

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL  
ON THE 31<sup>ST</sup> OF JANUARY, 2023**

**CIVIL REVISION No.72 of 2023**

**Between:-**

1. **SMT. SANGEETA NAMDEV W/O LATE SHIVKUMAR NAMDEV, AGED ABOUT 40 YEARS, OCCUPATION: HOUSEWIFE KACHHERI ROAD LAKHNADON DISTRICT SEONI (MADHYA PRADESH)**
2. **KU. ASHTHA NAMDEV D/O LATE SHIVKUMAR NAMDEV, AGED ABOUT 9 YEARS, OCCUPATION: GUARDIAN MOTHER SMT. SANGEETA NAMDEV R/O KACHHERI ROAD LAKHNADON DISTRICT SEONI (MADHYA PRADESH)**

**.....APPLICANTS**

**(BY SHRI BALRAM VISHWAKARMA, ADVOCATE)**

**AND**

1. **INDRAPATH @ MUNNA YADAV S/O SHRI JAGARDEV YADAV, AGED ABOUT 40 YEARS, VILLAGE DHUVAIYA PUKHRA POLICE STATION CHOWK GHAT DISTRICT BANARAS AT PRESENT GORAPARA TEHSIL SAIDPUR DISTRICT GAJIPUR TRUCK DRIVER UP 65 AT 6993 (UTTAR PRADESH)**
2. **SHYAM KUMAR SONKAR S/O LATE RAMU SONKAR R/O HOUSE NO. S23/66 DILVARIYA CHOWKIGHAT DISTRICT BANARAS TRUCK OWNER UP-65-AT-6993 (UTTAR PRADESH)**
3. **RELIANCE GENERAL INSURANCE CO. LTD. KHANUJA TOWER FIRST FLOOR IN FRONT OF STANDARD MARUTI SHOW ROOM NAPIER**

**TOWN JABALPUR DISTRICT JABALPUR  
TRUCK INSURER UP 65-AT-6993 (MADHYA  
PRADESH)**

**.....RESPONDENTS**

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*This revision coming on for hearing this day, the court passed the following:*

**ORDER**

Heard learned counsel for the applicants/claimants on the question of maintainability of instant Civil Revision which has been filed on 20.01.2023 seeking enhancement of Rs.95,000/- in the final award dtd. 27.1.2017 passed by MACT, Lakhnadaun, Distt. Seoni in claim case no. 41/2014, whereby an award of Rs. 34,15,616/- has been passed.

2. Learned counsel for the applicants submits that he wanted to file Misc. Appeal but in the light of objections being raised by the Registry of this Court in the light of decision/order dtd. 07.03.2022 passed by coordinate Bench at Indore in Misc. Appeal no. 814/2022 (**Uzer Khan Vs. Faruq and others**), the petitioners have preferred the instant civil revision and as per this decision, the amount in dispute being less than Rs.1,00,000/-, the civil revision is maintainable.

3. I have carefully gone through the order in the case of **Uzer Khan** (supra), which is based upon decision/order dtd. 21.11.2016 passed by coordinate Bench at Gwalior in **M.A. 1096/2016 (Netram Vs. Rajendra Singh Yadav and others)** and another decision of coordinate Bench of High Court of Himachal Pradesh in the case **Pala Ram Vs. Punjab Roadways and another 2007 ACJ 983**. I have also gone through both the decisions in the case of **Netram** (supra) and **Pala Ram** (supra), but in both these decisions the objection of maintainability raised by the

Registry, has been overruled and the Misc. Appeals of the claimants have been held to be maintainable.

