system. We, therefore, see no incongruity in the continuance of both the Wheat Procurement (Levy) Order and the impugned Fourth Amendment Order on the statute book.

(52) As all the contentions raised on behalf of the petitioners have not found favour with us we hereby dismiss these writ petitions. However, in view of the intricacy of the issues raised herein we leave the parties to bear their own costs.

N. K. S.

Before R. S. Narula, C. J. and A. S. Bains, J.

MAJOR TRILOKI NATH BHARGAVA, AND ANOTHER,—*Appellants.*

versus

SMT. JASWANT KAUR, ETC.,—*Respondents.*

Letters Patent Appeal No. 447 of 1971.

March 18, 1975.

Motor Vehicles Act (IV of 1939)—Sections 110-A and 110-D—Code of Civil Procedure (V of 1908)—Order 41, Rule 22—Cross-objections in an appeal under section 110-D—Whether maintainable—Court fee on such cross-objections—Whether required to be paid on ad-valorem basis—Letters Patent (Punjab)—Clause 10—Motor Vehicles Act (IV of 1939)—Section 110-D—Cross-objections in an appeal under section 110-D insufficiently stamped—objection to such cross-objections not taken either at the hearing before Single Judge or in the grounds of Letters Patent Appeal—Such objection at the hearing of the appeal under clause 10—Whether can be urged as a matter of right.

Held, that when a statute directs that an appeal shall lie to a court already established, then that appeal in the absence of a special rule to the contrary in that statute or rules framed thereunder must be regulated by the practice and procedure of that Court. Thus when a High Court becomes seized of an appeal under section 110-D of the Motor Vehicles Act, 1939, the rules of practice and procedure of the High Court become applicable to the appeal as there is no special rule to the contrary in the Act or the rules framed thereunder. Moreover the High Court while hearing appeals under section 110-D of the Act acts as a court and a proceeding even if at its inception has a semblance of an arbitration proceedings, does not retain its character as such in the appeal and the

award of a Motor Accident Claims Tribunal amounts for all practical purposes to a decree. Hence cross-objections at the instance of a respondent in an appeal under section 110-D of the Act are maintainable under the provision of order 41, Rule 22 of the Code of Civil Procedure, 1908.

Held, that no *ad valorem* court fee is required to be paid by a claimant on his appeal filed under section 110-D of the Motor Vehicles Act, 1939 against the award of a Motor Accident Claims Tribunal or on the cross-objections filed by a respondent to such an appeal as the special provisions of the Act and Rule 22 of the Rules framed thereunder require that no court fee at all is payable on a third party claim under section 110-A of the Act. If a claimant's petition for compensation is dismissed by the Tribunal and no *ad-valorem* court fee is required to be paid on the appeal against such a decision of the Tribunal then the question of payment of *ad-valorem* court fee on the cross-objections also does not arise because there is hardly any difference between an appeal and the cross-objections.

Held, that where the objection that the cross-objections filed by the respondent in an appeal under section 110-D of the Act should not have been entertained as the same were insufficiently stamped is not taken before the Single Judge at the hearing of the cross-objections, nor any such objection is raised in the grounds of appeal filed against the decision of the Single Judge, the same cannot be urged as a matter of right in an appeal under clause 10 of the Letters Patent without obtaining leave of the Bench hearing the appeal.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice C. G. Suri, dated 23rd April, 1971, passed in F.A.O. No. 34 of 1967, whereby his Lordship dismissed the appeal filed by the owner-driver of the motor car and the Insurance Company, but allowing the cross-objections filed by the widow of the deceased and enhancing the compensation amount to Rs. 12,000 instead of Rs. 6,364 as awarded by the Motor Claims, Tribunal, Punjab,—vide *order, dated 18th August,* 1966.

