

Rajasthan State Road Transport Corporation Jaipur

Vs

Poonam Pahwa

(G.N. Ray, G.T. Nanavati JJ)

09.07.1997

JUDGMENT

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G.N. RAY,J.

1. Leave granted. Heard Learned counsel for the parties.
2. The question that calls for the decision of this Court is whether Order XXI Rule 1 (2) Code of Civil Procedure is applicable in respect of the claims under Section 110 [c] of the Motor Vehicles Act, 1939 and whether it was justified in awarding interest on the decretal amount from June 26, 1986 (the date of deposit of the decretal amount in Court) to April 19, 1989 (when decree holder came to know about the deposit of the amount)?
3. The relevant facts of the case are that an accident had taken place on May 7, 1983 in which one Shri Subhash Chand Pahwa who was travelling in the bus belonging to the appellant Rajasthan State Road Transport Corporation from Jaipur to Delhi died due to accident by colliding with a truck. A claim petition was filed on August 23, 1983 by respondent No. 1, 2 and 3, namely, the widow, minor son and daughter of the deceased against the appellant and respondent No.4, Shri Deepak Thakur who was the driver of Truck No. HRU 2995, respondent No.5, Shri Durga Prasad Parnami, the owner of the said truck, respondent No.6 M/s. New Delhi Assurance Company limited and respondent No. 7, Ami Chand being the driver of bus No. RNB 7720 of the Rajasthan State Road Transport Corporation.
4. The Accidents Claim Tribunal passed an award in favour of the claimants, namely, Smt. Poonam Pahwa and her minor son and daughter and against the respondents including the appellant Rajasthan State Road Transport Corporation (hereinafter referred to as the Corporation) for a sum of Rs. 2.5 lacs with 12% interest from the date of filing of the claim petition till actual realisation.
5. The appellant-Corporation deposited a cheque of Rs. 3,36,111.30 on June 27, 1986 in the, executing Court comprising the decretal award of compensation and interest calculated on the decretal award upto the date of deposit of the said decretal amount. It is an admitted position that the decree holders were not informed either by the Court or by the judgment debtors about the deposit of the said sum of Rs.3,36,111.30 on June 27, 1986 and the decree holders came to know about such deposit only on April 19, 1989. The decree holders, therefore, made a claim for further interest at the said rate of 12% from the date of deposit till the decree holder got the information about such deposit made by the judgment debtors. Such claim was opposed by the appellant-Corporation by contending inter alia that there was no obligation of the appellant Corporation to give intimation to the decree holders about the deposit made by the Corporation and the provisions

of Order XXI Rule 1(2) of the Code of Civil Procedure is not applicable in respect of the award passed by the Motor Accidents Claim Tribunal and in any event if the Court had failed to give the intimation of such deposit, the judgment debtors would not suffer any prejudice on account of the mistake committed by the Court. Such contentions, however, have been rejected by the Tribunal in the execution proceedings. The appellant-Corporation thereafter moved a Petition before the Punjab and Haryana High Court against the order passed by executing Court for depositing further sum on account of the interest to be paid by the judgment debtors from the date of deposit of the said decretal amount till the date when decree holders had got the information of such deposit. By the impugned judgment, the Review Petition has been dismissed by the High Court.

6. Mr. S.K. Jain, learned counsel appearing for the appellant, has submitted that Order XXI Rule 1 (2) of the Code of Civil Procedure is not applicable in respect with the claim made under Section 110 [C] of the Motor Vehicles Act, 1939. Mr. Jain has referred to the provisions of Section 110 [C] of the Motor Vehicles Act, 1939 which reads as under:

"1) In holding any enquiry 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 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 a Civil Court for all the purposes of Section 195 and Chapter XXXV of Criminal Procedure Code 1898 (Act 5 of 1988)."

7. Rules have been framed under Section 111 A of the Motor Vehicles Act. Rule 20 of the said Rules prescribes that Order X, Rules 9 to 13 and 15 to 30 Order IX, Order XXXIII Rules 1 to 3 should be applicable in the proceedings before Claims Tribunal.

8. The Punjab Government vide its Notification No. GSR 68/CA4/39/SIII-Adm./(I) 68 dated June 21, 1968 amended Rule 20 to the following effect:

"In the Punjab Motor Accident Claims Tribunal Rules, 1969 in Rule 20 between the words and figure Order XVII and Order XXXIIO, the word and figure Order XXI shall be inserted."

