituted under this Act to deal with accident claims. Section 110 empowers the State Government to constitute one or more Motor Accidents Claims Tribunals "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". No person is qualified for appointment to the Claims Tribunal under sub-section (3) unless he "is or has been" either a High Court or a District Judge "or is qualified for appointment as a Judge of the High Court". It is emphasised that section 110-B of the Act empowers the Claims Tribunal, after giving the parties an opportunity of being heard, "to hold an inquiry into the claim" and to "make an *award* determining the amount of compensation which appears to it to be just". The Claims Tribunal, under sub-section (1) of section 110-C of the Act has to follow "such summary procedure as it thinks fit" and under sub-section (2) the 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." The Claims Tribunal further "shall be deemed to be a Civil Court." Under sub-section (3) of section 110-C, the 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."

Section 110-D refers to the right of appeal and a person "aggrieved by an award of a Claim Tribunal may, within ninety days from the date of the award, prefer an appeal to the High

Court". Sub-section (2) of section 110 D says that "no appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees". The jurisdiction of Civil Courts is specifically ousted under section 110 F which says that:—

> "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."

I will pause for a moment to point out what Mr. Goswami has very strongly emphasised that the Claims Tribunal is separate and distinguishable from a Civil Court following its own rules of summary procedure and assimilates the provisions of the Code of Civil Procedure only to a limited and specified extent. It is contended that the word "adjudication" on which Mr. Tuli has placed considerable reliance, does not denigrate from the essential attribute of arbitration imparted to the Tribunal by the repeated use of the word "award". By way of analogy Mr .Goswami submits that the Land Acquisition Act likewise invests the District Judges who give awards of compensation after a full investigation of the matters pressed before them by the claimants and the Collector. The adjudication done by the Claims Tribunal is not dissimilar, in the submission of Mr. Goswami, to the task of the District Judge before whom a reference is made under section 18 of the Land Acquisition Act and the provisions of the Code of Civil Procedure are made applicable under section 14 of this Act to the same extent as in the case of a Tribunal under section 110-C (2) of the Act.

In the submission of Mr. Goswami, the right of appeal is limited in scope in view of the statutory bounds provided in the two sub-sections of section 110-D. In the first place, it is submitted that the proceeding under the Act at its inception is an arbitration proceeding before a Claims Tribunal which is a *persona designata* and though the appeal lies to the High Court under sub-section (1) the character of arbitration cannot suffer or change thereby and the appeal to the High Court is in substance

also to a *persona designata* and secondly, the right of a appeal can be exercised only if the award is for an amount exceeding Rs. 2,000. So far as the first submission is concerned, it is supported by the authority of Mehar Singh, J., (as the Chief Justice then was) in *Harbans Singh* v. *Atma Singh* (1), in which the learned Judge after a discussion of authorities reached the conclusion that "the Claims Tribunal appointed under section 110 of the Motor Vehicles Act is a *persona designata* and is not a Court."

Mr. Goswami next proceeds to argue that Clause 10 of the Letters Patent which provides for an appeal before a Division Bench of the Court from a judgment, decree or order made by a Single Judge, does not envisage an award which essentially the order of the Single Judge is. If the Tribunal's decision is an award, the nature of the decision of the learned Single Judge in appeal would also be of the same description. Mr. Goswami has pressed before us that the award given by the Tribunal is hardly distinguishable from an award of a District Judge given on a reference under the Land Acquisition Act and the right of appeal to the High Court in both cases conferred by the respective statutes is almost identical. The basic decision in the case of an award under the Land Acquisition Act is that of the Privy Council in *Rangoon Botatoung Company Ltd.* v. *The Collector, Rangoon* (2). There, the question arose whether an appeal to the Privy Council lay from an order of the High Court passed in Land Acquisition proceedings, this not being a judgment, decree or order of a Court. Lord Macnaghten, speaking for the Board, said that "no appeal lies to His Majesty in Council from a decision of the Chief Court of Lower Burma on a reference to that Court by the Collector of Rangoon, in proceedings under the Land Acquisition Act (1 of 1894) on an award made by him as to the value of land acquired." It was further observed that "a right of appeal must be given by express enactment, and cannot be implied." This decision was approved by the Supreme Court in *Hanskumar Kishanchand* v. *The Union of India* (3). In the case

(1) 1966 P.L.R. 371.
(2) I.L.R. 40 Cal. 21.
(3) 1959 S.C.R. 1177.

before the Supreme Court, an appeal had been decided by the High Court under section 19(1)(f) of the Defence of India Act from an award made under section 19(1)(b) of that Act and it was held that the proceedings under these provisions of the Defence of India Act were essentially arbitration proceedings and as such the decision of the High Court could not be a judgment, decree or order either under the Code of Civil Procedure or under clause 29 of the Letters Patent of the Nagpur High Court, the relevant words of which, for all practical purposes, are the same as in clause 10 of the Letters Patent of the Lahore High Court. Mr. Justice Venkatarama Aiyar, as the spokesman of the Court, said that:—

> "There is a well-recognised distinction between a decision given by the Court in a case which it hears on merits and one given by it in a proceeding for the filing of an award. The former is a judgment, decree or order of the Court appealable under the general law while the latter is an adjudication of a private individual with the sanction of the Court stamped on it and where it does not exceed terms of the reference, it is final and not appealable."

