under it in respect of property which is not admitted to be that of Panchayat by the defaulter. Moreover, the Panchayat cannot be allowed to be a judge in its own cause by deciding that the property which the petitioner claims to be his is in fact that of the Panchayat. If the position maintained by the Panchayat is sustained it would mean that no one can ever oppose with impunity an assertion of title in any property made by the Panchayat as against the rest of the world. It is also an illegality in the order embodied in the resolution that the petitioner has been asked to pay a recurring fine. As I am of the view that the entire proceedings of the Panchayat are void and illegal, being of a coercive nature and being in respect of property whose ownership by the Panchayat is disputed, I quash the order of the Sub-Divisional Magistrate passed under section 97 and direct that the parties should have the matter of the ownership of the land on which the *sheesham* tree was standing decided by a Court of competent jurisdiction. The petitioner cannot be made to part with the timber which he had cut by an arbitrary fiat of the Panchayat when there is a dispute about the ownership of the land on which it stood.

This petition will, therefore, be allowed and in the circumstances of the case, the petitioner will also get the costs of this petition.

R.S.

APPELLATE CIVIL

Before H. R. Khanna, J.

M/S NEW ASIATIC TRANSPORT (P) CO. LTD.,—Appellant

versus

MANOHAR LAL AND OTHERS,—*Respondents*

F.A.O. 86-D of 1964.

1965

May, 4th.

Motor Vehicles Act (IV of 1939)—Ss. 95, 110 and 110-B—Appointment of Tribunal—Whether should be of a person by name—Appointment of Judge of the Small Cause Court as tribunal—Whether legal—Award of compensation by the Tribunal—Whether can be made only against the Insurer—General Clauses Act (X of 1897)—S. 15—Effect of.

Held, that a bare perusal of section 15 of the General Clauses Act, 1897, goes to show that it is not essential to appoint any person to fill any office or execute any function by name and that the appointment can be made by virtue of office unless there be anything in a Central enactment or Regulation expressly to the contrary. There are no words expressly to the contrary in section 110 of the Motor Vehicles Act, 1939, because it is nowhere provided in that section that the person constituting the Claims Tribunal should be appointed by name and not by office. The appointment of a Judge of the Small Cause Court as the Motor Accidents Claims Tribunal is perfectly legal and valid under section 110 of the said Act, but if a Judge of the Small Cause Court be found lacking in qualifications which are mentioned by sub-section (3) of section 110 of the Act, his appointment as member of the Tribunal would be illegal and he would not be able to discharge the functions of the Claims Tribunal.

Held, that sub-section (2) of section 95 of the Motor Vehicles Act, 1939, specifies the limit of the liability of an insurer with respect to compensation payable under the Act. The object of inserting the concluding words in section 110-B is that in case the compensation awarded by the Tribunal exceeds the amount which is payable by an insurer under sub-section (2) of section 95 of the Act, the Claims Tribunal should specify and make clear the extent of the liability of the insurer. If the amount of compensation awarded is less that the amount for which the insurer is liable, the omission to specify the extent of the liability of the insurer will not make any material difference if the order indicates that the liability of the insurer is for the full amount of compensation awarded. It is also not possible to spell out an inference from the concluding words of section 110-B that in case the amount payable by the insurer is specified, the insurer alone is responsible and not the other persons against whom also the order for payment of compensation is made. It may be that in case the amount for which the insurer also is liable is recovered from the driver or the owner of the motor vehicle, they would be entitled to be indemnified and re-imbursed for that amount by the insurer, but it cannot be held that the petitioner in whose favour the order for recovery of compensation is made, can proceed for the amount in question only against the insurer and not against the driver or owner, in the course of whose employment the injuries are caused by the use of the vehicles.

First Appeal under section 110-*D of Motor Vehicles Act IV of* 1939, *from the order of Shri A. N. Aggarwal, Motor Accidents Claims Tribunal, Delhi, dated the* 26*th November,* 1963, *awarding a sum of Rs* 13,000 *to the petitioner.*

NATYA NAND DHAWAN, ADVOCATE, for the Appellant.

R. L. AGGARWAL, ADVOCATE, for the Respondents.

ORDER

KHANNA, J.—This appeal filed by New Asiatic Transport (Private) Company Limited is directed against the order of Motor Accidents Claims Tribunal, Delhi, whereby the appellant-company and respondents 2 and 3 were ordered to pay an amount of Rs. 13,000 with costs to Manohar Lal respondent No. 1 and raises interesting questions under the Motor Vehicles Act (No. IV of 1939), hereinafter referred to as the Act. One of the questions, which needs determination, is whether the Claims Tribunal in question was validly constituted under section 110 of the Act, and the other question is about the scope of section 110-A of the Act. The questions arise in the following circumstances:— Khanna, J.

