
Before S. S. Nijjar & Ajay Kumar Mittal, JJ.

BALDEV SINGH AND ANOTHER,—*Appellants*

versus

KAMALJIT KAUR & ANOTHER,—*Respondents*

CWP No. 525-CII & 526-CII of 2004 & F.A.O. 164 of 2004

5th August, 2004

Motor Vehicles Act, 1988—Section 173—Accidental death—MACT holding owner of the vehicle liable to pay compensation jointly & severally with Insurance Company—Challenge thereto—Section 173(1) provides that no appeal by a person who is required to pay any amount in terms of such award shall be entertained by High Court unless he has deposited with it Rs. 25,000 or 50% of the amount so awarded, whichever is less—Appellants failing to deposit the required sum—Appeal not maintainable—Liable to be dismissed.

Held, that a bare perusal of section 173 of the Act would show that any person aggrieved by an award of Motor Accident Claims Tribunal may prefer an appeal before this Court within 90 days from the date of the award. The proviso to sub-section (1) provides that no appeal by person who is required to pay any amount in terms of Section 173(1) shall be entertained by the High Court unless he has deposited with it Rs. 25,000 or 50 per cent of the amount so awarded, whichever is less. Admittedly, the appellants have not deposited the sum of Rs. 25,000. He has also not deposited half of the compensation since fifty per cent; of it is much more than Rs. 25,000. The aforesaid provisions make it abundantly clear that the appeal cannot be entertained unless the amount of Rs. 25,000 is deposited by the person aggrieved who is required to make the payment. We are of the considered opinion that whether or not the amount has been paid by the insurance company is wholly irrelevant for the purpose of Section 173 of the Act. The section is categorical that no appeal by a person who is required to pay any amount in terms of the award shall be entertained by the High Court unless the amount is deposited 'with it'. The use of the words 'with it' clearly indicates that the intention of the Parliament was to provide for the deposit of the requisite

amount as a pre-condition for the appeal to be even entertained by the Registry. The amount not having been deposited, the appeal is clearly incompetent. It cannot be considered on merits.

(Para 5)

J.P. Jindal, Advocate for respondent Nos. 1 to 3.

Tarun Aggarwal, Advocate for respondent No. 5.

JUDGMENT

S. S. NIJJAR, J. (ORAL)

Aggrieved against the award of the Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as "the MACT", the appellants being the owner of the truck which was involved in the accident leading to the death of Mohinder Singh, have filed the present F.A.O. The MACT has held the appellants liable to pay the compensation jointly and severally with the Insurance Company. The Insurance Company has been directed to pay the entire compensation. It has, however, been ordered that thereafter the Insurance Company can recover the same from the appellants. The appellants have filed an application under Section 173(1) of the Motor Vehicles Act read with Section 151 CPC for exemption from depositing the amount of Rs. 25,000.

(2) We have heard the learned counsel for the appellants at length.

(3) We have directed the counsel for the appellants time and again to comply with the provisions of Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). However, the learned counsel for the appellants is adamant that the appellants are entitled to exemption from payment of the amount required to be paid under section 173. Counsel for the appellants has vehemently argued that in the present case, the Insurance Company had been directed to make the payment. Thereafter, the insurance company has the remedy to recover the amount from the appellants. He also submits that the entire amount has been paid by the insurance company. Therefore, nothing is now to be paid by the appellants to the claimants.

(4) We have perused Section 173 of the Act with the assistance of learned counsel for the appellants. The aforesaid Section provides as under :—

“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 per cent 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.”

(5) A bare perusal of Section 173 of the Act would show that any person aggrieved by an award of Motor Accident Claims Tribunal may prefer an appeal before this Court within 90 days from the date of the award. The provision to sub-section (1) provides that no appeal by person who is required to pay any amount in terms of Section 173 shall be entertained by the High Court unless he has deposited with it Rs. 25,000 or 50% of the amount so awarded, whichever is less. Admittedly, the appellant has not deposited the sum of Rs. 25,000. He has also not deposited half of the compensation since fifty per cent of it is much more than Rs. 25,000. The aforesaid provisions make it abundantly clear that the appeal cannot be entertained unless the amount of Rs. 25,000 is deposited by the person aggrieved who is required to make the payment. We are of the considered opinion that whether or not the amount has been paid by the insurance company is wholly irrelevant for the purpose of section 173 of the Act. The section is categorical in that no appeal by a person who is required to

pay any amount in terms of the award shall be entertained by the High Court unless the amount is deposited "with it" clearly indicates that the intention of the Parliament was to provide for the deposit of the requisite amount as a pre-condition for the appeal to be even entertained by the Registry. The submissions of the learned counsel are without merit on first principles as well as on precedent. The amount not having been deposited, the appeal is clearly incompetent. It cannot be considered on merits. This view of ours finds support from a Division Bench judgment of this Court in the case of **Sohan Singh versus Kushla Devi and others (1)**. In that case, Mr. G. S. Singhvi, J. speaking for the Bench framed the important issue for determination, as under :—

"G.S. Singhvi, J.—An important issue which has arisen for determination by this Court in view of the office objection raised to the entertainability of the appeal is whether an appeal filed by a party against an award of the Motor Accident Claims Tribunal can be entertained by a court without compliance of the proviso to Section 173 (1) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

(6) Exactly the same arguments were raised by the learned counsel for the appellants therein. After considering the provisions of Section 173(1) of the Motor Vehicles Act, the Division Bench observed as follows :—

"5. The object behind incorporating the proviso to Section 173(1) of the Act is remedial and beneficial. The requirement of the deposit of the amount as condition precedent to the entertainability of the appeal protects the interest of the claimant in whose favour an award has been made. By making it obligatory to deposit the amount specified in the proviso to section 173(1), it has been made clear by the legislature that one who wants to challenge the award of compensation must part with a specific amount which in appropriate cases may be made available to the claimants even before final adjudication of the appeal. Keeping in view the object behind the legislative

intent, we do not find any reason not to accept the plain language used in the proviso and apply different principles of interpretation which may lead to rewriting of the statute.

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13. Applying the above referred rule of interpretation, we are clearly of the opinion that on a plain reading of the proviso to Section 173(1), any person who is required to pay any amount under an award passed by the Claims Tribunal, prefers an appeal, his appeal can be entertained by the High Court only if he makes deposit of a specific amount as required by the said proviso and he cannot claim exemption from making the deposit on the ground that a co-respondent before the Tribunal has filed an appeal and has made the requisite deposit. It is a different thing that the High Court will not order the disbursement of the entire amount deposited by different parties under the proviso to Section 173(1).

14. In view of the above, we uphold the office objection and direct the appellant to deposit the amount specified in proviso to Section 173(1) of the Act within a period of six weeks, failing which this appeal shall stand dismissed.”

(7) In view of the above, we are of the considered opinion that the appeal is not maintainable. Dismissed.

(8) In view of the fact that the appeal has been dismissed as not maintainable, no separate order is required to be passed in the application under Section 5 of the Limitation Act for condonation of delay in filing the appeal.

R.N.R.