

RAJASTHAN HIGH COURT

Fazal Ali

Vs.

Amna Khatun

D.B. Civil Special Appeal No. 24 of 2003
(N.N. Mathur and K.K. Acharya, JJ.)

18.09.2003

JUDGMENT

N.N. Mathur, J.

1. At the motion stage, a question of wide ramification arises for consideration is whether the Special Appeal filed under Article 225 of the Constitution of India against the judgment of a learned Single Judge passed in an appeal preferred under Section 173 of the Motor Vehicles Act is not maintainable in view of Section 100-A introduced by the Civil Procedure Code (Amendment) Act, 2002 with effect from 1.7.2002 ?

2. The impact of Section 100-A with respect to special appeals preferred under Section 18 of Rajasthan High Court Ordinance 1949, as stood before commencement of the Constitution and imported under Article 225 of the Constitution, against an original or appellate decree or order passed by the learned Single Judge after 1.7.2002 was examined by the Division Bench of this Court in *UCO Bank v. Roopa Ram*,¹ to which one of us (Mathur J.) was a party. The Division Bench held that in view of Section 100-A of the Civil Procedure Code (Amendment) Act 2002, appeals filed after 1.7.2002 are not maintainable and only such letters patent appeals saved are those filed prior to 1.7.2002 whether they have been admitted or not. The question in the instant appeal pertains to impact of Section 100-A with respect to special appeals under Article 225 of the Constitution against the appellate order passed in appeal under special enactment namely Motor Vehicles Act by learned Single Judge after 1.7.2002.

3. It is submitted that paramount Charter under which the High Court functions, would not get excluded by a provision incorporated in the Civil Procedure Code. Elaborating

the contention, it is submitted that a Motor Accident Claims Tribunal not being a Civil Court, restrictions provided under Section 100-A of the Civil Procedure Code are not attracted. Strong reliance is placed on a Full Bench decision of this Court in *United India Insurance Company Limited v. Brij Mohan Das*, 1998 WLC(Raj.) UC ¹. It is also contended that the legislature has deliberately omitted to extend the provisions of Section 100-A to an order passed on appeal under Section 173 of the Motor Vehicles Act by not using the words "decision of Tribunal" after the words "decree or order". It is also argued that the Motor Vehicles Act is a Special Act and it does not prohibit further appeal from the judgment of the learned Single Judge. Reliance has been placed on a recent decision of the Hon'ble Supreme Court in the case of *Subal Paul v. Malina Paul*,. ² Virtually, no argument has been advanced by any of the Counsel opposing the maintainability of the Special Appeal in view of Section 100-A Civil Procedure Code. However, there are formidable contentions, which deserve to be considered before answering the question posed.

4. It can be contended that Section 100-A Civil Procedure Code has been introduced to minimize the delay and, as such, to curtail the second appeal in the third Forum, the non-obstante clause has been appended to Section 100-A with a view to give the enacting part of the Section an overriding effect over the Acts or the Instruments having the force of law. The purpose of amendment in the Amendment Act has been highlighted by the Supreme Court in *Salem Advocates Bar Association v. Union of India*, ³ wherein it is held that no prejudice would be caused to the litigants by not providing for intra-court appeal even where the value involved is larger. In such cases, the Apex Court opined that the High Court Rules can provide that the Division Bench would hear the regular appeal. The Apex Court found no illegality in the provisions of Section 100-A.

5. Before proceeding to deal with the moot question, we may briefly refer to relevant statutory provisions having a bearing on the controversy involved.