The brief facts of the case are that on 14th March, 1961, Manohar Lal respondent was going while sitting on the back seat of scooter No. D.L.M. 7020 from Arya Samaj Road bus stand to Karol Bagh, Delhi. The scooter was at that time being driven by Kulwant Singh, a friend of Manohar Lal, Sohan Lal, respondent No. 2 who is in the service of the appellant Company, then came driving truck No. D.L.G. 819 in the course of employment and on the crossing of Gurdwara Road and Hardian Singh Road the truck struck against the scooter. Manohar Lal received various injuries as a result of the impact, which was due to the rash and negligent driving of the truck and became unconscious. Manohar Lal was got admitted the same day in Sir Ganga Ram Hospital and was examined by Dr. R. N. Kataria, F.R.C.S. Manohar Lal was found to have multiple bruises on the right leg, lacerated wound on the left joint eyebrow and compound and comminuted fracture of the Tibia and Fibula. He was put under plaster and it took about a year to remove the plaster finally. Despite treatment, the right lower leg of Manohar Lal was shortened by an inch and a half, and there was slight stiffness of the ankle. Manohar Lal also has started limping. Report about the occurrence was lodged by Kulwant Singh and Sohan Lal was tried in a case under sections 337 and 338, Indian Penal Code. He pleaded guilty and was, accordingly, convicted and sentenced to pay fine by Magistrate I Class, Delhi, as per judgment dated 28th January, 1962, copy of which is Exhibit A-1. Manohar Lal filed the

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present petition under section 110A of the Act on 10th October, 1961 for recovery of Rs. 58,500 as compensation from Sohan Lal and the appellant-company as also from Motor and General Insurance Company Limited respondent No. 3, with which company the truck had been insured.

The petition was resisted by the appellant and respondent No. 3, while the case proceeded *ex parte* against Sohan Lal. The appellate raised a preliminary objection that the Tribunal had not been constituted in accordance with section 110 of the Act. It was admitted that the truck belonged to the appellant-Company and had been insured with respondent No. 3. Some other allegations were also made but we are not concerned with them, and the following issues were framed by the Tribunal:—

(1) Whether this Tribunal has not been properly constituted? If so, what is its effect?

(2) Whether this application is barred by limitation ?

(3) Whether the petitioner received injuries on 14th August, 1961 at about 9 a.m. on the crossing of Gurdwara Road and Hardian Singh Road due to the rash and negligent driving of truck No. D.L.G. 819 ?

(4) To what amount of compensation the petitioner is entitled to and from whom ?

(5) Whether the driver of truck No. D.L.G. 819 was not driving the truck under a valid licence, and during the course of his employment ?

Issues Nos. 1, 2, 3 and 5 were decided in favour of Manohar Lal respondent, and against the appellant and the Insurance Company. On issue No. 4 the finding was that Manohar Lal was entitled to Rs. 200 on account of medical treatment, nursing and special diet, Rs. 3,000 on account of loss of income during the period of confinement in bed, another Rs. 5,000 on account of loss of prospective income and Rs. 5,000 on account of the suffering undergone by him as well as the permanent disability, discomfort and loss of enjoyment of life. The appellant and respondents 2 and 3 were, accordingly, ordered to pay Rs. 13,000 to Manohar Lal with costs.

In appeal the first contention, which has been raised by Mr. Dhawan on behalf of the appellant-Company is that though there was a validly constituted Motor Accidents Claims Tribunal from 28th August, 1962 onwards, before that date the Tribunal had not been properly appointed and as such the proceedings taken in the petition under section 110-A of the Act filed by Manohar Lal respondent before 28th August, 1962 were null and void. To appreciate this contention, it would be necessary to refer to the relevant provisions of law and the notifications on the subject. Section 110 of the Act deals with the constitution of the Claims Tribunals and reads as under :—

"(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 notifications 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.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) 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 High Court; or

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

(c) is qualified for appointment as a Judge of the High Court.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them."

The following notification dated 25th October, 1957 appointing the Judge, Small Causes Court, Delhi, as Motor Accidents Claims Tribunal for the Union Territory of Delhi

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was issued and published in the Delhi Gazette, dated November 7, 1957 :—

"No. F. 12(67)/57 M & PH/Home. In exercise of the powers conferred on him by sub-section (1) of section 110 of the Motor Vehicles Act, 1939, the Chief Commissioner, Delhi is pleased to appoint the Judge Small Causes Court, Delhi as Motor Accidents Claims Tribunal for the Union Territory of Delhi 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.

By order,
(Sd.). . . .,
HANS RAJ,

Secretary (Law & Judicial) Delhi, Administration, Delhi."