In the Supreme Court case it was further pointed out that there was no "difference in law between an arbitration by agreement of parties and one under a statute. A reference to arbitration under a statute to a court may be to it either as a Court or as an arbitrator. If it is to it as a Court, the decision is a judgment, decree or order appealable under the ordinary law unless the statute provides otherwise, while in the latter case the Court functions as a *persona designata* and its decision is an award not appealable under the ordinary law but only under the statute and to the extent provided by it". As pointed out by Mr. Justice Venkatarama Aiyar, "an appeal being essentially a continuation of the original proceedings, what was at its inception an arbitration proceeding must retain its character as an arbitration proceeding even where the statute provides for an appeal."

Mr. Goswami rightly seeks support from the Supreme Court decision for his contention that the right of appeal is conferred by statute and is not a right which is given to the High Court under the general law. Neither the Tribunal nor consequently the High Court is strictly speaking a Court, indeed, the phraseology employed in section 110-C itself is indicative of that intendment. The

Claims Tribunal in holding an inquiry has been given certain powers of a Civil Court for certain specified purposes. Obviously, the Tribunal cannot be regarded as a Court, strictly speaking, and the employment of the word "award" gives a complexion of arbitration to its proceedings. Naturally, it cannot be said that a right of appeal under Clause 10 of the Letters Patent is to be inferred; it must be so specifically granted. Mr. Goswami further submits that the award of a tribunal cannot be a judgment under sub-section (9) of section 2 of the Code of Civil Procedure which defines this word to mean "the statement given by the Judge of the grounds of a decree or order", the Judge being defined in the earlier sub-section (8) to mean "the presiding officer of a Civil Court."

Mr. Tuli has argued that the award given by a Tribunal, though not a judgment, is still an order which is appealable as such under the general law. In support, he has relied on two judgments, one of the Privy Council and the other of the House of Lords. The Privy Council decision, *Secretary of State for India* v. *Chellinkani Rama Rao* (4), related to a case where an appeal to the District Judge was provided against the decision of the Forest Settlement Officer on the objections raised by the person whose rights were affected. The Privy Council repelled the argument that the decision of the District Judge was unappealable. Lord Shaw, delivering the judgment of the Board, in distinguishing the *Rangoon Botatoung Company's case,* cited in support of this proposition, observed thus:—

> "The claim was the assertion of a legal right to possession of and property in land; and if the ordinary Courts of the country are seized of a dispute of that character, it would require, in the opinion of the Board, a specific limitation to exclude the ordinary incidents of litigation."

In the opinion of Lord Shaw, the principle in *Rangoon Botatoung Company's* case was not applicable as there the proceedings "from beginning to end ostensibly and actually were arbitration proceedings. In view of the nature of the question to be tried, and the provisions of the particular statute, it was held that there was no right to carry an award made in an arbitration as to the value of

(4) I.L.R. 39 Mad. 617.

land further than to the Courts specifically set up by the statute for the determination of that value". The line of distinction between the two cases is clear and distinct. In the *Madras* case the Settlement Officer had to decide certain questions about certain property rights and an appeal has been provided to the District Judge. It was held that an appeal to the District Court was under the general law and although the statute was silent, the right of further appeal in Lord Shaw's view should be inferred. On the other hand, in the *Rangoon* case, the proceedings were regarded in the nature of arbitration proceedings and consequently the powers could not be carried beyond what was actually provided in the statute.

The decision of the House of Lords in *National Telephone Company* v. *His Majesty's Postmaster-General* (5), related to a matter on which an appeal had been provided by the Railway and Canal Traffic Act, 1888, from the Railway and Canal Commission to the Court of Appeal. As in the Privy Council case, it was held that the Court of Appeal, which was named as the appellate Court acted not as an arbitrator but as a Court of Appeal, and consequently, a further appeal on a question of law lay to the House of Lords. Lord Haldane, Lord Chancellor, made this important observation at page 552 in an oft-quoted passage which was later cited in a Supreme Court decision, to which I would shortly advert :—

> "When a question is stated to be referred to an established Court without more it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

The thread of reasoning in both those English decisions is that where a statute confers the right of hearing to an established Court, then the ordinary incidents of procedure with regard to appeal would be applicable. Can it be said in the present instance that the Claims Tribunal or the High Court heard the matters referred to them as established Court without more ? I think the answer to this question would be in the negative considering the setting and background of sections 110-B to 110-F of the Act. The Claims Tribunal has been

(5) 1913 A. C. 546.

invested with status different from a Civil Court and likewise the appeal to the High Court must take its colour and complexion from the original proceedings and subject to special conditions of the statute.