6. At the outset, we may point out that there has been a controversy as to abrogation of right to intra-court appeal in Rajasthan High Court with the repealing Act coming into force on 29.8.2001 by which the Rajasthan High Court Ordinance, 1949 was repealed. The *intra*-court appeal named as "Special Appeal" has been provided against the judgment of a learned Single Judge before the Division Bench under Section 18 of the Rajasthan High Court Ordinance, 1949. The said Ordinance was repealed by the Judicial Administration Laws (Repealed Act, 2001) with effect from 29.8.2001. A Division Bench of this Court held that there is no other provision existing in any

Statute, Ordinance or Rules providing for an appeal against judgment & order of learned Single Judge before a Division Bench other than Section 18 of the Rajasthan High Court Ordinance, 1949 and as the said Ordinance stood repealed, the Special Appeal was not maintainable. It was further held that Section 18 of the Ordinance, which provides for an appeal, stood repealed and the repealing Act did not contain any saving clause, thus there existed no provision for Special Appeal. However, on reference, a Full Bench in *State of Rajasthan v. R.C. Misra* ⁴ held that right to intra-Court appeal can not be said to have been abrogated with the repealing Act of 2001, as the power of the High Court in the matters of administration of justice has been preserved by Article 225 of the Constitution of India read with Sections 52, 54 and 57 of the Rajasthan Reorganization Act and Rajasthan High Court Rules. The Court held that the remedy of intra-Court appeal is a constitutional remedy under Article 225 of the Constitution. The Court recorded its conclusions in para 228 of the judgment, the relevant conclusions are extracted as follows :

"The right of *intra*-court appeal does not stand abrogated with the Repealing Act of 2001 coming into force on 29.8.2001 by which the Rajasthan High Court Ordinance, 1949 was repealed. The right to the *intra*-court appeal in the High Court of Judicature for Rajasthan, and the jurisdiction of the Division Bench to hear the appeal against the judgment of the learned Single Judge of this Court as was vested under Article 225 of the Constitution and later on conferred under Section 52 of the State Reorganization Act, 1956 and the Rajasthan High Court Rules therefore, was not affected or abrogated by the repeal of the Rajasthan High Court Ordinance, 1949 which had long ceased (ceased ?) to be governing statute in respect of subjects dealt with under Article 225 of Chapter-V of Part-VI of the Constitution and on the subject matters dealt with in Part-V of the State Reorganization Act, 1956."

7. It would be relevant to mention that the Rajasthan High Court was established as a Court of Record under the Rajasthan High Court Ordinance, 1949. Section 18 provides for the *intra*-court appeal in the name of Special Appeal. Section 18 reads as follows :

"18. *Appeal to the High Court from judgment of Judges of the Court.* - (1) An appeal shall lie to the High Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court and not being an order made in the exercise

of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under Section 43 or in the exercise of criminal jurisdiction) of one Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal."

8. Since the High Court constituted under any instrument prior to commencement of the Act ceased to derive their existence and source of authority from that instrument, the provision was made in the Constitution being Article 225 identifying them to be same as outgoing High Court. Framers of the Constitution did not provide for continuance of old High Court to function under old laws as High Court set-up over it. Article 225 reads as follows :

"Article 225 Jurisdiction of existing High Courts. - Subject to the provisions of this Constitution and to the provisions of any laws of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

9. Thus, Article 225 makes it clear that it was investing the respective High Courts with same jurisdiction or power of judges of the respective High Courts in relation to the administration of justice including any power to make rules of the Court and to regulate sitting of members of the Court either singly or in Division Courts as were immediately before the commencement of the Constitution. This has the effect of

incorporating respective provisions as laws deriving their force from the Constitution and not from the parent enactment. In other words, Article 225 preserves the jurisdiction of and the law administered in the existing High Court and respective powers of the judges thereof in relation to administration of justice in court including the powers to make rules in the Court and to regulate the sitting of the Court and members thereof sitting alone or in Division Courts by declaring the same as immediately before the commencement of the Constitution. Thus, when it is said that the Special Appeal is filed under Article 225 of the Constitution, it is on account of preservation of jurisdiction of Section 18 of the High Court Ordinance, 1949.

