Before S. S. Sandhawalia, C.J., P. C. Jain and S. S. Kang, JJ.

Jai Singh and another,—*Appellants*

versus

Col. N. A. Subramaniam and another,—*Respondents.*

Letters Patent Appeal No. 281 *of* 1977.

June 2, 1982.

Motor Vehicles Act (IV of 1939)—Sections 110-B and 110-C—Punjab Motor Accidents Claims Tribunal Rules, 1964—Rule 20—Code of Civil Procedure (V of 1908)—Order 6 Rule 17—Motor Accident—Claim for compensation by the injured—Injured person belonging to a profession and holding a pensionable post—Apprehended loss from inability to set up private practice or secure other lucrative employment after retirement—Whether to be considered in determining the quantum of compensation—Tribunal—Whether has power to allow amendment of a claim application—Such power—Whether could be exercised after the expiry of the period of limitation—Appellate Court—Whether could exercise similar powers of amendment—Factors to be considered in allowing amendment—Stated—Parties—Whether entitled to adduce additional evidence after the amendment.

Held, that it is quite evident that the provisions of section 110-C of the Motor Vehicles Act, 1939 and Rule 20 of the Punjab Motor Accidents Claims Tribunal Rules 1964 do not either expressly or by necessary implication exclude the applicability of those provisions of the Code of Civil Procedure to which there is no specific mention, to the proceedings before the Tribunal. Once that is so, there can be no gainsaying that vast power exists in the Tribunal to determine its own procedure in dealing with a claims application. The Tribunal has all the trappings of a Court and the proceedings before it closely resemble to the proceedings in a Civil Court. Moreover, it is quite evident that the Legislature purposely did not make all the provisions of the Code of Civil Procedure applicable to the proceedings before the Tribunal which are of a summary nature, as the whole intent of the Legislature was to ensure a speedy disposal of the claim applications filed by the injured persons or the legal representatives of the deceased. Under section 110-C, the Tribunal is empowered to evolve its own procedure and for the purpose of dealing with a claims application it can resort to any provision of the Code of Civil Procedure or the principles of justice, equity and good conscience. In order to do real and substantial justice an order of the Tribunal, which does not contravene the positive provisions of the law and is orderly and consistent with the rules of natural justice, would certainly be legal. Thus, it is held that the Claims Tribunal has power to

allow amendment of a claim application at any time whether such an application is made within the period of limitation or after the expiry of the period of limitation. (Paras 21 and 22).

Held, that while dealing with the question of amendment on an application made within the period of limitation, i.e., within the period prescribed for filing a claims application, the Tribunal should ordinarily allow the amendment which is necessary for the purpose of deciding the claims application of the injured or the legal-representatives of the deceased. But where an application is made after the expiry of the period of limitation, then the Tribunal must require the party asking for amendment to show sufficient cause and in the event of being satisfied that sufficient cause exists, the Tribunal would be well within its jurisdiction to allow the amendment after the period of limitation. (Para 23).

Held, that since the power of allowing an amendment of a claim application exists in the Tribunal, then *a fortiori* such a power has to be presumed in the Appellate Court also which hears appeals against the award of the Claims Tribunal. Same principles would govern the exercise of the power by the Appellate Court for allowing amendment as are to be borne by the Tribunal. (Para 24).

Held, that when a pleading is allowed to be amended, an opportunity should generally be afforded to the opposite side to meet the new case by filing any additional statement or letting in such further evidence as may be necessary. But there may be cases where such a contingency may not arise at all, e.g., where no new case is being set up and a higher relief is being claimed on the plea already set up and, the evidence led thereon, or where on the plea though not specifically taken, the parties have already led evidence during the trial and the amendment is asked for, to avoid an objection that without there being a specific plea no amount of evidence can be looked into. But when a pleading is allowed to be amended, an opportunity should generally be afforded to the opposite side to meet the new case by filing any additional statement or letting in such further evidence as may be necessary. Thus, in the event of an application for amendment of a claim application being allowed, the respondent will ordinarily be entitled to adduce additional evidence in order to meet the case set up by way of amendment. (Para 26).

Held, that when an injured person puts in a claim for his apprehended loss resulting from his inability (or handicap) to set up his private practice or secure other lucrative employment, the same would be based merely on his conjectures or guess-work inasmuch as at that particular time, the problem as to what he might do after retirement, may not at all be present in his mind, nor there may be

any occasion for taking some such decision. Thus, merely because a person is in service at the time of accident and possessed of ability, skill and good health, would not entitle him to claim pecuniary benefit arising out of apprehended loss resulting from his inability to set up private practice or secure other lucrative employment and as such a claim would just be based on guess-work and *ipse dixit* of the injured. The estimate of the prospective loss has to be made on a foundation of solid facts. Ability, skill and good health at the time of accident by themselves would not be such solid facts which might permit the grant of compensation for apprehended prospective loss. But this does not mean that in no case an injured person can claim compensation for his apprehended loss resulting from his inability to obtain a job or start his practice after retirement, as there may be cases where besides the aforesaid facts an injured person may as a fact be able to prove and establish that he was actually receiving offers for some good jobs or that for starting his practice he had actually chalked out certain plans and made arrangements in that respect. Then on proof of all those facts coupled with the ability. skill and good health of the employee, it may be possible as well as permissible for the Tribunal to entertain a claim and grant compensation for the prospective loss of income resulting from inability (or handicap) to set up a private practice or secure lucrative employment. These principles, however, will apply only to claim cases filed by the injured persons themselves and they will have no relevance to the claim petitions filed by the heirs of the deceased. (Paras 33, 34 and 35),