R. M. Suri, Advocate, *for the appellants.*

J. S. Virk and Gurdial Singh, Advocates, *for the respondents.*

JUDGMENT

Narula C.J.—Major Triloki Nath Bhargava appellant No. 1 was driving his car No. RJL-3436 at about 10.50 A.M. on April 27, 1964, while going from Jullundur to his village Daroli Kalan in that

district. His car ran from behind into the bicycle of late Ganesha Singh, a retired Junior Commissioned Officer, aged about 59 years, when the latter was pushing his bike in the *kutcha* portion on the left side of the road. The car was being driven by the first appellant himself. The car could not stop for several yards after the impact, the deceased was dragged with it, and sustained as many as 18 injuries, including several fractures. The first appellant took Ganesha Singh in his car to the hospital where the latter succumbed to his injuries. Jaswant Kaur respondent No. 1, widow of the deceased, filed a claim for Rs. 30,000 under section 110-A of the Motor Vehicles Act (4 of 1939) (hereinafter called the Act) in the Court of the Motor Accident Claims Tribunal, Punjab. Since the car of the first appellant was insured with the second appellant, she preferred the claim against both the present appellants. She also impleaded as *pro forma* respondents the mother, the daughter and sons of the deceased, and claimed that they did not contest her right to receive the compensation which might be allowed to her. The claim was contested by the owner and insurer of the car, that is by both the appellants. From the pleadings of the parties the Tribunal framed the following three issues:—

(1) Whether the accident was due to the negligence of the driver of the car?

(2) What is the quantum of compensation due if any ?

(3) Relief.

By his judgment and award, dated August 18, 1966, the Tribunal held on issue No. 1 that the accident was due to the negligence of the driver of the car, i.e., due to the negligence of the first appellant. The finding on issue No. 2 was that the deceased was 59 years old at the time of his death, that he was getting a pension of Rs. 102 per mensem besides his income from agricultural land, that out of his income the deceased used to spend about half the amount on his own person, and that the loss occasioned to the widow by the death of the deceased came to Rs. 50 per mensem. Treating the expectancy of the balance of the life of the deceased as 11 years, that is up to the age of 70, and calculating the quantum of loss on the above basis the Tribunal awarded a sum of Rs. 6,364 as compensation to the first respondent under section 110-B of the Act. He arrived at the figure of Rs. 6,364 by deducting from the sum of Rs. 6,600

(calculated at the rate of Rs. 50 per mensem for eleven years) the sum of Rs. 235.60 P. representing one-fifth of the total sum of Rs. 1,178 which was lying to the credit of the deceased in his account with the Punjab National Bank.

Not satisfied with the award of the Tribunal, the present appellants preferred F.A.O. 34 of 1967, against the said award to this Court on February 21, 1967. On getting notice of the appeal and within 30 days thereafter the first respondent filed on May 27, 1967, cross-objections for enhancement of the quantum of compensation from Rs. 6,364 to Rs. 30,000. Suri, J. (as he then was) by his judgment and order, dated April 23, 1971, dismissed the appeal of the present appellants, but allowed the cross-objections of the first respondent and enhanced the amount of the award in her favour to Rs. 12,000. The driver-owner of the car and its insurer have preferred this appeal under clause 10 of the Letters Patent against the judgment of the learned Single Judge in the cross-objections. The first respondent has not preferred any further appeal in the matter of the quantum of damages.

Mr. Ravinder Mohan Suri, learned counsel for the appellants, has confined his arguments in this appeal to the following three points—

(i) the judgment of the learned Single Judge is liable to be reversed and the order enhancing the amount of compensation is liable to be set aside as the first respondent had not preferred any appeal against the judgment and award of the Tribunal, and not having done so, she was not entitled to file any cross-objections as the provisions of Order 41 Rule 22 of the Code of Civil Procedure have no application to proceedings for award of compensation under the Act;

(ii) the order of the learned Single Judge enhancing the amount of compensation is not justified even on the facts and merits of the case; and

(iii) the learned Single Judge should have rejected the cross-objections of the first respondent even if the same are held to be maintainable on the ground that the same had not been sufficiently stamped. The court-fee payable on

the cross-objections had to be calculated on *ad valorem* basis under article 1 of Schedule I to the Court Fees Act, and not on fixed basis under article 11 of Schedule II or otherwise.

