Before S. S. Sandhawalia, C.J. & S. P. Goyal, J.

SHILA WANTI and others,—*Appellants.*

versus

R. B. KISHORE CHAND and others,—*Respondents.*

Letters Patent Appeal No. 328 *of* 1977.

March 21, 1983.

Code of Civil Procedure (V of 1908)—Order 22—Limitation Act (XXXVI of 1963)—Article 120—First appeal in motor accidents case pending in High Court—Claim petition filed against Hindu Joint Family Firm and the Karta—Such Karta dying during the pendency of the appeal—Legal representative not brought on record within time stipulated by Article 120—Appeal in High Court—Whether to be dismissed as having abated—Proceedings under the Motor Vehicles Act—Whether can be described as a civil proceeding so as to attract the provisions of Order 22.

Held, that the provisions of the Code of Civil Procedure as such are not applicable though its principles are often resorted to in regulating the proceedings of the Tribunal set up under the Motor Vehicles Act. Consequently, even though the Tribunal would be entitled to implead the legal representatives of the deceased claimant or of the owner or the driver but it cannot be said that an application to bring on record the legal representatives would be the one filed under the Code of Civil Procedure. The appeal being a re-hearing of the claim and continuation of the original proceedings, the procedural limitations on the powers of the appellate Court would be co-extensive with those of the Tribunal. The moment it is held that the application for bringing on record the legal representatives of the deceased owner in appeal is not an application under the Code of Civil Procedure, Article 120 would not govern the same. The matter can be looked at from another point of view also. Rule 10, Order 30 of the Code of Civil Procedure, provides that a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and in so far as the nature of the case permits, all rules under Order 30 shall apply accordingly. Rule 4 of Order 30, Civil Procedure Code, provides that notwithstanding anything contained in section 45 of the Indian Contract Act, 1972, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such person dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased as a party to the suit. In view of the provisions of Rule 4 aforesaid, on the death of the Karta, it was not necessary to bring on record his legal representatives because the joint Hindu family concern continues to be a party in spite of the death of the Karta. As such, the appeal could not be said to have abated and dismissed on that score.

(Paras 6 and 7).

Letters Patent Appeal Under Clause X of the Letters Patent against the judgment dated 3rd June, 1977 passed by Hon'ble Mr. Justice Gurnam Singh in F.A.O. 10 of 1972 affirming that of Shri Surinder Singh Motor Accident Claims Tribunal, Amritsar, dated 19th November, 1971, dismissing the claim application, with no order as to costs.

Harinder Singh, Advocate with S. K. Taunque and R. K. Garg, Advocates, *for the appellant.*

M. S. Rakkar with J. R. Mittal, for Nos. 1 and 2, *for the Respondent.*

V. P. Gandhi, for National Insurance Company.

JUDGMENT

S. P. Goyal, J.—

(1) This appeal under clause 10 of the Letters Patent has been brought against the judgment of the learned Single Judge, dated June 3, 1977, whereby the appeal of the claimants was dimissed as having abated.

(2) Gian Chand Joshi, a clerk in the Railway Workshop Accounts Office, Amritsar, was run over by truck No. PNO 3442, and died on May 11, 1969. His widow, three minor children, appellants and two major children respondents No. 5 and 6, filed this petition before the Tribunal alleging that the death of Gian Chand was caused by rash and negligent driving of the truck by Narain Singh, driver, and claimed Rs. 1,70,418.40 as compensation. Messrs Rai Bahadur Kishore Chand and Sons, a joint Hindu family concern, and Rai Bahadur Kishore Chand were named in the petition as owners and the Calcutta Insurance Co. Ltd., the insurer of the truck.