4. The decision given by coordinate Bench of this Court in the case of **Netram** (supra) has in fact considered and followed another coordinate Bench decision of Rajasthan High Court in the case of **Ghanshyam Vs. Additional District Judge, MACT Cases 2009 ACJ 1946**, relevant paras 8 and 9 of which are as under :-

“8. Per Sub-section (1) of Section 173, any person aggrieved by the award of the Claims Tribunal could prefer appeal to the High Court within 90 days from the date of award. The provisos to Sub-section (1) of Section 173 are to the effect that no appeal by the person who is required to pay any amount under the award would be entertained by the High Court unless a sum of Rs.25,000 or 50 per cent of the award amount, whichever be the less, has been deposited; and that the appeal could be entertained even after expiry of period of 90 days upon the appellant satisfying the High Court that he was prevented by sufficient cause from preferring the appeal in time. Sub-section (2) of Section 173, however, bars an appeal if the amount in dispute in the appeal is less than Rs.10,000. It is not the award amount that Sub-section (2) of Section 173 refers to; but it is the amount in dispute in appeal that alone is relevant.

9. The Tribunal in the present case has awarded to the petitioner an amount of Rs. 9,000 together with interest at the rate of 7.5 per cent per annum. Even if the component of interest is left aside and the principal amount as awarded by Tribunal is taken into consideration, the fact remains that the said amount of Rs.9,000 is the one that has been awarded to the petitioner and is not the amount in dispute. If the said award amount of Rs.9,000 alone was sought to be questioned in appeal by the person(s) against whom the award has been made, may be the question of competence of such an appeal would have arisen for the bar as spelt out in Sub-section (2) of Section 173 of the Act. The non-applicants are not questioning the award amount and the said amount of Rs. 9,000 as awarded by the Tribunal is not at all the amount in dispute in this matter. Reference to the decision in Illapu Seethamma's case, 2001 ACJ 328 (AP), appears to be entirely misplaced. The said common judgment relates to nine appeals preferred by the insurer of the vehicle involved in the accident against whom the award had been made by concerned Tribunal; and in the said decision, such appeals (four in number) wherein the amount in dispute was found to be less than Rs.10,000 were held to be incompetent. In the present case, the person against whom the award has been made is not challenging the award; but it is the claimant-petitioner who is seeking enhancement over the award amount.”

5. The decision/interim order dtd. 21.11.2016 given by coordinate Bench of this Court at Gwalior in the case of **Netram Vs. Rajendra**

**Singh Yadav & Others M. A. No. 1096/ 2016** is reproduced in toto as under :-

“Heard learned counsel for the appellant on the objection raised by the Registry that since the claim amount awarded by the Tribunal is only Rs.6,000/-, therefore, as per the judgment of the Special Bench in the case of National Insurance Co. Ltd., Gwalior Vs. Shrikant & Others as reported in 2007(2) JLJ 138, appeal is not maintainable as award is less than Rs.10,000/-.

Learned counsel for the appellant has submitted that ratio of the judgment in the case of National Insurance Co. Ltd., Gwalior (Supra) is not applicable to his case because present appeal has been filed by the claimant. Further, the claim before the Tribunal was Rs.15,70,000/- and if the amount awarded is Rs.6,000/-, then respondents were debarred from filing an appeal and not the claimant in terms of the provisions of Section 173(2) of the Motor Vehicle Act. Learned counsel has further submitted that in fact Section 173(2) of the Motor Vehicle Act provides that no appeal is maintainable against any award of Claims Tribunal, if the amount in dispute in the appeal is less than Rs.10,000/-, therefore, it has been held that where the remedy of appeal is not available under Section 173(2) of the Motor Vehicle Act, 1988, aggrieved party has a remedy of Revision under Section 115 of C.P.C.

Learned counsel for the appellant has placed reliance on the judgment of High Court of Himachal Pradesh at Shimla in the matter of Pala Ram Vs. Punjab Roadways & Another as reported in 2007 ACJ 983, wherein it has been held that appeal will be barred if the amount claimed is less than Rs.10,000/-.

In the present case, appellant had since claimed a sum of Rs.15,70,000/- before the Tribunal and was awarded only a sum of Rs.6,000/-, therefore, the dispute is with regard to Rs.15,70,000/- (-) Rs.6,000/- i.e. Rs.15,64,000/-. Thus, the disputed amount in the appeal filed by the claimant is the enhanced claim in the appeal or in case where the claim petition has been dismissed, the total amount claimed in the claim petition. It is not the amount awarded which will determine whether appeal is maintainable under Section 173(2) or not, therefore, the objection was rejected.