10. The Motor Vehicles Act, 1988 as well as its predecessor Act of 1939 evinced keen intent of the Parliament for the expeditious disposal of the Claim Cases by the Tribunal. Section 169 of the Act lays down that "Claim Tribunal can follow such summary procedures as it thinks fit". It is obviously with the purpose to ward off the delay and to keep it away from the regular Suit. The Tribunal has also been invested with the powers of the Civil Court in certain matters. Against the award of the Tribunal, an appeal can be filed under Section 173, which reads as follows :

"173. *Appeals.* - (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty percent of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than ten thousand rupees."

11. Section 174 makes the amount awarded recoverable as arrears of land revenue. The jurisdiction of the Civil Court has been expressly barred by Section 175. It is well settled that a Claims Tribunal gives an award, which does not have the status of "judgment", "decree" or "order" as contemplated by the Civil Procedure Code. The legislature wanted a determination of the Claims Tribunal to be distinguished from an

order or decree of an ordinary Civil Court.

12. Coming to the Civil Procedure Code, 1908, a reading of the preamble shows that it is an Act to consolidate law relating to the procedure of the Courts of Civil Judicature. Section 9 provides that the Court shall have the jurisdiction to try all Suits of a civil nature excepting Suits where cognizance is either expressly or impliedly barred.

13. Section 4 of the Civil Procedure Code reads as follows:

"4. *Savings.* - (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for recovery of rent of agricultural land from the produce of such land."

14. Section 100-A was inserted by the Civil Procedure Code (Amendment) Act, 1976 declaring that :-

"Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, no further appeal (Letters Patent Appeal) will lie against the decision of a Single Judge in a second appeal."

15. Thus, the judgment rendered by a third Court in a second appeal was to be treated as final and it could not be challenged in third appeal before the fourth Forum. Perhaps, the primary object behind Section 100-A of the Civil Procedure Code (Amendment) Act, 1976 was to minimize the delay and to give finality to a decision rendered by the second Appellate Court. In other words, there should not be third appeal before the fourth Court.

16. The Law Commission in the 14th Report recommended abolition of Letters Patent Appeals from the judgments of a Single Judge of the High Court exercising appellate jurisdiction. In Statement of Objects & Reasons, it has been stated:

"Under the Letters Patent appeals lie, in certain cases, against the decision of a

Single Judge in a second appeal. Such appeal, in effect, amounts to a third appeal. For the purpose of minimizing delay in the finality of adjudications, it is not desirable to allow more than two appeals. In the circumstances, new Section 100-A is being inserted to provide that there should be no further appeal against the decision of a Single Judge in a second appeal."

17. By the Civil Procedure Code (Amendment) Act, 1999, Section 100-A was substituted as under :

"100-A. Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force -

(a) where any appeal from an original or appellate decree or order is heard and decided,

(b) where any writ, direction or order is issued or made on an application under Article 226 or Article 227 of the Constitution,

by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge."

18. Though the Amendment Act, 1999 received the assent of the President on Dec. 30, 1999, the said amendment did not come into force. There was opposition from the bar and other corners with respect to abolition of the intra-Court appeal against the judgment of a learned Single Judge of the High Court in a proceeding under Article 226 or 227 of the Constitution of India. Thus, amendment was made in the Civil Procedure Code (Amendment) Act, 2002 and further appeal (Letters Patent Appeal) was abolished only against the judgment of a learned Single Judge in first appeal and right of appeal against the judgment of a learned Single Judge in a proceeding under Article 226 or 227 of the Constitution of India, which were there prior to the Amendment Act of 1999, was kept intact.

19. The Amendment Act, 2002 has been brought into force from July 1, 2002, which reads as follows:

"100-A. *No further appeal in certain cases.* - Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by

a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

20. Even without reference to Section 100-A, there has been a controversy with respect to maintainability of the Special Appeal against the judgment of a learned Single Judge in a Motor Accident Claim Case. A Division Bench of this Court in *United India Insurance Co. Ltd. v. Smt. Lad Kanwar*,⁵ reading the expression used "an appeal" under Section 110-B (173 of the New Act) held that against the judgment and award passed by the Claims Tribunal, only one appeal could be filed. However, the said decision has been reversed by the Full Bench in *New India Insurance Co. v. Santosh and Ors.*,⁶ wherein it is held that the word "an appeal" used in Section 100-D or Section 173 of the New Act does not indicate number of appeals. The word "an" has been prefixed to the word "appeal" as a requirement of grammar. In view of the Full Bench decision in New India Insurance Company Limited's case (supra), the appeals against the judgment of a learned Single Judge under the Motor Vehicles Act are being maintained.