9. Mr. Jain has contended that the said amendment of Rule 20 had not been incorporated in the Rules applicable in the State of Haryana. Hence, in respect of the claim petition on account of accident taking place in the State of Haryana, the provisions of Order XXI of the Code of Civil Procedure has no manner of application. Mr. Jain has also submitted that in any event, the judgment debtor had deposited the decretal amount and such judgment debtor had no obligation to give notice to the decree holders about making such deposit. He has submitted even if the Court had a duty to inform the decree holders about such deposit, for the failure of the Court, no liability can be fastened on the judgment debtor. Mr. Jain has submitted that although the Tribunal rightly indicated the principle of law that nobody should suffer on account of the mistake of the Court, the Tribunal erred in awarding interest for the said period against the judgment debtor even though the judgment debtor did not commit the mistake but deposited the entire decretal amount.

10. Mr.Jain has submitted that even though the provisions of Order XXI was not applicable in respect of the said claim petition because amendment of Rule 20 in the State of Punjab by making Order 21 Civil Procedure Code expressly applicable in 1968 had not been incorporated in Rules applicable in Haryana, it has been erroneously hold that provisions of Order XXI Civil Procedure Code are applicable. He has, therefore, submitted that impugned decision in awarding further interest for the period between the date of deposit and the date on which the decree holders got the information about the deposit was illegal and wholly unjustified and therefore, this appeal should be allowed setting aside the impugned judgment.

11. Shri D.P. Mukherjee, learned counsel appearing for respondent No.6 namely, M/s New Delhi Assurance Company Limited and Ms. Lalita Kaushik, learned counsel appearing for the respondent Nos. 4 and 5, namely, the driver and owner of the said track, however, did not advance any submission presumably because such respondents are not directly concerned with the impugned decision.

12. Dr. Rajeev Dhawan, learned Senior counsel at the request of this Court, has appeared as amicus curiae in this appeal. Dr. Dhawan has submitted that by GSR 20/CA-4/39-S 111A/72 dated January 28, 1972 Haryana has adopted the Punjab Motor Vehicles Rules by indicating "In Haryana the Punjab Motor Vehicles Claims Tribunal Rules, 1964 adopted after substituting the word Haryana for Punjab in Rule Clause (b) and in Rule 2 Clause (b)." Order XXI Civil Procedure Code was inserted in Rule 20 in the State of Punjab by amendment made on June 21, 1968 and published in Gazette on July 12, 1968. As the Haryana has adopted the Punjab Rules in 1972 by implication it will mean that Punjab Rules as stood amended on the date of adoption of Punjab Rules in Haryana in 1972, was applicable in the State of Haryana. Dr. Dhawan has submitted that in the impugned decision, no reference to 1972 notification of the Haryana Government has been made and only reference is to the judgments of Punjab and Haryana High Court of 1969 and 1970 (1968 ACT 360 (DB) and (AIR 1970 Punjab

506).

13. Dr. Dhawan has submitted that if Order XXI of Civil Procedure Code is expressly applicable, law is well settled that the judgment debtor has obligation to notify the date of deposit of decretal amount to the decree, holder. But even if Order XXI Civil Procedure Code is not expressly applicable, the Tribunal having been exclusively vested with the power of adjudication of the claims arising out of accident of motor vehicles, it has to decide such claims fairly and reasonably by applying the underlying principles of the Civil Procedure Code.

14. Dr. Dhawan has submitted that the question, therefore, re- quires to be considered in this case is:-

1) Is the Civil Procedure Code or the principles underlying the provisions of the Code to be followed in the absence of any specific incorporation of the provisions of the Code of Civil Procedure particularly where a selective incorporation has been made and some provisions of the Code have been incorporated but the relevant provisions of Order XXI have not been incorporated specifically?

2) Should the rule of notice in Order XXI Rule 1 (2) be applied where no specific incorporation of the said rule has been made and what rules to be applied where there is lacuna in the procedure?