P. S. Bhatnagar *v.* State of Punjab and others,

1977 P.L.R. 300 —OVERRULED.

[*Case referred by the Division Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice Sukhdev Singh Kang,*—vide *their Lordship's Order dated the 18th September, 1980 to a Full Bench for the decision of the important questions of law as under) involved in the case* :—

(1) *Whether the claim of an injured person holding a pensionable post, for compensation on the ground of apprehended loss resulting from his inability (or handicap) to set up a private practice or secure other lucrative employment even after his retirement ,apart from and in addition to his admissible pension), is a mere speculative possibility or a reasonable probability computable in terms of money ?*

(2) *Whether a claimant's amendment application seeking an enhanced compensation under the Motor Vehicles Act, after the period of limitation has expired, can be allowed at the appellate stage ?*

(3) *If the answer to question No. (2) is in the affirmative, whether the respondent would ordinarily be entitled to adduce evidence and re-cross-examine the opposing witnesses afresh to avoid any prejudice on this score ?*

The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice Prem Chand Jain and the Hon'ble Mr. Justice Sukhdev Singh Kang,—vide order dated the 2nd June, 1982 *after answering the questions referred to, again send the case to the Division Bench for the decision of the case on merits.).*

Appeal under Clause X of the Letters Patent Appeals against the judgment of Hon'ble Mr. Justice A. S. Bains dated the 20th May, 1977 in F.A.O. No. 217 of 1973 modifying the order of the court of Shri S. S. Sodhi, Motor Accident Claims Tribunal, U.T. Chandigarh dated the 11th July, 1973 (awarding amount of Rs. one lakh to Shri N. A. Subramanian as compensation Rs. 2,000 to Col. J. S. Khurana, Rs. 1,000 to Major Bisaria and Rs. 3,000 to Sepoy driver P. Mohd. and further ordering that these amounts shall be payable to the claimants with interest at the rate of 6 per cent per annum from the date of their respective claim applications to the date of the deposit of this amount with this Tribunal or payment thereof to these claimants, whichever is earlier) enhancing the compensation to Rs. 3,00,000 in all together with interest at the rate of 6 per cent per annum from the date of claim application till its payment and that the amount already paid to him shall not carry any interest.

Cross-Objection 16 of 1978:—

Cross Objections under order 41 Rule 22 of the Code of Civil Procedure Code praying that cross objections be accepted and claim be allowed with interest from the date of application.

L. M. Suri, Advocate with R. M. Suri & V. P. Gandhi, Advocates, *for the Appellants.*

T. S. Grewal, Advocate with Achhra Singh, Advocate, *for the Respondents.*

JUDGMENT

Prem Chan Jain, J.—

1. This judgment and order of ours would dispose of L.P.As. No. 281, 282, 283 and 284 of 1977 as well as cross-objections No. 16 of 1978 filed in L.P.A. No. 281 of 1977 and cross-objection No. 15 of 1978 filed in L.P.A. No. 284 of 1977, as common questions of law and fact arise in these appeals and cross-objections.

2. In order to appreciate the controversy, certain salient features of the case be noticed :—

3. Colonel N. A. Subramaniam respondent along with Colonel J. S. Khurana and Major Y. Bisaria were going towards the Airport, Chandigarh, in a Military staff car driven by Sepoy-driver P. Mohammad on November 7, 1969, when the staff car met with an accident with a private car No. CH-1104, which was being driven by Sham Singh respondent and was owned by Jai Singh appellant, at the crossing of the roads between Sectors 23 and 24 and the Dakshan Marg. As a result of the accident, Colonel Subramaniam was thrown out and received injuries, so also the other occupants of the car including the driver. All the four injured persons filed claim applications for compensation. The learned Tribunal,—*vide* its award dated July 11, 1973, awarded compensation of Rupees one lac to Colonel N. A. Subramaniam, Rs. 2,000 to Colonel J. S. Khurana, Rs. 1,000 to Major Y. Bisaria and Rs. 3,000 to Sepoy P. Mohammad.