21. In other decision of Full Bench i.e. Brij Mohan Das's case (supra), it has been held that the Motor Accident Claims Tribunal is having trappings of a Court but is not a Civil Court. The Full Bench analysing the provisions of the Motor Vehicles Act noticed the following significant features :

(i) The Presiding Officers of the District Court are appointed as members of the Claims Tribunal by a notification of the State Government for deciding the cases of Motor Accident Claims. The Judicial Officers mentioned in the notification act as a *persona designata* and not as a Court while deciding the Claim Cases under the Motor Vehicles Act.

(ii) The jurisdiction of the Civil Court in the matter of Motor Accident Claims has been excluded by Section 175 of the Act.

(iii) Section 3 of the Civil Procedure Code provides for subordination of Courts. It says for the purpose of Civil Procedure Code, the District Court is subordinate to High Court and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and the District Court. Obviously, the MACT under the Motor Vehicles Act, 1988 is neither the District Court nor the Civil Court of grade inferior to that of District Court nor they are Courts of Small Causes. Thus, it is not a Court subordinate to High Court within the meaning of Section 3 of the Civil

Procedure Code.

22. The expression "subordinate" finds place in Section 24 of the Civil Procedure Code. Section 24 confers upon the High Court general power of transfer and withdrawal of any civil case or proceeding from any court subordinate to it, whereas the Motor Vehicles Act, 1988 gives power to regulate the distribution of business among the Claims Tribunals to the State Government and not the High Court. Thus, unlike Section 24, Civil Procedure Code, the power of transfer and withdrawal of business is not vested in the High Court but in the State Government.

23. In *Associated Cement Companies Ltd. v. P.N. Sharma*⁷ making distinction between the Civil Court and the Tribunal, the Apex Court held that the MACT is not a Civil Court within the meaning of the Civil Procedure Code, though it has the trappings of Court.

24. The distinction between the Court and the Tribunal has been brought out by the Supreme Court in *Associated Cement Companies Ltd.'s* case (supra). It is observed that the powers, which the Civil Court exercise, are governed by the prescribed rules or procedure and they deal with the question of fact & law before them by adopting a process which is described as judicial process. The powers, which the Courts exercise are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions. On the other hand, the Tribunals occupy a special position of their own under the scheme of the hierarchy of the courts and Tribunals, and special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic, since both the courts as well as the Tribunals are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the Courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the Tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the Tribunals is substantially the same and there is no essential difference between the functions that they discharge. But in the case of the Courts, so also in the case of the tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State and on consideration of policy,

the State transfers its judicial functions and powers mainly to the Courts established by the Constitution. The basic and fundamental feature which is common to both the courts and Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in the Sovereign State.

25. Thus, the Civil Court does not possess the power to devise its own procedure. It has to follow the provisions of the Civil Procedure Code to the trial of the suits and the remedies like appeals and revisions but there is no such obligation on the Claims Tribunal subject to the rules framed, it is entitled to follow such summary procedure as it may think fit. In fact, Section 175 of the Motor Vehicles Act prohibits the jurisdiction of the Civil Court to entertain any question related to any claim for compensation, which will be adjudicated upon by the Claims Tribunal. Thus, it is well established by the decisions of the Full Bench of this Court and the Apex Court that the MACT is not a Civil Court within the meaning of the Civil Procedure Code. Hence, the restrictions provided under Section 100-A of the Civil Procedure Code can not be extended to further appeal preferred under Section 173 of the Motor Vehicles Act. Had the intention of the legislature was to the extent of provisions of Section 100-A of the Civil Procedure Code to Motor Vehicles Act, the legislature could have added *the* words "decision of the Tribunal" after the words "decree or order".