15. Dr. Dhawan has submitted that as an adjudicating authority of the claim arising out of motor vehicle accident, the Tribunal has a duty to act judicially and fairly by following the principles underlying the Code of Civil Procedure as a bench mark for fairness unless any particular rule of the Code of Civil Procedure has been specially excluded. Dr. Dhawan has submitted that in the instant case, there is no dispute that the procedure of the judgment debtor's giving notice to the decree holder was not followed. It is also not disputed that the executing Court did not inform the decree holder. The Claims Tribunal has been declared to be Civil Court for the purposes of taking evidence on oath, forcing attendance of witnesses, discovery and production of documents and such matters as may be prescribed and also for the purposes of Section 195 and Chapter XXXV of the Criminal Procedure Code, 1988 as contained in Section 110 [c] of the Motor Vehicles Act, 1939 and corresponding Section 169 (2) of the Motor Vehicles Act, 1988. Under the rule making power under the said Motor Vehicles Act, the State Government can inter alia lay down the procedure to be followed by the tribunal and the powers vested in a Civil Court which may be exercised by the Claims Tribunal. Rule 20 of the Motor Vehicles Act states that the Code of Civil Procedure will apply in certain cases. The following provisions of the First Schedule to the Code of Civil Procedure 1908 shall in so far as may be applied to proceedings before, the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30, Order IX, Order XIII, Rules 3 to 10, Order XVI Rules 2 to 21, Order XVII, and Order XXXIII Rules 1 to 3. Amendment to Rule 20 has been made in different States. In the State of Punjab, Order XXI was inserted in Rule 20 on June 21, 1968 and published in the Gazette on July 12, 1968. As already indicated, the State of Haryana adopted the Punjab Rules in 1972 after the inclusion of Order XXI in the Punjab Rules in 1968, by GSR 20/CA-4/39/S 111A/72 dated January 28, 1972.

16. Dr. Dhawan has submitted that the Motor Vehicles legislation creates a Claims Tribunal which is a body for the purpose of adjudicating claims and it is headed by qualified legal personnel and it has a duty to give parties a chance to be heard and make an award determining the amount of compensation. For the said contention, Dr. Dhawan has drawn the attention of the Court to Sections 110 of the Motor Vehicles Act, 1939 and corresponding Section 165 of the Motor Vehicles Act of 1988. Dr. Dhawan has submitted that the Motor Accidents Claim Tribunals are in lieu of Civil Courts by excluding the jurisdiction of Civil Courts. For such contention, reference has been made to Section 110F of the Motor Vehicles Act, 1939 and corresponding Section 175 of the Motor Vehicles Act, 1988. Dr. Dhawan has submitted that it will, therefore, appear that the Tribunal has a duty to act judicially in a fair manner consistent with the statutory scheme that ousts the jurisdiction of the Civil Courts. Dr. Dhawan has submitted that procedurally the Tribunal is supposed to act by way of summary procedure as it thinks fit (Section 110C of Motor Vehicles Act, 1939 and Section 169 of Motor Vehicles Act, 1988). Dr. Dhawan has also contended that the rule making power makes a distinction between the procedure to be followed and the powers vested in a Civil Court which may be exercised by a Claims Tribunal and any other matter that may be prescribed. (Section 111 A of Motor Vehicles Act, 1939 and Section 176 of Motor Vehicles Act, 1988). Dr. Dhawan has submitted that even if certain empowerments in the Code of Civil Procedure are not made, the procedure may be prescribed or not, the procedure to be followed must be fair. Dr. Dhawan has submitted that the criteria for determining the right procedure are the Civil Procedure Code and Criminal Procedure Code. In practice, the principles underlying the Civil Procedure Code and the general law have been followed as being consistent with public policy and due process.

17. Referring to Wade's Administrative Law (7th Edition page 931), Dr. Dhawan has contended that more generally, following the tribunalization of justice, there is a need that the tribunals that are set up should be commensurate to the task.

18. Dr. Dhawan has submitted that the need for a fair procedure stems from the following sources:

- i) Justice, equity and good conscience - it is a part of Indian Law and must be deemed to have continued by virtue of Article 372 of the Constitution.
- ii) Article 21 as interpreted by this Court after Maneka Gandhi's case (1978 (2) SCR 621) mandates a fair procedure.
- iii) The principles of natural justice are founded on fairness, a right to be heard and dealt with fairly.