The Judge, Small Causes Court, Delhi, continued to work as Tribunal till 28th August, 1962, when Shri Tilak Raj, Handa, Subordinate Judge I Class, Delhi, was appointed the Tribunal for the Union Territory of Delhi as per following notification dated 28th August, 1962 published in the Delhi Gazette dated 6th September, 1962 :—

"F. 12/197/62PR (T).—In exercise of the powers conferred on him by sub-section (1) of section 110 of the Motor Vehicles Act, 1939, and in supersession of his notification No. F. 12(67)/57 M & PH/Home, dated the 25th October, 1957, the Chief Commissioner Delhi is pleased to appoint Shri Tilak Raj Handa, Sub-Judge, 1st Class, Delhi, as Motor Accidents Claims Tribunal for the Union Territory of Delhi 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.

By order,
(Sd.). . . .,
K. M. L. GUPTA,
Under-Secretary, (Transport)
Delhi Administration, Delhi.

It is not disputed that after Shri Tilak Raj Handa, Shri Amar Nath Aggarwal, Subordinate Judge, was appointed the Claims Tribunal for the Union Territory of Delhi on 31st October, 1962 and it was Shri Amar Nath Aggarwal, who, as the Tribunal, decided the petition. The contention of Mr. Dhawan is that as sub-section (3) of section 110 contemplates that the person appointed as a member of the Claims Tribunal should hold one of the three qualifications mentioned in sub-section (3), the appointment of a person as a one-man member of the Tribunal should be by name and not by designation as before 28th August, 1962 the notification was about the Judge of the Small Causes Court as constituting the Tribunal and no one had been appointed by name the Tribunal cannot be deemed to have been validly constituted before 28th August, 1962. Reliance in this connection is placed upon the case *Aurangabad Mills Limited* v. *Industrial Court* (1), wherein a Division Bench of the Hyderabad High Court, held that a person by name and not by office should be appointed as the sole member of the Industrial Court under the Hyderabad Trade Disputes Order. It was further held that where the Sessions Judge of a particular place was appointed by office an Industrial Court and upon his transfer no fresh appointment of the successor Sessions Judge was made to Industrial Court, the successor Sessions Judge had no jurisdiction to decide the dispute.

I have given the matter my consideration and am of the view that there is no force in the contention advanced on behalf of the appellant that there was no valid Motor Accidents Claims Tribunal for Delhi before 28th August, 1962. The Motor Vehicles Act is admittedly a Central Act. Section 15 of the General Clauses Act, 1897 (Act X of 97) reads as under :—

> "15. Power to appoint to include power to appoint *ex-officio*.
>
> Where, by any Central Act or Regulation, power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office."

(1) A.I.R. 1952 Hyd. 144.

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Bare perusal of the above provision of law goes to show that it is not essential to appoint any person to fill say office or execute any function by name and that the appointment can be made by virtue of office unless there by anything in a Central enactment or Regulation expressly to the contrary. There are no words expressly to the contrary in section 110 of the Act because it is nowhere provided in that section that the person constituting the Claims Tribunal should be appointed by name and not by office. *In re*: *Palanisamy Chettiar* (2), decided by a Division Bench (Somasundaram and Ramaswami Gounder, JJ), question arose about the validity of the appointment of District Magistrates as Assistant Sessions Judges. The appointment of the District Magistrates as Assistant Sessions Judge being made not by name but by designation. Repelling the contention that the appointment should have been by name and not by designation, it was observed.

> "It is true that, by that notification, the District Magistrate is appointed as an Assistant Sessions Judge, not by name, but by his designation. We fail to see why the authority competent to make an appointment should not make it by designation, instead of referring to the officer by name. That it is permissible is apparent from two decisions which were brought to our notice during the discussion, namely, *Alaga Phillai*, v. *Emperor* (3), and *In re, Shaik Silar* (4). In fact, section 15 of the General Clauses Act makes it clear that where by any Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, any such appointment may be made either by name or by virtue of office. That is exactly what has been done in the present case, namely, to appoint District Magistrates, by virtue of office, as Assistant Sessions Judges."

In *Public Prosecutor* v. *Narkidimilli Srirambhadrayya and others* (5), it was held, after referring to section 15 of the General Clauses Act, that Sanitary Inspectors can be

(2) A.I.R. 1957 Mad. 351.
(3) A.I.R. 1924 Mad. 256.
(4) A.I.R. 1941 Mad. 681.
(5) A.I.R. 1960 And. Prd. 282.

appointed by virtue of their office as Food Inspectors and that it was not necessary that the appointment should be by name. A similar view, was taken by a Division Bench of Mysore High Court in *The State of Mysore* v. *Danjaya* (6).