26. In *Vanita M. Khanolkar v. Pragna M. Pai*,⁸ a question came up for consideration before the Apex Court as to whether the power of appeal under Section 15 of the Letters Patent, which is a Charter under which the High Court of Bombay functions, the said provision for appeal would not have been whittled down by statutory provisions of Section 6(3) of the Specific Relief Act ? The Apex Court held that any statutory provision barring an appeal or revision can not cut across the constitutional power of High Court. The Court observed thus :

"Now, it is well settled that any statutory provision barring an appeal or revision can not cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under letters patent."

27. Recently, before the Apex Court in Subal Paul's case (supra), the question came up for consideration as to whether the Letters Patent Appeal would lie against the judgment of the learned Single Judge of the High Court filed under Section 299 of the Indian Succession Act, 1925 ? In the said case, the application for probate was

rejected by the Original Court. The applicant preferred an appeal under Section 299 of the said Act before the High Court. The learned Single Judge allowed the appeal and granted letters of administration with a copy of the will annexed thereto. Aggrieved respondent preferred a Letters Patent Appeal before the Division Bench of the High Court. A preliminary objection was raised that no such appeal was maintainable being barred by Section 104 of the Civil Procedure Code. The Bench overruled the objection and directed for hearing of the matter. The said order was challenged before the Apex Court. The Apex Court considered the question in the context that the Indian Succession Act, 1925 is a Special Act and Section 299 thereof provides for an appeal against the order by the District Judge either refusal or issuing probate. As to whether the provisions of Section 104 of the Civil Procedure Code are attracted in the appellate proceeding, the Apex Court held that as Section 299 expressly provides for an appeal in the High Court, the right of appeal is not conferred under Section 104 of the Civil Procedure Code. The Apex Court referred to the decisions of the High Courts of Calcutta, Madras and Bombay following the decision of the Privy Council in *Hurish Chunder v. Kaisunder*,⁹ and held that Section 588 of the Civil Procedure Code, as it then stood, did not take away the jurisdiction of Clause 15 of the Letters Patent. In para 17, the Court further took notice of the decision of the Allahabad High Court, which led to insertion of the words "save as expressly provided any other Act" in Section 104 of the Civil Procedure Code with a view to give effect to Calcutta, Madras and Bombay High Courts decisions. In para 18, the Apex Court has observed as follows:-

"18. Had the intention of the Legislature been that an appeal under Section 299 would be governed by the provisions of the Civil Procedure Code, the Legislature could have used the language as has been done in Section 28 of the Hindu Marriage Act providing that all decrees and orders passed under the Act "may be appealed from under any law for the time being in force."

28. In the instant case, there is no indication to gather that the legislature intended to extend the prohibition provided under Section 100-A Civil Procedure Code to further appeal against the decision on appeal preferred under Section 173 of the Motor Vehicles Act. In the same judgment in para 21, the Apex Court has observed that -

"If a right of appeal is provided for under the Act, the limitation thereof must also be provided therein. A right of appeal which is provided under the letters patent cannot be said to be restricted."

The Court further observed that -

"Limitation of a right of appeal, in absence of any provision in a statute cannot be readily inferred."

The Court further observed as follows:

"It is now well settled that the appellate jurisdiction of a superior court is not taken as excluded simply because subordinate court exercises its special jurisdiction."

It is further observed in para 22 as follows :

".....on matters where the special Act sets out a self-contained Code, the applicability of the general law procedure would be impliedly excluded."