19. It has also been submitted by Dr. Dhawan that as a matter of rule of law, where the right to adjudicate one's disputes is taken away from a Court of law, the alternative dispute settlement mechanism must be fair. For this contention, Dr. Dhawan has drawn the attention of the Court to the decisions in *Dr. M. Ismail Faruqi & Ors. Vs. Union of India & Ors.* (1994 (6) SCC 360 at pp. 412, 422), *Magan Lal Chagganlal (P.) Ltd. Vs. Municipal Corporation of Greater Bombay and Ors.* (1975 (1) SCR at pp. 23, 24, 55), in *Re Supreme Court. The Special Courts Bill, 1978* (1979 (2) SCR 476, 532, 571, 573). Dr. Dhawan has also submitted that the underlying principles of general law have been made, applicable on the footing that they are consistent with the public policy. In support of this contention, Dr. Dhawan has referred to the decision of this Court in *P. Sambamurthy & Ors. Vs. State of Andhra Pradesh and Anr.* (1987 (1) SCC 362) where the application under Order XXIII in the writ proceedings has been upheld. Dr. Dhawan has submitted that the practice of this Court and the High Courts has been to incorporate general principles underlying the provisions of Civil Procedure Code even though such provisions of the Code have not been specifically incorporated in the Motor Vehicle Act and the Rules. In this connection, Dr. Dhawan has referred to the decision in *State of Haryana Vs. Darshan Devi* (1979 (2) SCC 236) where Order XXXIII dealing with the provisions for suing as *forma pauperis* has been made applicable in the proceedings before the Tribunal. Dr. Dhawan has also referred to the decision in *Bhagvati Devi Vs. L.G. Goel* (1983 ACJ 123 SC) where it has been held following the principle in *Darshana Devi*, that claims tribunals are Courts within the meaning of Section 25 of the Code of Civil Procedure. Dr. Dhawan has also referred to a number of decisions of various High Courts where the application of the principles underlying the Civil Procedure Code have been invoked in the endeavour to make the procedure of the Tribunal workable and fair.

20. In *K. Narayan Reddiar Vs. P. Venugopala Reddiar* (1976 ACJ 474 at 483 (AP) - general provisions of the C.P. Code have been made applicable to the Motor Accidents Claim Tribunal on the footing that the Tribunal has the trappings of the Court. Application of underlying principles of C.P. Code has also been made in the decisions in *Amarjit Kaur Vs. Vanguard Insurance Co. Ltd.* (1969 ACJ 286), *Jai Singh Vs. V.N.A. Subramaniam* (1983 ACJ 1), *M/s South Indian Insurance Co. Vs. Motor Accidents Claims Tribunal, J & K. & Others* (AIR 1973 JK 38), *New India Assurance Co. Vs. Punjab Roadways* (AIR 1964 Punjab 235), *Bihar Cooperative Motor Vehicles Insurance Society Vs. Rameshwar Raut* (AIR 1970 Patna 172), and *Madras Motor and General Insurance Co. Vs. K.Gopala Mudaliar* (1972 ACJ 135 Madras). Similarly, the application of provisions in respect of filing additional statements under Order VIII Rule 9 has been made in the *South India Insurance Co. Ltd. Vs. Lakshmi and Ors.* (1967 ACJ 153). Application of provisions on power to issue Commissions has been made in *M. Krishnan Nair Vs. Pankaj Jethaalal Sha* (AIR 1979 Madras 259).

21. Dr. Dhawan has submitted that Order XXI Rule 1 provides for that;

- i) the obligation to pay interest continues until notice is given to the judgment debtor;
- ii) the payment into Court does not constitute a payment for the decretal amount with interest;
- iii) the judgment debtor may treat the said payment as towards interest, with the result that the principal amount is still due;
- iv) any payment into Court without notice does not amount to payment in full satisfaction of the decree and interest will continue until notice is given (Order XXI Rule 1 (4), Civil Procedure Code).

22. Dr. Dhawan has also submitted that the failure of not giving notice is not a technical matter but constitutes an important principle of fairness.