(3) Respondent Narain Singh, driver of the truck did not appear in spite of service and was proceeded *ex parte*. The other three respondents opposed the petition and denied their liability. The Tribunals after recording evidence of the parties dismissed the petition against respondents No. 1, 2 and 3 as barred by time as they had been impleaded as parties after the expiry of the period for filing the claim-petition and against respondent No. 1 on the finding that neither he was employee of respondent No. 1 nor was driving the truck at the relevant time. On the question of compensation it was held that the deceased was equally negligent with the driver and that the pecuniary loss to the claimants was to the tune of

Rs. 49,163. However, after making deduction on account of contributory negligence and other matters, the claimants were ultimately held entitled only to Rs. 1,790.

(4) Against the said award of the Tribunal four claimants came up in appeal to this Court. During the pendency of the case, Rai Bahadur Kishore Chand died on January 22, 1975 but the application to bring on record his successor, Partap Chand, was filed sometime after February 24, 1977, when this matter was brought to the notice of the learned counsel for the appellants. It was declined as barred by time holding that the claim proceedings were in the nature of a civil suit; that the Tribunal was a civil Court for all intents and purposes and that the application for impleading the legal representatives would be governed by Article 120 of the Limitation Act. In the result, the appeal itself was dismissed against all the respondents having abated,—*vide* judgment, dated June 3, 1977. Hence this appeal.

(5) There can be no manner of doubt that the proceedings before the Claims Tribunal closely resemble to the proceedings in a Civil Court and as held by their Lordships of the Supreme Court in *Thakur Jugal Kishore Sinha* v. *The Sitamarhi Central Co-operative Bank and another*, (1) the Tribunal is for all intents and purposes a Civil Court discharging the same functions and duties in the same manner as civil court is expected to do. Again it was authoritatively settled by a Full Bench of this Court in *Shanti Devi and others* v. *The General Manager, Haryana Roadways and others*, (2), that the High Court hearing appeals against the award of the Tribunal acts as a court and that the claims proceedings even if at inception have resemblance to arbitration proceedings, do not retain this character as such in appeal. All the same, question still arises whether on the basis of the said pronouncements it can be said that the application for bringing the legal representatives of deceased respondent on record in the appeal against the award of the Tribunal would be governed by Article 120 of the Limitation Act. The said article provides a limitation of 90 days for an application under the Code of Civil Procedure to have the legal representatives of deceased plaintiff or appellant or deceased defendant or respondent made a party. This article obviously applies only to the applications which are filed under Order 22 of the Code of Civil Procedure. The

(1) AIR 1967 S.C. 1494.
(2) 1971 A.C.J. 247.

solution of the problem, therefore, depends on the answer to the question as to whether the application filed in the appeal could be said to be an application under the Code of Civil Procedure or in other words, whether the provisions of Order 22 are applicable to the proceedings before the Tribunal or to the appeal in the High Court. We need not, however, dilate on this matter because the Full Bench of this Court in *Ram Kala* v. *The Assistant Director, Consolidation of Holdings, Punjab, Rohtak and others,* (3), has already pronounced that the provisions of Order 22, Civil Procedure Code, do not apply to the writ proceedings in the High Court although the proceedings are in the nature of civil proceedings and governed so far as the procedure is concerned by the Code of Civil Procedure. Even if the Tribunal or the High Court is held to be acting as court, from this alone it cannot be said that the application to be filed for bringing on record the legal representatives before the Tribunal or court of appeal would be an application under the Code of Civil Procedure. The provisions of the Act and the rules framed thereunder also make it abundantly clear that Order 22, Code of Civil Procedure, has not been made applicable to the proceedings before the Tribunal although the Tribunal has been invested with various other powers of the court under the Civil Procedure Code.