4. Dissatisfied from the award, Colonel N. A. Subramaniam filed an appeal in this Court. Similarly, Jai Singh, owner of the car and the General Insurance Company filed two appeals and one revision. All those appeals were heard together by the learned Single Judge, who,—*vide* his judgment dated May 20, 1977, enhanced the compensation of Colonel N. A. Subramaniam from rupees one lac to rupees three lacs with interest at the rate of 6 percent per annum from the date of claim application till its payment and dismissed the other appeals and revision filed by the owner of the car and the Insurance Company.

5. Aggrieved from the judgment of the learned Single Judge, the appeals referred to above have been filed under Clause X of the Letters Patent.

6. The appeals and the cross-objections came up for hearing before a Division Bench of this Court. After hearing the arguments and on consideration of the entire matter, the Bench found that some substantial questions of law were involved in the appeals. Consequently, after formulating the following questions, the appeals have been referred to Full Bench for decision.

1. Whether the claim of an injured person holding a pensionable post, for compensation on the ground of apprehended loss resulting from his inability (or handicap) to set up a private practice or secure other lucrative employment even after his retirement (apart from and in addition to his admissible pension), is a mere *speculative possibility or a reasonable probability computable in terms of money* ?
2. Whether a claimant's amendment application seeking an enhanced compensation under the Motor Vehicles Act, after the period of limitation has expired, can be allowed at the appellate stage ?
3. If the answer to question No. (2) is in the affirmative, whether the respondent would ordinarily be entitled to adduce evidence and re-cross-examine the opposing witnesses afresh to avoid any prejudice on this score ?

This is how, we are seized of the matter.

7. The case was argued at great length before us and in view of the arguments advanced on either side by the learned counsel, I feel that it would be necessary to recast questions No. 2 and 3, as before finding out the power of the Appellate Court to allow amendment in cases filed under the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Act'), it would be essential and necessary to find out the power of the Tribunal in this regard. Consequently, I propose to recast the above questions No. 2 and 3 into the following three questions :—

2. Whether a Tribunal under the Act has power to allow amendment of a claims application after the expiry of the period of limitation ?

3. In case such a power is conceived in the Tribunal to allow amendment after the period of limitation has expired, will such a power not exist in the Appellate Court hearing appeals against the award passed by the Tribunal ?

4. In case the Tribunal or the Appellate Court allows amendment of the claims application, then would the respondent be entitled to ordinarily adduce additional evidence, so as to avoid any prejudice on that score ?

8. I would now first deal with Question No. 2 as recast. While developing the argument, Mr. Suri, learned counsel did not limit his case only to the power of the Tribunal to allow amendment after the expiry of the period of limitation, but went on to argue that under the Act there is no power at all in the Tribunal to allow amendment of a claims application whether such prayer is made within the period of limitation during which a claims application is required to be filed or after the expiry of the period of limitation. According to the learned counsel, only a few provisions of the Code of Civil Procedure have been made applicable, that the provisions of Order 6 of the Code of Civil Procedure have no applicability to the proceedings under the Act, that whatever power was intended to be given to the Tribunal, has been specifically mentioned in section 110-C of the Act and that in these circumstances, the Tribunal has no jurisdiction to allow amendment of a claims application at any stage of the proceedings.

9. On the other hand, it was submitted by Mr. T. S. Grewal, learned counsel for the respondents, that the Tribunal in the proceedings taken before him can evolve its own procedure, that that procedure has to be in conformity and in consonance with the procedure laid down for trial of plaints in the Code of Civil Procedure and that if sufficient cause is shown, then the Tribunal has an inherent power to allow amendment of a claims application on the principle of justice, equity and good conscience. It was further argued that under section 110-C of the Act there is power with the Tribunal to entertain an application beyond the period of limitation if sufficient cause is shown for not filing the application within the period of limitation, that when such a power exists in the Tribunal,

then power to allow amendment of a claims application even after the expiry of the period of limitation, but only when sufficient cause is shown, has to be presumed in the Tribunal.

10. Before dealing with the merits of the controversy it would be appropriate to refer to certain relevant provisions of the Act and the Rules.

11. Sections 110 to 110-F and section 111-A of the Act were added to the principal Act of 1939 by the various provisions contained in the Amendment Act (No. 100 of 1956)). Section 110 provides for the constitution of a Claims Tribunal and confers jurisdiction on it to adjudicate upon claims of compensation in respect of accidents involving death of, or bodily injuries to, persons arising out of the use of Motor vehicles. Section 110-A provides that an application for compensation arising out of an accident of the nature specified above, may be made by the person who has sustained an injury or by the legal representatives of the deceased where death has resulted from the accident. Section 110-B provides that the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an enquiry into the claims and may make an award determining the amount of compensation which appears to it to be just. Section 110-C of the Act reads as under :—

"110-C. Procedure and powers of Claims Tribunal.

(1) 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.