Similarly, in the case of Ghanshyam Vs. Additional District Judge (Fast Track) No.4, M.A.C.T. Cases, Jodhpur & Others as reported in 2009 ACJ 1946, a Bench of Rajasthan High Court has held that it is not the award that is referred to in Section 173(2) of the Motor Vehicle Act, but the amount in dispute and therefore, if the amount in dispute is more than Rs.10,000/-, the appeal is maintainable.

Even otherwise the judgment in the case of National Insurance Co. Ltd., Gwalior (Supra) categorically holds that-

“High Court shall not, under this Section, follow or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding except where:

a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings; or



sation as claimed by him in the claim petition. Therefore, the dispute is with regard to Rs. 73,000 and not Rs. 7,000. The judgments relied upon by Mr. Sharma are not at all relevant for the decision of this case since in both those cases the appeals were filed by the owners of the vehicles and the award was less than the stipulated amount. When a driver, owner or Insurance Company files an appeal then obviously if the award is less than Rs. 10,000 the dispute is with regard to an amount less than Rs. 10,000. However, when the claimant comes up in appeal for enhancement he is claiming the amount claimed by him in the claim petition and if that amount is more than Rs. 10,000 the appeal will be maintainable. The disputed amount in an appeal filed by the claimant is the enhancement claimed in the appeal or in case where the claim petition has been dismissed the total amount claimed in the claim petition. It is not the amount awarded which will determine whether appeal is maintainable under Section 173(2) or not. It is the amount which is in dispute in the appeal which will determine whether the appeal is maintainable. Therefore, in my opinion this objection has no basis and is accordingly rejected.

5. Coming to the facts of the present case it stands proved on record that the claimant was aged about 80 years. In the accident he suffered fracture of the femur. He remained admitted in the hospital from 25.6.1998 to 9.7.1998. The discharge summary has been proved by the doctor as Exh. PW 3/A. It has also been proved on record that the claimant has suffered permanent disability to the extent of 10 per cent. The Tribunal has awarded him only Rs. 7,000. In fact, in a case of permanent disability the Tribunal could not have awarded less than Rs. 25,000 which was the amount payable to the claimant as no fault liability under Section 140. No doubt the claimant is aged 80 years and, therefore, there will be no loss of income to him on account of the disability. However, he definitely has to be compensated for the period he remained in hospital, the expenses for medicines and attendant charges and also for pain and suffering and loss of amenities and future discomfort. Since the claimant is old man it is not necessary to determine the compensation under various heads.

Keeping the entire evidence in view and the fact that the claimant remained admitted in hospital for about 15 days and even on discharge had to wear a brace and suffered permanent disability of 10 per cent it would be just and reasonable to award Rs. 40,000 to him. The claimant shall also be entitled to interest on this amount at the rate of 9 per cent per annum w.e.f. the filing of the claim petition, i.e., 26.8.1998 till deposit of the amount.

6. In view of the above discussion, the appeal is allowed and the compensation is enhanced from Rs. 7,000 to Rs. 40,000 along with interest as aforesaid. No costs.”

7. Relying upon the decision in the case of **Netram** (supra), coordinate Bench of this Court at Indore in the case of **Pappu Jadhav s/o Malsingh Jadhav vs. Dharmendra Chouhan & two others MA No.2056/2021** has passed interim order on 08.03.2022 and held the claimant’s misc. appeal to be maintainable, which is also reproduced in toto as under :-

“Today the appeal is listed on the question of office objection regarding maintainability of the appeal.

This appeal has been filed for enhancement of the award dated 30.06.2021 passed by lind Additional M.A.C.T, Khargone in Claim Case No.136/2018.

