

(2006) 10 KL CK 0077

In the High Court Of Kerala

Case No : M.A.C.A. of 2006 (OP (MV) No. 901/03 of MACT, Pala)

Ajesh Alex

APPELLANT

Vs

John and Others

RESPONDENT

Date of Decision : 27-10-2006

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 52
Motor Vehicles Act, 1988 — Section 165, 166, 167, 168, 168

Citation : (2007) ACJ 1481 : (2006) 4 ILR (Ker) 570 : (2007) 1 KLJ 13 : (2006) 4 KLT 828

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Anil K. Narendran, for the Appellant;

Judgement

Thottathil B. Radhakrishnan, J.—The short issue that arises for decision is as to what constitutes "the amount in dispute in the appeal", for the purpose of Sub Section 2 of Section 173 of the Motor Vehicles Act, 1988, hereinafter referred to as "the Act". This question falls for determination on an objection raised by the Registry regarding the numbering of this appeal, on the ground that the amount of compensation granted by the Tribunal as per the award under challenge is less than Rs. 10,000/-. By the impugned award, the claimant is allowed "to realise compensation of Rs. 9050/- (Rs. Nine thousand and fifty only) with 9% interest from 17-11-03 till realisation along with cost of Rs. 225/- from the respondents".

2. According to the learned counsel for the appellant, this appeal is against the whole of the award and that, by adding on amounts that would accrue by way of interest from 17-11-03 till 3-1-05, the date of the impugned award, and the cost of Rs. 225/- awarded by the Tribunal, to the compensation of Rs. 9050/-, the amount in dispute in the appeal would be more than Rs. 10,000/- and therefore, the appeal is not barred by Sub Section 2 of Section 173 of the Act.

3. Chapter XII of the Act deals with Claims Tribunals, their constitution, jurisdiction, making of award, nature of adjudication, impleadment of insurers

etc. Section 168 provides that after such inquiry as is provided for therein, the Tribunal shall make an award determining the amount of compensation. Section 171 provides for awarding interest in addition to the amount of compensation. The rate of simple interest and the date from which it shall be paid are matters to be decided by the Tribunal, subject to the statutory direction that the date from which the interest shall run, shall not be earlier than the date of making the claim. Section 172 provides for award of compensatory costs in certain cases. After making such provision, the legislature made Section 173 providing for a right of appeal. It is as part of Section 173 that an embargo is created by Sub Section 2 thereof, as regards the appeals, by prescribing a bench mark of Rs. 10,000/- as the minimum amount in dispute in the appeal, to invoke Section 173. The use of the term "the amount in dispute in the appeal" in Sub Section 2 of Section 173 is the clear expression of the legislative intent that the limit prescribed by Sub Section 2 of Section 173 is not confined to the compensation determined in terms of Section 168. In an appeal u/s 173 by a person liable under the award of the Tribunal, he would be entitled to challenge the compensation fixed u/s 168, the order for interest, costs, compensatory costs, etc. Since an award is a direction to pay, the amount due by way of interest till the date of award will also form part of the amount due as on the date of award. The right of appeal u/s 173 springs on the pronouncement of the award and therefore, if a debtor under the award is the appellant and if he challenges the award as a whole, the amount in dispute in the appeal will be the entire amount that he would be liable to pay, if he satisfied the award of the Tribunal as on the date of its pronouncement. Therefore, the phrase "the amount in dispute in the appeal" takes within its sweep all amounts granted as part of an award. So much so, "the amount in dispute in the appeal", for the purpose of Section 173, would be the entire amount a person is liable to pay under the award as on the date of the award and which is the dispute in the appeal. This will necessarily include the quantum of compensation fixed, the interest accrued till the date of award in terms of Section 171 and awarded by the Tribunal, as also any costs or compensatory costs or any other amounts awarded and payable under the award as on the date of the award. Therefore, the only way of construing the term "the amount in dispute in the appeal" in Sub Section 2 of Section 173 is that it takes within it, any amount awarded as costs and the interest accrued on the compensation, till the date of making of the award.

4. Section 176 of the Act empowers the State Government to make rules for the purpose of carrying into effect the provisions of Section 165 to 174 and in particular, relating to the form of application, fee etc. In consonance with such power, Rule 397 of the Kerala Motor Vehicles Rules, 1989, hereinafter referred to as "the Rules", prescribed the fees payable on claim petitions. Sub Rule 3 of Rule 397 provides that fee for appeals shall be Rs. 100/-. Therefore, the fee leviable on an appeal u/s 173 of the act does not depend upon "the amount in dispute in the appeal". I notice this to assure myself that no recourse to the provisions of the Kerala Court Fee and Stamp Valuation Act, 1959 (Act 10 of 1960) is

necessary to interpret or apply the relevant laws, as regards claims before the Tribunals and appeals against such awards. Therefore, any concept flowing out of Explanation No. 2 to Section 52 of Act 10 of 1960 would be of no relevance

5. The decision of the Division Bench of this Court in Oriental Fire and General Insurance Co. Ltd., Trichur Vs. Narayani Amma and Others, relied on by the office of this Court also does not apply because the ratio of that decision is that in determining "the amount in dispute in the appeal", the interest accrued after the date of the award cannot be added on the inflated amount in dispute in the appeal. This is clear from the concluding paragraph (para 5) of that judgment to the effect that "the amount in dispute in the appeal" is the amount actually in dispute. The conclusion of the aforesaid discussion is that in cases, as in the present one, where the appeal is by a debtor under the award and the award amount, inclusive of compensation, costs and interest, accrued till the date of award, is Rs. 10,000/- or above, an appeal would lie u/s 173 of the Act.

Hence, it is directed that the appeal shall be numbered and sent up for consideration for admission.