(2) The Claims 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; and the Claims Tribunal shall be deemed to be Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

(2-A) Where in the course of any inquiry, the Claims Tribunal is satisfied that —

(i) there is collusion between the person making the claim and the person against whom the claim is made, or

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may for the purpose of adjudicating upon any claim for compensation, choose one or more person possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

Section 110-D of the Act gives statutory right of appeal to a person aggrieved by an award of Claims Tribunal. Section 110-E provides for recovery from the insurer of compensation money awarded by the Tribunal as arrears of land revenue. Section 110-F excludes, where a Claims Tribunal has been constituted for any area, the jurisdiction of the Civil Court to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area and also bars the issue of an injunction in respect of any action taken or to be taken before the Claims Tribunal. Section 111-A of the Act authorises the State Government to make rules for the purpose of carrying into effect the provisions of sections 110 to 110-E of the Act and, in particular, such rules may provide for, *inter alia*, the procedure to be followed by a Tribunal, in holding an inquiry under Chapter VIII, and the powers vested in a Civil Court which may be exercised by a Claims Tribunal and in exercise of the power conferred by section 111-A of the Act, the Punjab Motor Accidents Claims Tribunal Rules, 1964, have been framed.

12. At this stage, reference may also be made to rule 20 to which our attention had pointedly been drawn at the time of hearing:—

> "20. (Section 110-C) Code of Civil Procedure to apply in certain cases":—
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> The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 101; Order XVI Rules 2 to 21; Order XVII and Order XVIII, Rules 1 to 3."

13. Having referred to the relevant provisions I would now deal with the merits of the controversy.

14. On the respective contentions of the learned counsel for the parties, the first question that needs determination is whether the application of the provisions of the Code of Civil Procedure, other than the one to which reference has been made specifically, has been deliberately excluded by the Legislature and the Tribunal is not competent to allow the amendment of the application. The answer has obviously to be in the negative. Under Section 110-C provisions like summoning of witnesses, enforcing their attendance and issuing of commissions for examination of witnesses have specifically been made applicable to the proceedings before the Tribunal, not as exhaustive of its powers but with a view to make the processes issued by the Tribunal regarding the matters referred to above enforceable as processes of the Civil Court. Similarly, by providing in Rule 20 that some of the provisions of the Code of Civil Procedure would apply to proceedings before the Claims Tribunal, no such inference can be drawn that the intention of the Legislature was to specifically exclude the applicability of the remaining provisions of the Code to the proceedings before the Claims Tribunal.

15. Section 110-C (*) specifically provides that in holding an enquiry on the claims application made before it 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. Thus, it is abundantly clear that the Tribunal is free to follow any procedure which it considers expedient in the interest of justice In other words, the Tribunal is at liberty to follow any procedure that it may choose to evolve for itself so long as the said procedure is not arbitrary, is consistent with the rules of natural justice and does not contravene the positive provisions of law. When such a wide power exists in the Tribunal, then there will absolutely be no justification to restrict the exercise of that power on the ground that the Legislature impliedly intended to do so by not applying all the provisions of the Code. In order to do justice and to achieve the purpose for which it has been constituted, a Tribunal would have inherent powers to apply all or any of the provisions of the Code of Civil Procedure, on the principles of justice, equity and good conscience. It is not that such a situation has arisen under this Act only as even under the East Punjab Urban Rent Restriction Act also, a question had arisen in *Mathra Das* v. *Om Parkash* (1), as to what procedure is required to be followed by the Rent Controller. The learned Chief Justice on consideration of the relevant judicial decisions observed thus :—

> I regret I am unable to concur in this contention. A Court of law possesses inherent powers to act *ex debito justitiae*, to do that real and substantial justice for the administration of which it alone exists and to do all things that are reasonably necessary for securing the ends of justice within the scope of its jurisdiction *D. N. Ray* v. *Nalin Behari Bose* (2) *and Hukamchand Baid* v. *Kamlanand Singh*, (3). It must, therefore, proceed on the assumption that every procedure is permissible unless it is shown to be prohibited by the law (*Narsingh Das* v. *Mangal Dubey*) (4). In respect of matters in regard to which the Code of Civil Procedure has made no provision or has made insufficient provision, the Court has an inherent jurisdiction to do the justice between the parties which is warranted

(1) 1957 P.L.R. 45.
(2) 46 I.C. 621.
(3) I.L.R. 33 Cal 927, 931.
(4) I.L.R. 5 All. 163 (F.B.)

under the circumstances and which the necessities of the case require (*Hukamchand Baid's case* (supra). The powers exercised by an administrative tribunal are wider still, for as pointed out by Sargent C.J. in *Ramchandra Narayan Kulkarni* v. *Draupadi Kom Narayan* (5), the conduct of proceedings before a Special Judge who is not regulated by any particular procedure must be deemed to be in his own discretion.