Counsel for the appellant placing reliance over the judgment in the case of Sanobanu Nazirbhai Mirza and others vs. Ahmedabad Municipal Transport Service reported in 2013 ACJ 2733 and the order passed by the Gwalior Bench of this Court in M.A No.1096/2016 (Netram vs. Rajendra Singh Yadav & others) and submits that the appeal is maintainable and the office objection is to be ignored.

After hearing learned counsel for the parties and going through the decisions cited by the counsel for the appellant, I find substance in the arguments advanced by the appellant. In the present case, since appellant had claimed a sum of Rs.20 lakhs before the Tribunal and the Tribunal had awarded only a sum of Rs.14,80,000/-, therefore, the dispute is with regard to Rs.20,00,000 – (minus) Rs.14,80,000/- i.e. Rs.5,20,000/-. Thus, the disputed amount in the appeal filed by the claimant is the enhanced claim in the appeal.

The purpose of provision contained in section 173 (2) of the MV Act is to discourage appeals by the owner, driver and the insurer -2- for petty amounts. Hence, relying on the decision in the case of Netram (supra), the office objection is overruled.”

**8. In another decision in case of NEW INDIA ASSURANCE CO. LTD VERSUS MEGHNATH AND ANOTHER AIR 2001 MADHYA PRADESH 36, coordinate Bench of this Court has held as under :-**

“20. In the instant case, the claim proceedings were instituted subsequent to the enactment of 1988 Act hence the maintainability of appeal would be governed by the provisions of S. 173(2). Section 173(2) specifically bars filing of an appeal if the amount of compensation is less than Rs. 10,000/-. The provision has been enacted in order to save the claimants from the hierachy of the Courts and mutliplication of the expenses incurred at different levels. Therefore, in its wisdom the legislature has considered it fit and proper that if the amount is less than Rs. 10,000/- finality be attached to the awards passed by the Claims Tribunal. If it is held that revision is maintainable at the behest of the insurer or other persons liable to pay the compensation, where the amount is less than Rs. 10,000/- the intent of the legislature would be defeated in its letter and spirit.”

**9. In the case of VARGHESE DEVASSIA VERSUS JOSSY VARGHESE 2019 (1) KLT 769 Division Bench of Kerala High Court has held as under :-**

“11. We accordingly hold that the restriction contained in sub-section (2) of Section 173 of the Act can have no application to appeals filed by claimants in this court

seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal and that the said provision will apply only to appeals filed by the owner/driver/insurer of the motor vehicle involved in the accident who have been held liable by the Tribunal to pay the compensation awarded by it. Consequently, we overrule the objection raised by the Registry and direct the Registry to number the appeal and the accompanying application and to send up the application to condone the delay for hearing as per roster after the ensuing Onam vacation. We also place on record our appreciation of the valuable assistance rendered by Sri. Mathews Jacob, learned Senior Advocate.”

**10. The Supreme Court has in the case of *K.P. Manu vs. Chairman, Scrutiny Committee For Verification Of Community Certificate* (2015) 4 SCC 1 held as under :-**

“48. When a binding precedent is not taken note of and the judgment is rendered in ignorance or forgetfulness of the binding authority, the concept of per incuria comes into play. In *A.R. Antulay v. R.S. Nayak*[(1988) 2 SCC 602], Sabyasachi Mukherji, J. (as His Lordship then was) observed that:

"42. .... 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

At a subsequent stage of the said authority, it has been held that:

"47. .... It is a settled rule that if a decision has been given per incuriam the court can ignore it."

**11. The Supreme Court has in the case of *Rajasthan Public Service Commission and another Vs Harish Kumar Purohit and Others* (2003) 5 SCC 480 held as under :-**

“14. The position was highlighted by this Court in a three-judge Bench decision in *State of Tripura v. Tripura Bar Association and Ors.* (1998(5) SCC 637) in the following words :

"We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Bench of the High Court in the case of *Durgadas Purkayastha v. Hon'ble Gauhati High Court* (1988(1) Gau LR 6). If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of inter se se-



riority of the Judicial Officers impleaded as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent-Judicial Officers is set aside. The appeals are disposed of accordingly. No costs."