This brings me to a consideration of another Supreme Court decision in which the two English decisions have been followed in proceedings under the Trade Marks Act, *National Sewing Thread Co. Ltd.* v. *James Chadwick & Bros. Ltd.* (6). In order to appreciate the import of this decision, it is essential to observe that under sub-section (1) of section 76 of the Trade Marks Act, 1940, which was applicable to the dispute at the relevant time "an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar or Deputy Registrar under this Act or the rules made thereunder to the High Court having jurisdiction". The Supreme Court construed this provision to mean that the jurisdiction had been invested in the High Court as an established Court with all the incidents attached thereto. Chief Justice, Mahajan at page 1034 observed:—

> "....the High Court being seized as such of the appellate jurisdiction conferred by section 76 it has to exercise that 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."

As observed by the learned Chief Justice, "the Trade Marks Act has not created any special forum for the hearing of an appeal as had been created by the Sea Customs Act." The Sea Customs Act had given rise to a Privy Council decision in *Secretary of State* v. *Mask and Co.* (7), which had taken the opposite view. In the words of the Chief Justice:—

> "On the other hand, the Trade Marks Act has conferred appellate jurisdiction on an established court of law. Further, the Sea Customs Act had made the order of the Collector

(6) 1953 S.C.R. 1028.
(7) 67 I.A. 222.

passed on an appeal final. There is no such provision in the Trade Marks Act. It has only declared that an appeal shall lie to the High Court from the order of the Registrar and has said nothing more about it."

In examining the right which has been conferred on High Court under sub-section (1) of section 110-D of the Act, we have to see that the proceedings emanate with an award given by a Tribunal which has not got the appurtenances of a Court and enjoy the powers of a Civil Court to a limited and specified extent, and further, that the right of appeal can be exercised only in respect of awards giving compensation exceeding Rs. 2,000. In the words of Lord Haldane in *National Telephone Company's* case the matter has not been referred to an establish Court "without more" and the principle of the *Rangoon Botatoung Company's* case, in our opinion is attracted.

Adverting once again to the decision of the Supreme Court in *Hanskumar Kishanchand* v. *The Union of India* (3), it may be mentioned that Venkatarama Aiyer, J., had closely examined and analysed the decision in *Chellikani Rama Rao's* case and *National Telephone Company's* case and laid down the distinction between the reasoning of these cases and the one adopted in *Rangoon Botatoung Company's case.* The conclusion reached at page 1190, was that "a proceeding which is at the inception an arbitration proceeding must retain its character as arbitration, even when it is taken up in appeal, where that is provided by the statute". Their Lordships of the Supreme Court were dealing with a case in which compensation had been awarded in respect of premises requisitioned under the provisions of the Defence of India Act, and it was observed that while in one set of cases questions of money compensation arose, in the other (as in the Madras case) some vital questions involving the rights of property were involved.

The same distinction has been brought out in another Privy Council decision in *Hem Singh and others* v. *Basant Das and another* (8), cited in support of his contention by Mr. Tuli. Two separate appeals were preferred from two decrees of the Lahore High Court which reversed the decision of the Sikh Gurdwaras Tribunal constituted under the Sikh Gurdwaras Act, 1925. A Tribunal is constituted

(8) A.I.R. 1936 P.C. 93.

under section 12 of that Act for the purposes of adjudication upon certain specified matters in the Act and it is presided over by a person who is or has been a Judge of the High Court. An appeal from the decision of the Tribunal lies before a Division Bench of the High Court. The matters adjudicated upon broadly speaking, relate to the properties attached to the Sikh Gurdwaras or a declaration whether a certain institution notified as such is in fact a Sikh Gurdwara or not and further whether an institution not notified as Sikh Gurdwara should in fact be declared to be a Sikh Gurdwara. In an objection taken before the Privy Council about the competency of the appeals, it was pointed out that "the questions which may come for decision before a tribunal under the Sikh Gurdwaras Act include questions which in substance concern the nature of the trusts under which the endowments of certain religious institutions are held. They also include questions of compensation for loss of office and questions as regards claims to property in respect of which the tribunal's powers are not limited by any provisions as to value." Consequently, the Privy Council, ranking the matter before them in the same category as in *Chellikani Rama Rao's* case as opposed to *Rangoon Botatoung Company's* case, came to the view that "the provisions of the Code of Civil Procedure with reference to appeals to His Majesty apply to decrees of the High Court made under section 34 of the Sikh Gurdwaras Act" and the preliminary objection was overruled.