23. Dr. Dhawan has lastly submitted that admittedly the judgment debtor did not give notice for the decretal amount being deposited in Court even though the judgment debtor had an obligation under Order XXI Rule 1 Code of Civil Procedure to give such specific notice of the date of deposit of the decretal amount to the decree holder. The judgment debtor, therefore, cannot avoid the liability by contending that it was the duty of the Court to intimate and if the Court has committed the mistake in not informing the decree holder, the judgment debtor cannot suffer on account of the laches of the Court. Dr. Dhawan has submitted that since Rule 20 was amended by the State of Punjab in 1968 and Haryana has adopted the said Rule in 1972, it should be held that the Haryana has adopted Rule 20 with all amendments incorporated in Punjab Rules on the date adoption of Punjab Rule by Haryana. Hence, the liability under Order XXI Rule 1 Code of Civil Procedure because of the express application of Order XXI in the Punjab Rules since adopted by State of Haryana cannot be evaded by the Judgment debtor.

24. Dr. Dhawan has further submitted that even if it is assumed that the State of Haryana has adopted the Punjab Rules of 1964 without amendment effected subsequently in 1968 by which Order XXI Civil Procedure Code has been made expressly applicable, the Tribunal had the authority to apply the underlying principle of Order XXI Rule 1 of Civil Procedure Code in awarding interest against the judgment debtor because such principle under Order XXI Rule 1 is consistent with justice and fairplay the Tribunal having been vested with exclusive jurisdiction to adjudicate the claims arising out of motor accidents, has to act fairly and reasonably in resolving the claim. Therefore, the impugned judgment is quite legal and valid and interference against the said decision is not called for.

25. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the appellant and by Dr. Dhawan, the learned Senior counsel appearing as amicus curiae in this appeal, it appears to us that the State of Haryana has adopted the Punjab Motor Accidents Claims Tribunal Rules 1964 by substituting the word 'Haryana' for Punjab in Rule 1 Clause (b) and in Rule 2 Clause (b). Such adoption in the Punjab Motor Accidents Claims Tribunal, 1964 was made on January 20, 1972. In the Punjab Motor Accidents Claims Tribunal Rules 1964, amendment was effected on June 21, 1968 by inserting Order XXI of the Code of Civil Procedure in Rule 20 framed under Motor Vehicles Act 1939. In our view, Dr. Dhawan is justified in his submission that when Haryana has adopted the Punjab Motor Accidents Rules in 1972, it must be held that it is adopted the Punjab Rules as it stood on the date of adoption, namely, January 20, 1972. Order XXI of the Code of Civil Procedure has been expressly made

applicable in Punjab Motor Accidents Claims Tribunal Rules by amending the Punjab Rules in June 1968 which was published in Gazette on July 12, 1968. Therefore, by adopting the Motor Accidents Claims Tribunal Rules, 1964 in 1972, it should be held that Haryana has adopted the Punjab Motor Accidents Claims Tribunal Rules, 1964 as stood amended on the date of adoption. In this connection, reference may be made to the decision of this Court in Mahindra and Mahindra Vs. Union of India (1979 (2) SCC 529) and Bolani Ores Ltd. Vs. State of Orissa (1974 (2) SCC 777). In Mahindra and Mahindra's case, it has been held if there is mere reference to a provision of statute in another without incorporation, then unless a different intention clearly appears, Section 8 (1) of General Clauses Act would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute.

26. In the decision in Bolani Ores' case, the question came up for consideration of this Court as to whether the definition of 'motor vehicles' in Section 2 (18) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 as incorporated in Orissa by the Orissa Amendment Act of 1940 will include the definition of 'motor vehicles' in the Motor Vehicles Act as amended in 1956. It has been held by this Court that incorporation of the definition of 'motor vehicles' in the Orissa Taxation Act would not be affected by subsequent amendment of the definition of 'motor vehicle' in the Motor Vehicles Act. In appreciating the definition of 'motor vehicle' as incorporated by the Taxation Act, regard must be had to the intention of the legislature in adopting such a method, its purpose and intendment as also the definition of the Motor Vehicles Act. It has also been indicated that nature of tax under the Taxation Act must remain compensatory and regulatory in character. If a vehicle does not use the public road, it cannot be taxed. Therefore, legislature only intended to incorporate by reference to the definition of motor vehicles as in 1940.