In support of his first contention Mr. Suri has relied on the judgments of the Gauhati High Court in the *Motor Owners Insurance Co. Ltd.* v. *Srimati Renuka Rov and another* (1), *Messrs Oriental Fire and General Insurance Co. Ltd.* v. *Nani Choudhury and others* (2), as also on the judgment of a Division Bench of the Mysore High Court in *A. Rahiman and another* v. *M. Wabber and others* (3). The earliest of these judgments is of the Mysore High Court in the *case of A. Rahiman and another* (supra). The learned Judges held in that case that the Motor Vehicles Act is a complete code by itself, and, therefore, the provisions of Order 41 of the Code of Civil Procedure cannot be brought to bear on matters under the Act. They followed the earlier judgment of their Court in *Union of India* v. *Narasivappa* (4). The argument advanced on behalf of the claimant on the authority of the decision of the Madhya Pradesh High Court in *Manjula Devi Bhuta and another* v. *Manjusri Raha and others* (5), to the effect that when once an appeal is preferred to the High Court, the usual practice and rules of procedure applying to the appeals to be dealt with by the High Court should become applicable, and, therefore, a right to file cross-objections would accrue in such appeal was repelled. In adopting the view which prevailed with the learned Judges of the Mysore High Court they also differed from the decision of the Delhi High Court in *Delhi Transport Undertaking and another* v. *Raj Kumari and others* (6). In the *case of the Motor Owners Insurance Co. Ltd.* (supra), the learned Single Judge of the Gauhati High Court took the same view as had found favour with the Mysore High Court particularly in view of the provision of rule 20 of the Assam Motor Accidents Claims Tribunals Rules, 1960, which has made certain provisions of the Code of Civil Procedure specifically applicable to the trial of a claim under the Act, and the fact that the provisions of order 41

(1) A.I.R. 1973 Gouhati 142.
(2) 1974 Accidents Claims Journal 269.
(3) 1973 Cr. L.J. 1682.
(4) (1970), 1 Mysore Law Journal 319.
(5) 1968 Accidents Claims Journal 1.
(6) 1972 Accidents Claims Journal 403.

Rule 22 of the Code of Civil Procedure are not covered by the said rule 20. The judgment of the Gauhati High Court in the *case of the Motor Owners Insurance Co. Ltd.* was followed and approved by another learned Single Judge (R. S. Bindra, J. as he then was) of the Gauhati High Court (the High Court for the States of Assam, Nagaland, etc.) in *Messrs Oriental Fire and General Insurance Co. Ltd.* v. *Nani Choudhury and others* (2).

It is a matter of regret that Mr. Suri has cited the judgment of the Division Bench of the Mysore High Court in the *case of A. Rahiman and another* which has subsequently been expressly overruled by a Full Bench of the same Court in *K. Chandrashekara Naik and another* v. *Narayana and another* (7). After discussing the entire law on the subject the learned Judges of the Karnataka High Court (earlier known as the Mysore High Court) held on the basis of the law laid down by their Lordships of the Supreme Court in *Collector, Varanasi* v. *Gauri Shanker Misra and others* (8), that in an appeal under section 110-D of the Act the respondent can file cross-objections by invoking the provisions of Order 41 Rule 22 of the Code of Civil Procedure as the Act does not expressly lay down the procedure to be followed by the High Court in dealing with appeals filed before it, and the Karnataka Motor Vehicles Rules do not contain any provision relating to such procedure. The learned Judges held that in such a contingency the special Act being silent in regard to the procedure by the appellate Court, such an appellate jurisdiction has to be exercised in the same manner as the High Court exercises its general appellate jurisdiction, and that the appeal so filed must be regulated by the practice and procedure of the High Court. The Supreme Court has held in the *case of Collector, Varanasi* (supra) that since neither the Defence of India Act, 1939, nor the rules framed thereunder prescribe any special procedure for the disposal of appeals preferred to the High Court under section 19(1)(f) of the Defence of India Act, appeals under that provision have to be disposed of just in the same manner as other appeals to the High Court. It was observed that as soon as the appeal reaches the High Court, it has to be determined according to the rules of practice and procedure of the High Court as it is well-settled that when a statute directs that an appeal shall lie to a Court already

(7) A.I.R. 1975 Karnatka 18.
(8) A.I.R. 1968 S.C. 384.