Mr. Tuli has further relied on a Supreme Court decision in *South Asia Industries (P) Ltd.* v. *S. B. Sarup Singh and others* (9), where it was observed that if a statute gives right of appeal from an order of a tribunal or a Court to the High Court without any limitation thereon, the appeal to the High Court would be regulated by the practice and procedure obtaining in the High Court, including the right of Letters Patent appeal. This judgment, though it refers to the Supreme Court decision in *National Sewing Thread Company's case* (6), makes no mention of the decision of the same Court in *Hanskumar Kishanchand's* case. The principle of law applicable in the present case, in our opinion is the one which was enunciated by Venkatarama Aiyar, J., in *Hanskumar Kishanchand's case.*

Yet another decision on which Mr. Tuli relies is of *Secretary of State* v. *Hindustan Co-operative Insurance Society Ltd.*, (10). The

(9) A.I.R. 1965 S.C. 1442.
(10) A.I.R. 1931 P.C. 149.

matter in dispute in that case initiated with the decision of a Tribunal under the Calcutta Improvement Act, 1911, which created a Tribunal for determining the amount of compensation payable on acquisition of land. A provision was made for an appeal in certain cases from the decision of the Tribunal to the Calcutta High Court. The point that arose for determination was whether the decision given by the High Court in appeal under the provision was open to further appeal to the Privy Council. Sir George Lowndes, speaking for the Board, observed that "even if the award of the Tribunal under Calcutta Improvement Act were deemed to be a decree, that would not of itself be sufficient to give a right of appeal to His Majesty in Council. To come within the purview of Clauses 16 and 39, Letters Patent, it must be a decree of a Court subject to the superintendence of the High Court, and it is at least doubtful whether the Tribunal is such a Court". Mr. Tuli specially relied on a provision of the Calcutta Improvement Act that subject to the appeal to the High Court the award would be final. It is his submission that such words not occurring in the Act itself, finality did not attach to the order of the learned Single Judge. Now, it is important to note that this very case was relied upon by Mr. Justice Venkatarama Aiyar in support of the conclusion which was reached by the Supreme Court in that case, and indeed the Privy Council itself dismissed the appeals from the decree of the High Court as incompetent.

A Division Bench authority of Chief Justice Bhandari and G. D. Khosla, J., in *Gopal Singh* v. *The Punjab State and others* (11), cited by Mr. Goswami, remains to be considered. In this case an award was given by a Commissioner appointed under the Workmen's Compensation Act, 1923, section 30 of which provides that an appeal shall lie to the High Court from certain specified orders of a Commissioner. A claim can be made against his employer by a workman under this Act in respect of a personal injury sustained by him in an accident arising out of and in the course of his employment. The claim for compensation which is to be fixed in accordance with the principles of the Act, lies before the Commissioner who in this state is usually an officer of the Subordinate Judiciary. From the order of the Commissioner an appeal was preferred which was disposed of by Kapur, J., and in the Letters Patent appeal an objection was taken that the decision of the Commissioner is in reality an award and not a judgment under clause 10 of the Letters Patent. The preliminary objection was sustained by the Division Bench which relied for support

(11) I.L.R. 1957 Punj. 615.

on the Privy Council decision of *Rangoon Botatoung Company's* case. Mr. Tuli submits, however, that the proceedings before the Commissioner under the Workmen's Compensation Act are truly arbitration proceedings as the words 'settled' and 'referred' are employed in sections 19 and 20. It is, however, important to note that in sub-section (2) of section 19, by which the jurisdiction of the Civil Court is barred, the following language is used:—

> "No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner..".

The word "settled" is used in juxtaposition with "decided" or "dealt" and the argument of Mr. Tuli that this word implies arbitration proceedings is of no avail. Truly, the proceedings under the Act and the Workmen's Compensation Act, like those under the Land Acquisition Act, are akin and alike and the line of distinction between such cases and those under the Trade Marks Act or the Madras Forest Act or the Sikh Gurdwaras Act, is well-marked and clear. The former class of cases dealt with awards of compensation given by special tribunals under special procedures and the right of appeal given to Civil Courts is to be strictly construed.

On a review of the decisions which have been discussed in detail, we are of the opinion that an appeal under Clause 10 of the Letters Patent is not competent and it is accordingly dismissed. In the circumstances, we would make no order as to costs.

CAPOOR, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

M/S CHUNI LAL-TILAK RAJ,—*Petitioner*

versus

THE ESTATE OFFICER,—*Respondent*

Civil Writ No. 2222 of 1966

November 15, 1967

Punjab Land Revenue Act (XVII of 1887)—Ss. 76 and 98—Land Revenue Rules—Rule 43—Code of Civil Procedure (V of 1908)—Order XXI Rule 35—Property of defaulter auctioned for recovery of loans by Estate Officer—Property