(6) Initially, the claims arising out of motor accidents were tried by the civil courts prior to the enactment of the Motor Vehicles (Amendment) Act, 1956. By the said amendment, the State Governments were authorised to constitute Claims Tribunal who were empowered to dispose of claims by holding an enquiry following such summary manner as it thought fit. The purpose of the amendment and the creation of the Tribunal obviously was to give speedy relief to the sufferers of the accident and to give free hand to the Tribunal to dispose of the claims speedily, its proceedings not hampered by the rigours of the procedure laid down by the Code of Civil Procedure. A similar view was expressed by a Division Bench of this Court as early as the year 1964 in *New India Assurance Co. Ltd., New Delhi and another* v. *Punjab Roadways, Ambala City and others,* (4), in the following terms:—

> "Held, that, though the various provisions contained in the Motor Vehicles Act and the Rules framed thereunder do

(3) 1977 P.L.R. 100.
(4) 1964 P.L.R. 157.

not make applicable the Code of Civil Procedure as a whole, to proceedings before a Tribunal under the Act, yet nothing in the Act prohibits resort by the Tribunal to the principles embodied in various Rules relating to the conduct of proceedings before a Civil Court. Unless there is any prohibition in the rules framed under the Act, the Tribunal is free to follow any procedure which it considers expedient to the interest of justice. Section 110-C of the Act expressly confers powers on the Tribunal to formulate its own procedure, and for the purpose of promoting the ends of justice it can well resort to all the principles of an orderly trial and for that purpose exercise the powers of allowing amendments to a petition or substitution of parties, so as to rectify a mistake or to bring on record parties which are necessary or proper.

Held, also that though Order 1, Rule 10, Civil Procedure Code does not in terms apply to the proceedings before the Tribunal, there is no prohibition in resorting to the principles contained therein, the technicalities of that rule are not to be taken note by the Tribunal and it is only the spirit that has to be applied with the object of securing the ends of justice."

The consistent view of this Court has been that the provisions of the Code of Civil Procedure as such are not applicable though its principles are often resorted to in regulating the proceedings by the Tribunal. Consequently, even though the Tribunal would be entitled to implead the legal representatives of the deceased claimant or of the owner or the driver but it cannot be said that an application to bring on record the legal representatives would be the one filed under the Code of Civil Procedure. The appeal being a re-hearing of the claim and continuation of the original proceedings, the procedural limitations on the powers of the appellate Court would be co-extensive with those of the Tribunal. The moment it is held that the application for bringing on record the legal representatives of the deceased owner in appeal is not an application under the Code of Civil Procedure, Article 120 would not govern the same. According to the rule laid down by the Full Bench in *Ram Kala's case* (supra) there would be no limitation for filing such an application but we do not propose to go into this

matter because even if it is held that such application would be governed by the residuary Article 137, the limitation would be three years and the application in the present case had been moved long before the expiry of three years.

(7) The matter can be looked at from another point of view also. Rule 10, Order 30, Civil Procedure Code, provides that a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and in so far as the nature of such case permits, all rules under Order 30 shall apply accordingly. Rule 4 of Order 30, Civil Procedure Code, provides that notwithstanding anything contained in section 45 of the Indian Contract Act, 1972, where two or more persons may sue or be sued in the name of a firm, under the foregoing provisions and any of such person dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased as a party to the suit. It is not disputed that Messrs Rai Bahadur Kishore Chand and Sons was a Joint Hindu family concern and had been sued through its Karta, Rai Bahadur Kishore Chand. In view of the said provisions of Rule 4, on the death of the Karta, it was not necessary to bring on record his legal representatives because the Joint Hindu Family concern continues to be a party in spite of the death of the Karta. So the question of the abatement of the appeal did not arise and the name of the new Karta could be impleaded as a party at any time. It is, therefore, not possible to sustain the view of the learned Single Judge that the appeal had abated on the death of Rai Bahadur Kishore Chand, the Karta of the Joint Hindu Family concern and the impugned judgment is accordingly reversed.

(8) As the learned Single Judge had not disposed of the appeal on merits, on reversal of the order of abatement, the case should go to the Single Bench for disposal on merits but as the accident in the present case took place in the year 1969, almost 14 years ago, we heard the case on merits as well.