27. There is nothing to indicate that in Haryana, the Punjab Motor Accidents Claims Tribunal Rules, 1964 without the amendment effected in the said Rules after 1964 were adopted. Hence, Punjab Motor Accident Claims Tribunal Rules were adopted by only referring the Rules and not by expressly indicating that the said Punjab Rules of 1964 as it stood in 1964 were only adopted, it must be held that the Punjab Rules as stood amended on the date of adoption by Haryana are applicable in the State of Haryana. It cannot also be held that there was a legislative intendment to restrict the Punjab Rules in its application in Haryana only to the extent of Punjab Rules of 1964. The amendment in Punjab Rules in 1968 was made in order to bring in effect the procedural law being followed by the Civil Courts for ensuring fair trial and justice by inserting Order XXI Civil Procedure Code. In this connection, reference may be made to a decision of a seven Judges' Bench of this Court in State of Maharashtra Vs. Madhavrao Damodar Patil and Anr. etc. (AIR 1968 SC 1395). The question arose for consideration by this Court in the said case was whether amendments effected in the Maharashtra State Agricultural Land (Ceiling on Holdings) Act, 1961 have the protection for being included in Ninth Schedule of the Constitution when for inclusion in Ninth Schedule, only the said principal Act of 1961 was mentioned without mentioning the amendment acts. It has been held by this Court in the said decision that although for some purposes an amending Act retains its individuality but this, however, does not lead to conclusion that when an Act is referred to, it is not include the amendments made in it. Therefore, the amendments effected in the said Maharashtra State Agricultural Lands (Ceiling on Holdings) Act, 1961 will also get the protection for being included in the Ninth Schedule of the Constitution.

28. Order XXI Rule 1 Civil Procedure Code as amended in 1976 expressly provides that the judgment debtor shall give notice of the deposit of the decretal amount to the decree holder either

through the Court or directly to the decree holder. The obligation of giving the notice to the decree holder is not absolved by simply depositing the amount without taking steps to ensure service of the notice of such deposit to the decree holder through Court or otherwise. Therefore, the appellant cannot escape its liability to pay interest to the decree holder for the period between the date of deposit of the decretal amount and the date of notice of such deposit of the decree holder.

29. Even if it is assumed that by adopting the Punjab Motor Accidents Claims Tribunal Rules 1964 the subsequent amendments effected in the said Rules were not adopted or incorporated by the State of Haryana and therefore, Order XXI of the Code of Civil Procedure cannot be held to be expressly applicable in the Motor Accidents Claims Tribunal Rules of Haryana, the appellant, in our view can be fastened with the liability to pay interest for the aforesaid period on account of not giving notice of the deposit of the decretal amount to the decree holder by applying the underlying principles of Order XXI Rule 1, of Civil Procedure Code. The Motor Accidents Claims Tribunal has been constituted under the Motor Vehicles Act to adjudicate the disputes arising out of claims on account of motor accidents. The Motor Accidents Claims Tribunal has been constituted by giving the exclusive Jurisdiction to determine such disputes by excluding the Jurisdiction of Civil Courts. The Motor Accidents Claims Tribunal being a statutory Judicial Tribunal specifically constituted for adjudicating the claims arising out of Motor accidents, have the trappings of the Court. In Bhagwati Devi's case (supra) this Court has applied the provisions of Section 25 of Civil Procedure Code for transferring the case from one Court to another by indicating that the Motor Accidents Claims Tribunals are Courts within the meaning of Section 25 of the Civil Procedure Code. In Darshana Devi's case (supra), this Court also applied Order XXIII dealing with the provisions for suing by an indigent person in forma pauperis even though in Rule 20, neither Order XXIII nor Section 25 of Civil Procedure Code have been made expressly applicable. Dr. Dhawan has taken pains in referring to a number of decisions of various High Courts where the underlying principles of Civil Procedure Code have been made applicable in the proceedings before the statutory judicial tribunal on the footing that such provisions of Civil Procedure Code are based on equitable principles for ensuring fair trial.

30. In Mathunni Mathai Vs. Hindustan Organic Chemicals Ltd. and Ors. (1995 (4) SCC 26), it has been held that Order XXI Rule 1 as amended in 1976 is applicable in executing the award made under the Land Acquisition Act after indicating the principle that if the decretal amount is deposited by the judgment debtor pursuant to the order of the Court and the judgment debtor has not given notice of such deposit to the decree holder and also does not specify the manner in which the amount should be appropriated, the decree holder will be entitled to appropriate the amount deposited by the judgment debtor towards interest and other expenses and the decree holder is not bound to adjust the same towards the principal.

