

(2004) 07 KL CK 0025
In the High Court Of Kerala
Case No : Unnumbered M.A.C.A. of 2004

Abdul Rahiman

APPELLANT

Vs

Rajan

RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2004) 3 ACC 251 : (2005) ACJ 682 : (2004) 3 ILR (Ker) 364 : (2004) 2 KLT 1113 : (2004) 4 RCR(Civil) 166

Hon'ble Judges : K. Thankappan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : U.K. Devidas and E. Sandeep, for the Appellant;

Judgement

J.B. Koshy, J.—When the insurance company is directed to deposit the entire compensation awarded by the Motor Accidents Claims Tribunal and after satisfying the award insurance company is given the right to get reimbursement from the insured for violation of policy conditions etc. and that direction challenged in appeal filed by the co-respondent who is liable to reimburse the insurance company, whether he should deposit the amount as required u/s 173(1) of the Motor Vehicles Act is the question to be considered in this order.

2. Section 173(1) of the Motor Vehicles Act 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 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."

In this case, insurance company was the third respondent and it was found by the Tribunal that there was valid insurance and that respondents 1 to 3, owner, driver and insurance company, are liable to pay the compensation jointly and severally. It was further held that respondent No. 3 insurance company "is entitled for reimbursement of the award amount from respondent No.2 after satisfying the award". Thereafter, it is also stated by the Tribunal as follows:

"Rule 3 shall produce cheque or DD for the award amount with interest and cost drawn in the name of petitioner for payment."

Therefore, respondent No. 3 insurance company has to deposit the amount. After deposit of the amount they are entitled to get the amount reimbursed from respondent No.2. Respondent Nos. 1 and 2, driver and owner of the vehicle, filed this appeal contending that respondent No. 1 had valid licence and there is no violation of the policy conditions. We are not going into the merits of the matter, at present, as that has to be decided in appeal.

2. Proviso to Section 173 was intended to remove the hardship of the claimant and it mandates that the persons who are responsible for payment as per the award should deposit Rs. 25,000/- or 50% of the amount awarded, whichever is less, as a condition precedent in filing the appeal. Here, insurance company was directed to deposit the amount and, only after satisfying the award, it was allowed to get reimbursement. The entire amount of compensation awarded is directed to be deposited by the insurance company. Therefore, if the insurance company wants to file an appeal, it is bound to comply with the condition in the proviso to Section 173(1) as it is required to pay the amount awarded. Only after satisfying the award, question of reimbursement will arise. It is true that once it pays the amount awarded, reimbursement from the insured can be compelled in execution of the award itself. If appellants are directed to pay the amount first finding that there is no insurance coverage for the vehicle at the time of accident, they are bound to make pre-deposit of the amount required before filing the appeal. But, here, insurance company was directed to deposit the amount. Hence, first proviso to Section 173(1) of the Motor Vehicles Act regarding pre-deposit is not applicable in this case and the registry is directed to number the appeal.