So far as the case of *Aurangabad Mills Limited*, relied upon by the appellant, is concerned, I find that in that case reliance was placed upon section 7 of the Indian Industrial Disputes Act, 1947. According to Rule 5 of the Industrial Disputes (Central) Rules, 1957, the appointment of a Board, Court, Labour Court, Tribunal or National Tribunal has to be notified in the official Gazette together with the names of the persons constituting the Board, Court, Labour Court, Tribunal or National Tribunal. I thus find that though the law makes it imperative to specify the names of the members constituting Industrial Tribunal or Court, there is no such requirement in the case of the Claims Tribunal appointed under the Motor Vehicles Act. In the circumstances, the appellant can derive no assistance from *Aurangabad Mills Limited* case (supra). It is no doubt true that if a Judge of the Small Causes Court be found lacking in qualifications which are mentioned by sub-section (3) of section 110 of the Act, his appointment as member of the Tribunal would be illegal and he would not be able to discharge the functions of the Claims Tribunal but such a contingency has not arisen, because it is not the case of the appellant that the successive Judges of the Small Causes Court, who also acted as members of the Tribunal, were lacking in the qualifications contemplated by sub-section (3) of section 110 of the Act.

The second contention advanced on behalf of the appellant relates to the interpretation of section 110-B of the Act which reads as under :—

> "110-B. Award of the Claims Tribunal—On receipt of an application for compensation made under section 110-A the Claims Tribunal shall, after giving the parties on opportunity 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

(6) A.I.R. 1963 Mys. 157.

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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."

It is argued by Mr. Dhawan on behalf of the appellant that the concluding words of the section, according to which the Claims Tribunal has to specify the amount to be paid by the insurer, tend to show that the liability in respect of that amount is only of the insurer and that the driver of the motor vehicle or the owner of the vehicle in the course of whose employment the driver caused injuries to the persons making the claim are not liable. This contention too is devoid of force. Sub-section (2) of section 95 of the Act specifies the limit of the liability of an insurer with respect to compensation payable under the Act. According to it if the vehicle in question is a goods vehicle the limit is Rs. 20,000. The object of inserting the concluding words in section 110-B, in my opinion, was that in case the compensation awarded by the Tribunal exceeded the amount which is payable by an insurer under sub-section (2) of section 95 of the Act, in such a case the Claims Tribunal should specify and make clear the extent of the liability of the insurer. For example, where compensation for an amount of Rs. 50,000 is awarded by a Tribunal in respect of injuries caused while driving a goods vehicle, the Claims Tribunal would have to specify the amount payable by the insurer to be Rs. 20,000 only, because that is the maximum amount for which an insurer can be held liable for a goods vehicle. If, however, the compensation awarded is Rs. 20,000 or less than Rs. 20,000 and the order for payment of compensation is, as in the present case, against the driver and owner of the vehicle as also against the insurer, in such an event the omission to specify the extent of the liability of the insurer would not make any material difference. because an indication is already there in the order that the liability of the insurer is for the full amount of compensation awarded. It is also not possible to spell out an inference from the concluding words of section 110-B that in case the amount payable by the insurer is specified, the insurer alone is responsible and not the other persons against whom also the order for payment of compensation is made. Had it been the intention of the legislature

that the liability for the amount was to be that of the insurer alone, it would not have been difficult to make that intention clear by use of appropriate language and suitable words to that effect, but in the absence of such language and words it is not permissible to read in the section something which is plainly not there. It may be that in case the amount for which the insurer also is liable is recovered from the driver or the owner of the motor vehicle, they would be entitled to be indemnified and reimbursed for that amount by the insurer, but it cannot be held, as already observed above, that the petitioner in whose favour the order for recovery of compensation is made, can proceed for the amount in question only against the Insurer and not against the driver or owner, in the course of whose employment the injuries are cuased by the use of the vehicle. I, therefore, have no hesitation in rejecting the contention which has been advanced on behalf of the appellant.

Cross-objections have been filed by Manohar Lal respondent for enhancement of compensation but they have not been pressed at the hearing. The result is that both the appeal and cross-objections are dismissed. In the circumstances of the case, I leave the parties to bear their own costs of the appeal and cross-objections.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

JALPU RAM AND OTHERS,—*Petitioners*

versus

THE DEPUTY COMMISSIONER, KULU AND OTHERS,—*Respondent*

Civil Writ No. 536 of 1965.

1965
May, 12th.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 5(2)(cc)—The only woman candidate contesting election but securing no vote—Whether entitled to be co-opted—Interpretation of Statutes—Intention of the Legislature—How to be determined.

Held, that a woman candidate who contests the election cannot be described not to have contested merely because she fails to secure