After a careful consideration of the several authorities which have been cited before me, I entertain no doubt in my mind that in the absence of a restraining provision a Rent Controller or a District Judge acting under the provisions of the Rent Restriction Act is at liberty to follow any procedure that he may choose to evolve for himself so long as the said procedure is orderly and consistent with the rules of natural justice and so long as it does not contravene the positive provisions of the law. The elementary and fundamental principles of a judicial enquiry should be observed but the more technical forms discarded.

16. When a Tribunal acts as a Court and the proceedings before it closely resemble to the proceedings in a Civil Court then on the doctrine of implied power, it can reasonably be inferred that the Tribunal would have all powers which are reasonable and necessary to do that real and substantial justice for the administration of which it alone exist and to do all things that are reasonably necessary for securing the ends of justice within the scope of its jurisdiction. As earlier observed, section 110-C or Rule 20 does not either expressly or by necessary implication exclude the applicability to proceedings before the Tribunal those provisions of the Code, which it does not specifically mention. At the time of the hearing of the arguments an impression was given as if the type of the question with which we are faced, had not cropped up earlier directly. But a deep study of the judicial decisions shows to the contrary. *In New India Assurance Co. Ltd., New Delhi and another* v. *Punjab Roadways, Ambala City and others*, (6), a question had arisen whether the provisions of

(5) I.L.R. 20 Bom. 281, 283.

(6) 1964 P.L.R. 156.

Order 1 Rule 10, Code of Civil Procedure, would apply to the proceedings before the Tribunal or not. While answering the said question in affirmative it was observed thus :—

> "It is true that the various provisions contained in the Act and the Rules framed thereunder do not apply the Code of Civil Procedure as a whole, or the provisions of Order 1, rule 10 of the Civil Procedure Code specifically to the proceedings before the Tribunal, yet nothing in the Act or the Rules framed under the Act prohibits resort by the Tribunal to the principles embodied in various Rules relating to the conduct of proceedings before a Civil Court. In fact, the provisions like summoning of witnesses; enforcing their attendance and issuing of commission for examination of witnesses have been specifically made applicable to the proceedings before the Tribunal, not as exhaustive of its powers, but with a view to make the processes issued by the Tribunal regarding the matters referred to above enforceable as processes of a Civil Court. With regard to the rest of the matters, which relate to the procedure for dealing with claims application and the enquiry which the Tribunal is to conduct under section 110-C of the Indian Motor Vehicles Act, the legislature has vested a vast discretion in the Tribunal itself. This is quite apparent from the provisions of sub-section (4) of section 110-C. It specifically provides that in holding any enquiry under section 110-B on the claim application made before it, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. From this it follows that unless there is any prohibition in the rules framed under the Act, the Tribunal is free to follow any procedure which it considers expedient in the interests of justice. In similar situation, Bhandari, C.J. observed in *Mathra Das* v. *Om Parkash* 1 (supra) that in the absence of a restraining provision a Tribunal is at liberty to follow any procedure that it may choose to evolve for itself so long as the said procedure is orderly and consistent with the rules of natural justice and does not contravene the positive provisions of the law. The

section expressly confers powers on the Tribunal to formulate its own procedure and for the purpose of promoting the ends of justice, it could well resort to all the principles of an orderly trial and for that purpose exercise the powers of allowing amendments or substitution so as to rectify a mistake or to bring on record parties which were necessary or proper. In this view of the matter, the Tribunal acted quite properly in allowing substitution in accordance with the principles embodied in Order 1 Rule 10 of the Civil Procedure Code. Since this rule did not in term apply and there is no prohibition in resorting to the principles contained therein, the technicalities of that rule are not to be taken note of by the Tribunal, and it is only the spirit that has to be applied with the object of securing the ends of justice. Thus, I do not find anything wrong in the Tribunal allowing the substitution of the name of Shrimati Lajwanti for Dev Raj who had wrongly filed the application."

17. Reference may be made to another Single Bench judgment in *Smt. Darshna Devi and others* v. *Sher Singh and others* (7), wherein a question arose whether the claimants who were admittedly paupers could take benefit of the provisions of Order XXXIII of the Code or not. The Tribunal had rejected the prayer of the claimants and directed them to pay the court fee. The learned Chief Justice before whom the Civil Revision against the order of the Tribunal had come up for hearing, after considering the relevant provisions and the judicial decisions, observed thus :—

"In so far as this High Court is concerned therefore, the law appears to be well settled that a Claims Tribunal performing functions under the Motor Vehicles Act has more or less the same status as that of a Court and performs functions similar to it and also that Rule 20 of the Motor Accidents Claims Tribunal Rules does not, either expressly or by necessary implication, exclude the applicability to proceedings before the Claims Tribunal of those provisions of the Code of Civil Procedure which it does not

(7) A.I.R. 1978 Pb. & Haryana 265.

specifically mention and that, on the other hand, such provisions would be applicable, if they are in consonance with the principles of fairplay and propriety."

18. It would be pertinent to observe that a Special Leave Petition against the aforesaid judgment was filed which was dismissed by their Lordships of the Supreme Court and the view of the learned Chief Justice was upheld as is apparent from the judgment *in State of Haryana* v. *Smt. Darshna Devi and others* (8).