(9) The learned counsel for the appellants, in the first instance assailed the finding of the Tribunal that the claim petition against respondents Nos. 1 and 2 the owners, was barred by time as they were impleaded as parties after the expiry of the period of limitation for filing the claim petition. It is not disputed that the application for substituting the name of the owner of the truck in column

No. 16 was filed after the expiry of the limitation for filing the claim petition which was allowed by the Tribunal,—*vide* order, dated November 20, 1969 and the amended petition was filed on November 27, 1969. However, the learned counsel urged that neither the provisions of the Act nor the Rules require the claimant to implead any one as a party in the claim petition though in columns Nos. 15 and 16, the names of the insurer and of the owner of the vehicle involved in the accident are required to be mentioned. The Tribunal, therefore, is fully competent to add or substitute the name of any person in those columns at any time to perform the duty imposed upon him by the provisions of section 110-B of the Motor Vehicles Act. The argument of the learned counsel is well-merited. As already noticed above, the proceedings before the Tribunal are of a summary nature and the rule framing authority deliberately has not provided the filing of the pleadings in conformity with the Rules of pleadings as contained in the Code of Civil Procedure. Instead a simple form has been prescribed which does not require anybody to be shown as respondent. Once the claim petition is filed, a duty is enjoined upon the Tribunal under section 110-B of the Motor Vehicles Act, to hold enquiry into it, 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 the amount which shall be paid by the insurer or the owner or driver of the vehicle or by all or any of them, as the case may be. In *New India Assurance Co., New Delhi's case* (supra) this matter was dealt with in detail and the power of the Tribunal to allow amendment to a petition or substitution of parties so as to rectify the mistake or bring on record the parties which are necessary or proper was upheld. In *Bessarlal Laxmi Chand Chirawala* v. *The Motor Accidents Claims Tribunal, Greater Bombay and others* (5), the Division Bench of the Bombay High Court went still further and for holding that it was the duty of the Tribunal itself to ascertain and bring on record the parties liable to pay compensation, observed thus:

> "The form prescribed for filing compensation application does not require that the claimant should include in the application any party as defendant. Neither the Motor Vehicles Act or the Rules framed thereunder require the claimant to mention any parties as the opposite

(5) 1970 A.C.J. 324.

parties in the title of the application. On the other hand all the relevant facts in this connection are left to be ascertained by the Claims Tribunal itself. The Tribunal has been entrusted with the duty of finding out all the parties who may be liable to pay compensation. Formal defect of failure to mention appropriate names of the parties who are liable to pay compensation to the claimant was never intended to defeat the claims filed under the Act."

Respectfully agreeing with the view expressed in the said decisions we hold that the Tribunal has enough jurisdiction to allow addition or substitution of any person in the claim petition after the expiry of the limitation for its filing and once the application of the claimants was allowed to substitute the name of the owner in column 16, the petition could not later on be dismissed as barred by time against the parties so substituted because on the date the substitution was ordered limitation for filing the claim had expired. Accordingly the finding of the Tribunal on issue No. 1, that the claim petition against respondents Nos. 1 and 2 was barred by time, is reversed.

(10) On the second issue as to whether the accident took place due to rash and negligent driving of Truck No. PNO 3442 by its driver, the Tribunal found the deceased guilty of contributory negligence and ascribed fifty-fifty negligence to him and the driver. This finding is based on a stray sentence in the statement of Durga Dass, A.W. 4 that the accident took place while Gian Chand was trying to cross the road and had covered the distance of 5/6 feet. On the basis of this fact alone we are afraid, it was not possible to hold that the deceased was guilty of contributory negligence. A perusal of the site-plan would show that the truck had hit the deceased by going on the wrong side, i.e., right half of the road which clearly negatives the theory that the deceased was guilty of contributory negligence by trying to cross the road. Accordingly the finding of the Tribunal on this issued to the extent that the deceased was guilty of contributory negligence is set aside and it is held that the accident took place entirely because of the rash and negligent driving of the truck by respondent No. 4.