29. In *Sharda Devi v. State of Bihar*,¹⁰ a question came up for consideration for maintainability of the Letters Patent Appeal against the decision of the learned Single Judge on an appeal preferred under Section 54 of the Land Acquisition Act. The three-judge Bench held that the Letters Patent appeal will lie unless the concerned statute takes away the right to file letters patent appeal. The Bench has referred to its earlier decision in *Basant Kumar v. Union of India*¹¹ wherein it is held thus :

"The next question is whether the LPA would lie against the judgment of the learned single judge ? It is a settled legal position that under Section 54 of the Land Acquisition Act, the appeal would lie to the High Court; when the appeal on the basis of the pecuniary value was decided by a single judge necessarily, it being the judgment of the single judge, an appeal would lie to the same court in the form of LPA to the Division Bench. The Division Bench was not right in holding that the LPA would not lie to the High Court against the judgment of the single judge. To that extent, the view of the High Court is not correct."

30. After quoting *Basant Kumar's* case (supra), the Bench held that powers given to the High Court under the Letters Patent are akin to the constitutional powers of a High Court. Such a power would not get excluded unless the concerned statutory enactment excludes an appeal under the letters patent. The observations are extracted as follows:

"A letters patent is the charter under which the High Court is established. The powers given to a High Court under the letters patent are akin to the constitutional powers of a High Court. Thus when a letters patent grants to the High Court a power of appeal, against a judgment of a single judge, the right to

entertain the appeal would not get excluded unless the concerned statutory enactment excludes an appeal under the letters patent."

31. The aforesaid observation has been quoted with approval by another three- judge Bench of the Apex Court in Subal Paul's case (supra). In the said case, the Court held that Section 54 of the Land Acquisition Act, 1894 provides for an appeal before the High Court. Thus, it was held that letters patent appeal against the judgment or order of the learned Single Judge on an appeal preferred under Section 54 of the Land Acquisition Act would be maintainable.

32. Section 100-A Civil Procedure Code which contains non-obstante clause giving overriding effect over the Acts or other instruments having the force of law, would not have impact on Motor Vehicles Act, for the reason that the Tribunal is not a Civil Court and secondly letters patent is not an enactment. It is a Charter of the High Court. A non-obstante clause of such nature can not cover the Charter of the High Court. Similar contention was rejected by the Apex Court in Sharda Devi's case (supra). It would be convenient to extract para 10 of the said judgment as follows:

".....A letters patent is not an enactment. It is the charter of the High Court. A non-obstante clause of this nature can not cover the charter of the High Court."

33. On the conspectus of the entire matter, we are of the view that Section 100-A Civil Procedure Code will not take away the Letters Patent jurisdiction of the High Court as the Tribunal under the Motor Vehicles Act is not a Civil Court as contemplated under the Civil Procedure Code. The provision contained under Section 100-A Civil Procedure Code is applicable to only decree or order passed by a Civil Court, even those arising under the special enactments but not the orders passed by the Tribunals. Even the use of words "notwithstanding anything contained in any other law for the time being in force" does not take away the substantive right of appeal before a Division Bench of this Court, where such appeal is against the decision of the Single Judge in exercise of the appellate jurisdiction or decision of the Tribunal or quasi-judicial authority.

34. Accordingly, we hold that a Special Appeal against a judgment or order of a Single Judge in an appeal preferred under Section 173 of the Motor Vehicles Act is maintainable and the amended provision of Section 100-A Civil Procedure Code introduced by the Civil Procedure Code (Amendment) Act, 2002 has no impact on the power of a Division Bench to entertain and adjudicate the same.

Office to proceed.

Order accordingly.

Cases Referred.

1. 2003(6) ILD 421 (Raj)
2. 2003(2) RCR (Civil) 234 (SC): JT 2003(5) SC 371
3. 2002(4) RCR (Civil) 786 (SC): AIR 2003 SC 189
4. (2003(1) WLN 371)
5. 1993(1) WLC (Raj) 750
6. 1996(3) WLC (Raj) 675
7. AIR 1965 SC 1595
8. 1998(1) R.C.R. (Civil) 318: AIR 1998 SC 424
9. 1883(9) Cal 482
10. 2003(1) RCR (Civil) 552 (SC) : JT 2002(3) SC 43
11. 1996(11) SCC 542