19. The next case which needs mention is a Division Bench judgment of Allahabad High Court in *New India Assurance Co. Ltd. and another* v. *Smt Urmila Bahri and others* (9), wherein again, a question arose whether an amendment of the claims application could be allowed after the expiry of the limitation and the amount of damages could be enhanced as a result of the death of the injured-claimant. While upholding the power of the Tribunal to allow amendment, the learned Judges observed thus :—

"The cause of action for the claim in either side, whether the application is made by the injured or his heirs after death, arises with accident. The application contemplated by Section 110-A in either case is only for compensation payable for the injury sustained by the victim during the accident. Hence, once an application has been moved within time for a claim, its amendment can always be made as there is no provision in the Act prohibiting the amendment of the application after the lapse of a particular time.

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The fixation of the amount of compensation is the job of the Tribunal and not the applicant. It is more in the nature of evidence of the consequence of the accident than a pleading. But as it is to be the basis for the award of compensation to the heirs, it can be legally introduced in the application as a pleading. No question of bar of

(8) A.I.R. 1979 S.C. 855.
(9) A.I.R. 1975 All 422.

limitation arises in such a case. We can see no legal justification in the Tribunal's refusing to permit the introduction of this fact through the amendment of the original application."

(20) In the last, reference may be made to a Single Bench judgment of the Madras High Court in *D. Kannan* v. *Southern Roadways and another* (10), in which again a question about the Power of the Tribunal to allow amendment arose. The learned Judge, on consideration of the whole matter, conceived such a power in the Tribunal.

The relevant observations read as under:—

"The Tribunal had expressed the view that it has no power to order amendment of pleadings. It referred to section 110-C(2) of the Motor Vehicles Act, and observed that only certain provisions of the Civil Procedure Code, were applicable to the Motor Accidents Claims Tribunals and the provision enabling amendments to be made to the pleadings was not one of those provisions. The Tribunal, accordingly, held that the petitioner's application did not lie.

I do not agree with the Tribunal's limited view of the extent of its jurisdiction and powers. Section 110-A if the Act enables an injured person to apply to the Tribunal for compensation. The section itself does not provide any particular form of application. Rule 3 of Tamil Nadu Motor Accidents Claims Tribunal Rules, 1961, provides for a form of application in Appendix 2. In Part II of the application form a provision is made in sub-clause (h) for the claimant to enter the figure of compensation claimed for a permanent disability. Neither the Act nor the rules make provision for amendment of the entries or pleadings made by the claimant in the prescribed form. It must, however, be remembered that mere forms do not conclude the rights of claimants. The basis for the claim application is not the form prescribed, but the provision in section 110 of the Act which recognises and declares the right of

(10) 980 A.C.J. 298.

the person injured to apply for payment of compensation before a Claims Tribunal. Adjudication of the claim for compensation is, therefore, the responsibility of the Tribunal. If so much is granted, then every power that is necessary for or ancillary or incidental to the due discharge of that responsibility must be held to inherent in the Tribunal, even if the Act itself does not expressly say so. The power to order amendment must, therefore, be spelt as part of the Tribunal's jurisdiction on the basis of implied or ancillary powers.

There is yet another indication in the Act which shows that the Tribunal must have the requisite power to order amendment of pleadings in appropriate cases. Under the scheme of the Act the Tribunals do not supplant the Civil Courts in one sweep, as the one and only forum for adjudication of compensation claims. On the contrary, the Tribunals come in only when and where they happen to be appointed by State Government by notification for given areas. For the rest, the Civil Courts would continue to exercise their jurisdiction to hear and determine suits for compensation — suits which torts lawyers describe as running down sections. The Act thus makes for the co-existence of Tribunals and Courts, functioning in their own respective jurisdictional areas. For areas in respect of which the State Government has not constituted Claims Tribunals, civil suits would be the appropriate mode for enforcing claims for compensation. To such suits, before Civil Courts the procedure prescribed under the Civil Procedure Code wuuld apply without question. In such civil actions or suits, it can hardly be contended that civil Courts would benefit of any power to order amendment of the plaint pleadings. There might even now be areas in this country which are not covered by the jurisdiction of the Tribunals for the simple reason that none have been constituted. But, even if it were not so, the fact that the Act continues to carry appropriate provisions under which Courts and Tribunals co-exist for adjudication of claims in motor accident cases must condition our view as to the scope of the

powers of Courts, on the one hand, and of Claims Tribunals, on the other. It would be a proper basis for construction of any statute that it is administered in a uniform way throughout the territories in which it is in force. If the position were that Tribunals have no power to order amendments of claims because the Civil Procedure Code does not apply and at the same time if it were the position that civil Courts having jurisdiction to entertain motor accidents claims have the requisite power to order amendment of pleadings because the Civil Procedure Code empowers them in that behalf, then we would be applying the same law relating to motor vehicles accidents unequally on a distinction which would be highly invidious and without rational basis. The proper way to apply the law would be to construe and administer the statute in such a harmonious fashion that unequality does not result. This need for equality of administration of the law is another reason why the power to order amendments of pleadings must be read into the adjudicatory jurisdiction of the Claims Tribunal, as part of their implied or ancillary powers, even in the absence of an express provision to that effect in the Act.