(11) The next finding under challenge is that of the amount of compensation held to be payable to the claimants. The Tribunal assessed the compensation first by calculating the total amount of

the pay which was likely to be drawn by the deceased and then made certain deductions under the various heads. This method of calculation did not find favour with a recent Full Bench of this Court in *Lachman Singh and others* v. *Gurmit Kaur and others,* (6), where it was held that for the purpose of calculating the just compensation, annual dependency of the dependents should be determined in terms of the annual loss occuring to them due to the abrupt termination of life. For this purpose, annual earning of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependants will be the determining factor. This basic figure will then be multiplied by a suitable multiplier. The suitable multiplier shall be determined by taking into consideration the number of the years of dependency of the various dependants, the number of years by which the life of the deceased was cut short and the various imponderable factors such like early natural death of the deceased, his becoming incapable of supporting the dependants due to illness or any other natural handicap or calamity, the prospects of the marriage of the widow the coming up of age of the dependants and their developing independent sources of income as well as the pecuniary benefits which might accrue to the dependants on account of the death of the person concerned. Such benefits, however, should not include the amount of insurance policy of the deceased to which the dependants may become entitled on account of its maturity as a result of the death or the amount of the gratuity payable to the dependants. The amount of compensation payable, therefore, has to be assessed afresh keeping in view the principles laid down by the Full Bench.

(12) As is evident from the document 'A-1' the deceased was getting Rs. 412.25 per month as his pay and Rs. 30 per month as education assistance. His monthly total emoluments thus were Rs. 442.25. Out of this amount, he may reasonably be expected to spend Rs. 142 on his own maintenance. So the dependants were getting the benefit of Rs. 300 per month from the earning of the deceased and their annual dependancy or loss was to the tune of Rs. 3,600. The deceased at the time of his death was about 45 years old and as held in a recent Division Bench of this Court in *Asha Rani and others* v. *Union of India,* (7), in such a case sixteen would

(6) 1979 P.L.R. 1.
(7) 1982 P.L.R. 486.

be the proper multiplier to assess reasonable compensation. Thus calculated the claimants would be entitled to Rs. 57,600 by way of compensation. They shall also be entitled to 12 per cent interest on this amount from the date of the application till its realization.

(13) In view of the above discussion, this appeal is allowed, the impugned judgment of the Tribunal set aside and the award passed in favour of the appellants in the amount of Rs. 57,600 together with interest at the rate of 12 per cent per annum from the date of petition till its realization. The owners, respondents No. 1 and 2 and the driver, respondent No. 4 would be liable to pay the amount jointly and severally. However, the liability of the insurance Company would be limited to Rs. 20,000 apart from the interest at the said rate or the same amount in accordance with the law prevalent at the time of the accident. The claimants shall also be entitled to their costs throughout.

S. S. Sandhawalia, C.J.—I agree.

H.S.B.

Before S. S. Sandhawalia, C.J. & D. S. Tewatia, J.

HARJIT SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB and another,—*Respondents.*

Criminal Writ Petition No. 322 of 1982.

March 22, 1983.

Constitution of India 1950—Article 226—Writ of Habeas Corpus challenging detention admitted to a hearing—High Court—Whether can grant interim bail to the petitioner pending disposal of the writ petition.

Held, that the High Court has the jurisdiction to grant bail to a person, as an interim relief, in a writ of *habeas corpus* challenging his detention filed under Article 226 of the Constitution of India, 1950. (Para 7).

Gurmail Singh *v.* State Writ 279 of 1982 decided on 8th September, 1982—Overruled.

Case referred by Hon'ble Mr. Justice D. S. Tewatia, on September 15, 1982 to a larger bench for deciding an important question involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S Sandhawalia and Hon'ble Mr. Justice D. S. Tewatia, decided the question on March 22, 1983 and returned all the cases to a learned Single Judge for decision on merits.