31. In Prem Nath Kapur and Another Vs. National Fertilizers Corporation of India and others (1996 (2) SCC 71), the decision in Mathunni Mathai's case has been expressly overruled by a three Judges' Bench of this Court on the finding that Order XXI Rule 1 being inconsistent with the provisions contained in Sections 34 and 28 of the Land Acquisition Act. Such provision of Civil Procedure Code cannot be extended to the execution of award made under the Land Acquisition Act. Dr. Dhawan has rightly contended that in Prem Nath's case non applicability of Order XXI Rule 1 Civil Procedure Code on the score of inconsistency with provisions of Land Acquisition Act relating to awards under the said Act has been indicated and for the said reason, applicability of Order XXI Rule 1 Civil Procedure Code as held in Mathunni's case has been overruled. But applicability of Order XXI Rule 1 Civil Procedure Code in other cases has not been doubted and the principle indicated in Mathunni's case has also not been discarded. On the contrary, it has been held in Prem

Nath's case that the decision of this Court in *Meghraj Vs. Bayabai* (1969 (2) SCC 274) since relied in Mathunni's case is applicable to a debtor and creditor in an ordinary Civil suit governed by Civil Procedure Code.

32. It appears to us that the provisions of Order XXI Rule 1 are not in any way inconsistent with the provisions for awarding just and fair compensation in Motor Accident Claims. The real purpose of awarding just and fair compensation to the victim of the accident or the legal heirs of such victim will be fulfilled by applying the principle of Order XXI Rule 1 Civil Procedure Code so that the awardee is not deprived of the opportunity of gainfully utilising the amount under the award for want of notice about the deposit made by judgment debtor resulting in the sum remaining unutilised. In our view, therefore, there is no difficulty to apply the underlying principles under Order XXI, Rule 1 Civil Procedure Code in executing the award of compensation passed by the Motor Accidents Claims Tribunal and the Tribunal must be held to be competent to invoke the beneficial provisions of Order XXI Rule 1 Civil Procedure Code.

33. We may indicate here that before the amendment of Order XXI Rule 1 Civil Procedure Code by the Amending Act, 1976 on the question of liability of the judgment debtor to give notice when the decretal amount is deposited in Court, the High Courts took different views. In *Laxminarayan Ganeshdas Vs. Ghasiram Dalchand Palaliwal* (AIR 1930 Nagpur 191), it has been held that where a decree orders the payment of a sum of money awarding interest until payment and the money is paid by payment into Court under the provision of Order XXI Rule 1, the interest does not run until notice has been given to the decree holder under Order XXI Rule 1 (2) but ceases to run from the date of such payment. Such view of the Nagpur High Court was dissented from in a later decision by the Kerala High Court in *State of Kerala Vs. Mahadeva Iyer* (AIR 1969 Kerala 8). The Kerala High Court in the said decision has held that where the interest is awarded by the decree on the decretal amount until payment, it does not cease to run merely by reason of the making of the deposit of the decretal amount into Court unless it is followed up by the service of notice as required by Clause (2). It is only when the factum of deposit is brought to the knowledge of the decree holder by service of such notice that the deposit will amount to payment within the meaning of Order XXI Rule 1. In taking the said view, the Kerala High Court has relied on the decision of others High Courts (AIR 1932 Calcutta 111, AIR 1951 Bombay 394, AIR 1952 Travancore Cochin 236, AIR 1955 Madh Bha 126, AIR 1956 Trvancore, Cochin 46).

34. After the amendment of Order XXI Rule 1 in 1976, there is no scope for any controversy as to the liability of the judgment debtor when the decretal amount is deposited in Court but the notice of such deposit is not given to the decree holder. It is imperative that the judgment debtor has to give notice to the decree holder about deposit for the decretal amount. Since motor accident in the instant case, had taken place on May 7, 1983, Order XXI Rule 1 as amended in 1976 is clearly applicable. Even otherwise also, the provision of Order XII Rule 1 being a procedural law, amended provisions of Order XXI Rule 1 are applicable even if the accident had taken place prior to 1976 because such amendment of procedural law is retrospective in its operation.

35. In the aforesaid circumstances, no interference is called for against the impugned decision and the appeal is dismissed without however any order as to cost. Before we part, we intend to place on record our deep appreciation for the valuable assistance rendered by Dr. Dhawan who has taken pains in assisting the Court by appearing as an *amicus curiae*.