The power to grant amendment of the pleadings must, in my judgment be regarded as inherent in all Tribunals or authorities which are charged by the law with the duty of enquiring into rights and liabilities of parties and/or of adjudicating on their claims or disputes. Where pleadings play an important part in legal proceedings before Tribunals and other authorities and where they afford the basis for evidence to be called at the enquiry, the power to amend must be necessarily attributed as an indispensable adjunct to their jurisdiction. Pleadings, after all, are matters of composition by literate people. Error cannot be completely avoided from any human endeavour much less in matters of writing or drafting. Tribunals or other professional advisers are by no means to be regarded as perfectionists, nor their pleadings as always error-proof. Amendments of pleadings in claims applications must be as common and frequent if not more as in pleadings in civil suits."

(21) Thus, it is quite evident that the provisions of section 110-C and Rule 20 do not either expressly or by necessary implication exclude the applicability of those provisions of the Code to which there is no specific mention, to the proceedings before the Tribunal.

(22) Once having overcome the difficulty which, according to the learned counsel for the appellants, was created by section 110-C and Rule 20, there can be no gain saying that vast power exists in the Tribunal to determine its own procedure in dealing with a claims application. The Tribunal has all the trappings of a Court and the proceedings before it closely resemble to the proceedings in a Civil Court. Moreover, it is quite evident that the Lgislature purposely did not make all the provisions of the Code of Civil Procedure applicable to the proceedings before the Tribunal, which are of a summary nature, as the whole intent of the Legislature was to ensure a speedy disposal of the claims applications filed by the injured persons or the legal-representatives of the deceased. Under section 110-C, the Tribunal is empowered to evolve its own procedure and for the purpose of dealing with a claims application it can resort to any provision of the Code of Civil Procedure on the principles of justice, equity and conscience. In order to do real and substantial justice an order of the Tribunal, which does not contravene the positive provisions of the law and is orderly and consistent with the rules of natural justice, would certainly be legal. In this view of the matter, I hold that the Claims Tribunal has power to allow amendment of the claims application at any time whether such an application is made within the period of limitation or after the expiry of period of limitation.

(23) After having arrived at the aforesaid conclusion, it has now to be seen as to what principles should be kept in mind by the Tribunal while dealing with the application for amendment. In my view this matter should not detain us much nor is it necessary to dilate upon it in depth as it would suffice to observe that while dealing with the questiqn of amendment on an application made within the period of limitation, i.e., within the period prescribed for filing a claims application, the Tribunal should ordinarily allow the amendment which is necessary for the purpose of deciding the claims application of the injured or the legal-representatives of the deceased. But where an application is made after the expiry of the period of

limitation, then the Tribunal must require the party asking for amendment to show sufficient cause ad in the event of being satisfied that sufficient cause exists, the Tribunal would be well within its jurisdiction to allow the amendment after the period of limitation.

(24) Coming to Question No. 3, suffice it to observe that having held that power of allowing an amendment of a claims application exists in the Tribunal, then *a fortiori* such a power has to be presumed in the Appellate Court also which hears appeals against the award of the Claims Tribunal. But it may again be made clear that the same principles would govern the exrecise of the power by the Appellate Court for allowing amendment, as are to be borne by the Tribunal.

(25) This brings me to Question No. 4, which raises a controversy whether after allowing amendment, would it be necessary to grant an opportunity to the other party to adduce additional evidence in order to meet the case set up by way of amendment.

(26) It may be observed at the outset that when a pleading is allowed to be amended, an opportunity should generally be afforded to the opposite side to meet the new case by filing any additional statement or letting in such further evidence as may be necessary. But there may be cases where such a contingency may not arise at all e.g. a case where no new case is being set up and a higher relief is being claimed on the plea already set up and the evidence led thereon, or a case where on the plea though not specifically taken, the parties have already led evidence during the trial and the amendment is asked for to avoid an objection that without there being a specific plea no amount of evidence can be looked into. But as I have observed earlier, when a pleading is allowed to be amended, an opportunity should generally be afforded to the opposite side to meet the new case by filing any additional statement or letting in such further evidence as may be necessary In this view of the matter the question is answered in the affirmative, i.e. that in the event of the allowing of amendment of the claims application, the respondent will ordinarily be entitled to adduce additional evidence in order to meet the case set up by way of amendment.