established, then that appeal must be regulated by the practice and procedure of that Court. I have already referred to the judgment of a Division Bench of the Madhya Pradesh High Court in the *case of Manjula Devi Bhuta and another* (supra). The learned Judges observed in that case that the High Court has the jurisdiction to grant relief even to a party who has not filed an appeal while disposing of the appeal of the other side, and held that by virtue of the said rule, the High Court has extensive jurisdiction to interfere even in favour of a party who has not filed an appeal in order to do substantial justice. The Delhi High Court has consistently taken the view that the cross-objections can be filed within limitation after service of notice of an appeal under the Act. In the *case of Delhi Transport Undertaking and another* (supra) it was held that as soon as the High Court becomes seized of an appeal under section 110-D of the Act, the rules of practice and procedure of the High Court become applicable to the appeal as there is no special rule to the contrary in the Motor Vehicles Act or the rules framed thereunder, and therefore, the cross-objections under Order 41 Rule 22 of the Code can be filed. Again in *Vanguard Insurance Co. Ltd.* v. *Bahoti and others,* the same view was taken. A Single Judge of the Orissa High Court also adopted the same reasoning in order to uphold the maintainability of cross-objections in an appeal under section 110-D of the Act in *Madhusudan Rai* v. *Smt. Basanti Kumari Devi and others* (10). The basis of the argument of Mr. Suri regarding the non-maintainability of cross-objections is two-fold; (i) that the award of a Motor Accident Claims Tribunal cannot be equated to a decree; and (ii) that the Motor Accident Claims Tribunal is not a Court, and, therefore, it cannot be held that the procedure laid down by the Code relating to appeals against decrees can be applicable to an appeal under the Act. It is unnecessary to deal with this argument at any length as this kind of a plea has already been authoritatively repelled by a Full Bench of this Court (of which I happened to be a member) in *Smt. Shanti Devi and others* v. *General Manager, Haryana Roadways, Ambala, and others* (11). It was expressly held in that case that the High Court while hearing appeals under section 110-D of the Act acts as a Court and a proceeding even if at its inception has a semblance of an arbitration proceedings, does not retain its character as such in appeal. It was

(9) 1972 Accidents Claims Journal 426.

(10) 1973 Accidents Claims Journal 308.

(11) A.I.R. 1972 Pb. & H. 65.

further observed that the award of a Motor Accident Claims Tribunal amounts for all practical purposes to a decree. After carefully considering all the judgments cited before us by both sides, I am of the considered view that the view taken by the Full Bench of the Karnataka High Court in the *case of K. Chandrashekara Naik and another* (supra), and by the Delhi, Orissa and Madhya Pradesh High Courts in the various cases referred to above, is the correct one, and that the view taken by the Gauhati High Court, with the greatest respect to the learned Judges of that Court, does not lay down the correct law. I, therefore, hold that the cross-objections are maintainable at the hands of a respondent in an appeal under section 110-D of the Act. Consequently, the cross-objections filed by the claimant respondent in response to the appeal of the owner and the insurer of the vehicle were maintainable, and the objection of Mr. Suri against the maintainability of the same is without force and is repelled.

It is the common case of both sides that the basic criterion for determining the quantum of compensation payable to the heirs of the victim in a fatal running down action is the pecuniary loss occasioned to the claimant on account of the death. The next relevant thing which is not in dispute is that the sources of income of the deceased were mainly two, namely (i) his pension of about Rs. 102 per mensem; and (ii) his income from agricultural land. It is also in the evidence of the claimant-respondent that the deceased being a retired army officer used to do manual work on his own land. Even if the value of his work is assessed as that of an agricultural labourer, its worth would be not less than Rs. 150 per mensem. In order to get the same income which was coming to the family of the deceased and was shared by the claimant-respondent during the lifetime of the deceased from the land in question, the claimant would now have to engage manual labour in place of the work that was being done by her husband. Mr. Suri himself assessed the personal expenses of the deceased as Rs. 50 per mensem. Normally the personal expenses of an old retired man living in a joint family along with his large number of family members are practically negligible. Even if, however, the suggestion of the learned counsel for the appellants is taken on its face value that the deceased should be deemed to have been spending Rs. 50 per mensem out of his income on himself, the net pecuniary loss occasioned by his death would be about Rs. 202 per mensem. The deceased

