

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

LPA No. 225/2023 in
[Mac App No. 69/2021]
C/w
LPA No. 224/2023

*Reserved on: 28.05.2025
Pronounced on: 30.05.2025*

1. LPA No. 225/2023

Attika Bano, Aged 38 Years
D/o Abdul Gaffar Wani
R/o Trehgam, Kupwara
A/P Batmaloo, Srinagar.

..... Appellant/petitioner(s)

Through: -
Mr. A. A. Wani, Advocate

V/s

1. National Insurance Company Limited
Through its Divisional Manager, At Srinagar.
2. Branch Manager, National Insurance Company Limited
Bari Brahmna, Jammu.
3. Nazir Ahmad Malik
S/o Subhan Malik
R/o Shumnag, Kupwara, (Driver)
4. M/S Surinder Singh, Company Digiana Camp, Jammu (Owner)

..... Respondent(s)

Through: -
*Ms. Anisa, Advocate vice Mr. N. A. Dendru, Advocate
Mr. Aatir Javid Kawoosa, Advocate*

2. LPA No. 224/2023

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Through: -

Ms. Anisa, Advocate vice Mr. N. A. Dendru, Advocate
Mr. Aatir Javid Kawoosa, Advocate

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

(JUDGMENT)

01. In these two appeals filed under Clause 12 of Letters Patent, challenging an order and Judgment dated 1st of September, 2023 passed by the learned Single Judge of this Court [‘the writ Court’] in Mac App. No. 71/2021 and Mac App. No. 69/2021, a question with regard to the maintainability of these appeals has arisen for determination. On these appeals coming up for consideration, Mr. Aatir Kawoosa, learned counsel appearing for the respondent No. 1, raised the preliminary objection with regard to the maintainability of these appeals under Clause 12 of Letters Patent in view of the clear provisions of Section 100-A of the Code of Civil Procedure, 1908 [“CPC”].

02. Before we advert to the preliminary objection raised by learned counsel for the respondent No. 1, a brief introduction to the facts of the case would be necessary.

03. The appellant before us was the claimant before the Motor Accident Claims Tribunal, Kupwara [‘the Tribunal’ for short] in a claim petition filed against the respondents for seeking compensation for the permanent disablement suffered by her in a motor vehicle accident. The Tribunal vide its award dated 30.11.2019, awarded a compensation of Rs. 5,45,600/- with interest @ 7.5% per annum to be reckoned from the date of filing of the petition. This award was called in question by the appellant herein in Mac App. No. 69/2021. The respondent Insurance Company too assailed the award in Mac App. No. 71/2021. The learned Single Judge clubbed both the appeals and decided the same by a common order and Judgment dated 1st of September, 2023. The learned Single Judge reduced the compensation to a sum of Rs. 2,33,200/- and maintained the interest of 7.5% awarded by the Tribunal. In this way, the learned Single Judge dismissed the appeal filed by the appellant and partially allowed the appeal filed by the respondent Insurance Company.

04. The order dated 1st of September, 2023, deciding the two appeals aforementioned is challenged before us under Clause 12 of the Letters Patent.

05. Having heard learned counsel for the parties at some length and regard being had to the preliminary objection to the maintainability of these appeals, raised by Mr. Aatir Javid Kawoosa, learned counsel for respondent No. 1, we are of the view that a following question calls for determination in these appeals:

“Whether an intra Court appeal under Clause 12 of Letters Patent is maintainable against an order passed by the learned Single Judge of this Court in exercise of

its appellate jurisdiction whether against an original or appellate decree or order passed by the Courts subordinate to the High Court?”

06. The answer to this question is not far to seek. Ordinarily, the appeal before the High Court from an order, Judgment or decree of the High Court is not maintainable, unless a statute prescribes remedy of appeal before the Division Bench/Larger Bench from an order, Judgment or decree passed by the learned Single Bench. Clause 12 of the Letters Patent is one such statutory provision, which provides an appeal to the High Court from the “Judgment” of one Judge of this Court or one Judge of any Division Court. However, a judgment passed by a Single Bench 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 this Court is not maintainable.

07. Going by the bare provisions of Clause 12 of Letters Patent, an appeal against an order or Judgment of learned Single Judge passed in the exercise of appellate jurisdiction in respect of a decree or order made by the Court subordinate to the High Court on the original side is maintainable. However, Section 100-A of the Code of Civil Procedure, creates a bar against the maintainability of appeal under Clause 12 of Letters Patent against an order and Judgment passed by the learned Single Judge in the exercise of its appellate jurisdiction against an order or decree of the Court below passed, either in the exercise of original or appellate jurisdiction. For facility of reference Section 100-A of CPC is set out below:-

“100-A. No further appeal in certain cases.- 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, 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.”

08. From the plain reading of Section 100-A, it is evident that the “non-abstante” clause i.e., “notwithstanding” gives Section 100-A overriding effect over the Letters Patent of this Court. It establishes the precedence of S.100 A over Clause 12 of Letters Patent to the extent of conflict. And it clearly provides that 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. This is so even where LPA is preferred against the Judgment rendered by a Single Judge in an appeal arising out of special enactment like Motor Vehicles Act, 1989, in the case on hand.

09. Indisputably, the impugned order, challenged in these appeals, is passed by the learned Single Judge of this Court in the exercise of its appellate jurisdiction, exercised while hearing and deciding an appeal from an award passed by the Tribunal under Motor Vehicles Act. It is pertinent to note that in terms of Section 169(4), the award passed by the Tribunal is to be treated as a decree.

10. Be that as it is, the fact remains that the impugned order has been passed by the learned Single Judge, deciding the appeals against an original decree/order passed by the Tribunal and, therefore, in view of clear provisions of Section 100-A, further appeal is not maintainable.

11. In view of aforesaid discussion, it is held that an intra Court appeal under Clause 12 of Letters Patent is not maintainable against an

order passed by the learned Single Judge of this Court in exercise of its appellate jurisdiction against an original or appellate decree or order passed by the Courts subordinate to the High Court.

12. Offshoot of the discussion made above, is that both these appeals are held not maintainable and the same are, accordingly, **dismissed**.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR

30.05.2025

"Mohammad Yasin Dar"

Whether the Judgment is reportable: Yes/No.