(27) I would now deal with question No. 1, under which it is required to be decided whether the claim made by an injured person

for his apprehended loss resulting from his inability (or handicap) to set up a private practice or secure other lucrative employment, after his retirement is a mere speculative possibility and not computable in terms of money.

(28) It was forcefully contended by Mr. Suri, learned counsel for the appellants, that what an injured person would be able to earn after his retirement by setting up his own practice or by obtaining some other employment, cannot be determined in terms of money, as such a determination would not only be improper but highly speculative and that being so, a claim based on mere speculative possibility of pecuniary benefit cannot legally be entertained and has to be rejected. In other words, what was sought to be agitated by the learned counsel was that what a person might do after retirement by itself would not be sufficient to allow an injured person to claim compensation for his apprehended loss resulting from his inability to set up a private practice or secure other lucrative employment.

(29) At first sight the contention of the learned counsel looked to be untenable; but a little scrutiny of the same shows that to some extent it is convincing and plausible.

(30) At the outset, it may be observed that except a Division Bench judgment of this Court in *P. S. Bhatnagar* v. *State of Punjab and others* (11), which deals with somewhat an identical question, there is no direct authority one way or the other on the question posed before us. In this situation, the matter would need determination on first impression.

(31) A little analysis of the question would show that the cases of only those persons who belong to legal, medical or some other profession and hold a pensionable post, fall within its ambit. It is only in the cases of such persons that the question of starting private practice after retirement would arise. As is evident a claim for compensation on the ground of apprehended loss resulting from inability or handicap to set up a private practice or secure other

(11) 1977 P.L.R. 300.

lucrative employment has to be based on an assumption that a person who is capable and possesses good health, would not waste his energy and talent by sitting idle and that he would certainly do something after retirement. What had been contended by Mr. Suri, learned counsel, was that merely this fact that a person possesses ability and has maintained good health by itself would not be a valid and firm ground for establishing that after retirement he would be in a position to secure a good job or start his private practice successfully. According to the learned counsel, at best, it can be only a wish of a person in service to do something after retirement, though it be not so in the cases of many who after retirement may only desire to lead a peaceful life. It was also submitted by the learned counsel that those persons who have still many years to go in the service would hardly think of what they would be doing after retirement.

(32) On giving my thoughtful consideration to the entire matter, I find considerable force in the contention of the learned counsel for the appellants.

(33) The word 'speculative' means conjectures, guess-work and surmises. Now when an injured person puts in a claim for his apprehended loss resulting from his inability (or handicap) to set up his private practice or secure other lucrative employment, the same would be based merely on his conjectures or guess-work inasmuch as at that particular time, the problem as to what he might do after retirement, may not at all be present in his mind nor there may be any occasion for taking some such decision. In other words, an employee who is a fresher or has still a long time to go in service would, in the ordinary course, not think or contemplate as to what he would do after retirement. Thus, merely this fact that a person in service at the time of accident is possessed of ability, skill and good health, would not entitle him to claim pecuniary benefit arising out of apprehended loss resulting from his inability to set up private practice or secure other lucrative employment, as such a claim would just be based on the guess-work and *ipse dixit* of the injured.

(34) The estimate of the prospective loss has to be made on a foundation of solid facts. Ability, skill and good health at the time of accident by themselves would not be such solid facts which might permit the grant of compensation for apprehended prospective loss. But this does not mean that in no case an injured person can claim

compensation for his apprehended loss resulting from his inability to obtain a job or start his practice after retirement, as there may be cases where besides the aforesaid facts an injured person may as a fact be able to prove and establish that he was actually receiving offers for some good jobs or that for starting his practice he had actually chalked out certain plans and made arrangements in that respect. Then on proof of all those facts coupled with the ability, skilled and good health of the employee, it may be possible as well as permissible for the Tribunal to entertain a claim and grant compensation for the prospective loss of income resulting from inability (or handicap) to set up a private practice or secure lucrative employment. In this view of the matter, I hold that generally a claim made by an injured person for his apprehended loss resulting from his inability (or handicap) to set up a private practice or secure other lucrative employment after his retirement, being speculative, would not be maintainable except in those cases where solid facts as indicated in the earlier part of the judgment, have been specifically pleaded and proved.

(35) In order to obviate any difficulty in interpretation of our view, it may be made clear that our reply to the question has applicability only to the claim cases filed by the injured persons themselves and that it has no relevance to the claim petitions filed by the heirs of the deceased. To emphasise, the heirs of a deceased on the basis of our view would not be entitled to claim compensation under the head that the deceased who was in service if had not died, then he would have after retirement earned income by obtaining some lucrative job or by practising his profession.

(36) Coming to *P. S. Bhatnagar's case* (supra), there can be no gainsaying that the view taken therein on this particular aspect is not correct. Accordingly, the same is overruled.

(37) Having answered the questions referred to for our decision, the cases would now go to the Division Bench for disposal on merits.

S. S Sandhawalia, J;—I agree;

S. S Kang, J.—I also agree;

N.K.S.

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