15. In the instant case, the position is still worse. The latter Bench did not even indicate as to why it was not following the earlier Bench judgment though brought to its notice. Judicial propriety and decorum warranted such a course indicated above to be adopted."

**12. The Full Bench of this Court has in the case of WALI MOHAMMED AND ETC. *VERSUS* BATULBAI AND ETC. 2003 (2) MPLJ 513 (FB) held as under :-**

"4. Taking the last question (No. iv) first, at the outset it may be stated that the answer to this question is contained in a recent Full Bench decision of this Court in the case of Jabalpur Bus Operators' Association v. State of Madhya Pradesh, (2003) 1 Jab LJ 105 : (AIR 2003 Madh Pra 81), wherein it is held :

"With regard to High Court, a Single Bench is bound by the decision of another Single Bench. In case he does not agree with the view of other Single Bench, he should refer the matter to Larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case it does not agree with the view of the earlier Division Bench, it should refer the matter to Larger Bench. In case of conflict between the judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of Larger Bench is binding on smaller Benches".

Needless to say that what is said about the decisions of Division Bench shall also apply in case of conflict between judgments of two Single Benches. So in case of conflict between two decisions of the High Court rendered by the Benches of equal strength (be it a Full Bench, Division Bench or Single Bench), the decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding."

**13. A coordinate Bench of this Court has in the case of BALWANT SAHEBLAL KHAWSE *VERSUS* STATE OF MADHYA PRADESH 2001 (3) MPLJ 414 held as under :-**

"8. As demonstrated earlier the statutory legal position, as it exists today, is that the offence under S. 7(1)(a)(ii) of the Act which is punishable with imprisonment for seven years is non-bailable. The question is whether the view taken in the four cases referred to above should be followed by this Bench or there is scope for clarification without referring the matter to a larger Bench. It is axiomatic that a decision is an authority for the question of law which it decides and not for a question which was not raised or considered. A sub-silentio order or assumption in disregard of a clear and unambiguous statutory provision is not a precedent. If a provision in a statute is construed or interpreted one way or the other that would be a precedent for the future and

would be binding on co-ordinate benches. But something which has been assumed and not decided cannot be considered as authoritative binding precedent.”

14. In view of the aforesaid legal position it is clear that earlier coordinate Bench decision dtd. 21.11.2016 given in the case of **Netram** (supra) was having binding effect and was to be followed and relied upon in the case of **Uzer Khan** (supra) decided on 07.03.2022 but despite making mention of **Netram’s** case in the case of **Uzer Khan**, the ratio of **Netram’s** case has not been taken into consideration, therefore, in my considered opinion in presence of decision in the case of **Netram** (supra), the decision in the case of **Uzer Khan** (supra) deserves to be ignored being per incuriam.

15. So far as the question of maintainability of misc. appeal in the light of section 173(2) of the Motor Vehicles Act, 1988 is concerned, it has no nexus with the appeal filed by the claimant(s) and this provision is applicable only to the non-claimants i.e. insurer, owner, driver or any other person liable to pay the amount of award, and merely because of the fact that the amount awarded by learned tribunal is less than 1 lac or misc. appeal is filed by claimant(s) for enhancement of rupees less than 1 lac, the same cannot be treated as a bar for filing misc. appeal by the claimant(s), as contained in sub-section (2) of Section 173 of the Act, and such amount cannot be said to be an amount in dispute for the appeal(s) filed by the claimants.

16. Resultantly, the instant Civil Revision is hereby held to be not maintainable.

17. However, as per prayer made by learned Counsel for the applicants, the Registry is directed to convert instant Civil Revision into Misc.

Appeal and to re-register the same accordingly. Certainly, the applicants have to pay the requisite court fee on the amount claimed in the misc. appeal.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

RS