was 59 years old at the time of his death. It is in evidence and is not disputed that he was in robust health. This is also obvious from the fact that he used to do agricultural labour. The expectancy of his life has been calculated by the learned Single Judge at 70 years. In view of the fact that the mother of the deceased is about 80 years old and was still alive at the time of the accident and even subsequently gives an indication about the expectancy of life in the family of the deceased. Taking into consideration all these factors, it appears to me that if at all the learned Single Judge erred, he erred in favour of the appellants in fixing the life expectancy of the deceased at 70 years. Even if the pecuniary loss occasioned by his death is calculated at a round sum of Rs. 200 per mensem for eleven years, it would come to Rs. 26,400. The claim filed in this case for a sum of Rs. 30,000 was, therefore, not at all exorbitant. In any case the learned Single Judge has allowed a sum of Rs. 12,000 only. No appeal having been preferred against the decision of the learned Single Judge on this point by the claimant, the minimum we can do is to maintain the award for that amount in favour of the claimant-respondent. We are unable to agree with Mr. Suri that the life expectancy of the deceased should have been fixed at 65 years and the pecuniary loss should be calculated only at the rate of Rs. 50 per mensem ignoring the value of the manual work which the deceased used to do at his farm. The second ground of attack levelled by Mr. Suri against the decision of the learned Single Judge also, therefore, fails.

The last submission of the learned counsel is that the cross-objections filed by the claimant-respondent should not have been entertained as the same were insufficiently stamped. Inasmuch as the first respondent had claimed in her cross-objections that the amount of the Tribunal's award of Rs. 6,364 should be raised to Rs. 30,000, she should according to Mr. Suri have paid *ad valorem* court-fee on the sum of Rs. 23,636, that is on the difference between the two figures. Admittedly no such objection was taken before the learned Single Judge at the hearing of the cross-objections. Nor has any such point been urged in the ground of appeal filed against the decision of the learned Single Judge. In these circumstances the appellants have no right to urge this new and absolutely fresh ground of attack in an appeal under clause 10 of the Letters Patent without obtaining leave of the Bench hearing the appeal. After carefully considering all the circumstances of the case we decline to grant such leave. Even otherwise we are of the opinion that in

view of the special provisions of the Motor Vehicles Act and rule 22 of the Rules framed thereunder which require that no court-fee at all is payable on a third-party claim under section 110-A of the Act no question of paying *ad valorem* court-fee by a claimant on his appeal or on his cross-objections should normally arise. Even Mr. Suri had to concede that if the claimant's petition had been dismissed by the Tribunal, and she had to prefer an appeal against the dismissal of her claim, she would not have been required to pay *ad valorem* court-fee on her memorandum of appeal. For purposes of court-fee there is hardly any difference between an appeal and the cross-objections. *Prima facie,* therefore, we are not inclined to agree with Mr. Suri even on the merits of his contention in this regard.

No other point having been argued by the appellants, this appeal must fail, and is accordingly dismissed with costs.

B.S.G.

Before R. S. Narula, C. J.

JIT SINGH SON OF RATTAN AND NINE OTHERS,—*Appellants.*

versus

KARNAIL SINGH AND SEVEN OTHERS,—*Respondents.*

Regular Second Appeal No. 1036 of 1964.

February 27, 1975.

Punjab Custom (Power to Contest) Act (II of 1920)—Section 7—Punjab Custom (Power to Contest) Amendment Act (No. 12 of 1973)—Section 3—Constitution of India (1950)—Article 254(1)—Amendment Act—Whether ultra vires *Article 254(1)—Section 7 as amended by section 3 of the Amendment Act—Whether bars a suit for contesting alienation of ancestral agricultural property on the ground of its being contrary to custom.*

Held, that expression "rights in or over land" in Entry 18 of List II in the Seventh Schedule to the Constitution of India 1950 is of a very vide amplitude and the State Legislature has the exclusive power to legislate on subjects relating to the transfer and alienation of agricultural land. The Punjab Custom (Power to contest) Act,