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**(2008) 04 MP CK 0078**  
**In the Madhya Pradesh High Court**  
**Case No : M.A. No. 2470 of 2007**

Chandrakanta Bhandari

APPELLANT

Vs

Manohar Lal and Others

RESPONDENT

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**Date of Decision :** 28-04-2008

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22  
Motor Vehicles Act, 1988 — Section 166, 173, 173(1)

**Citation :** (2010) ACJ 2109 : (2008) ILR (MP) 2373

**Hon'ble Judges :** S.K. Seth, J;A.M. Sapre, J

**Bench :** Division Bench

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## Judgement

A.M. Sapre, J.—Heard on LA. No. 7965 of 2007.

2. This is an application made by the appellant whereby she has sought exemption from ensuring compliance of the requirement of proviso to Section 173(1) of Motor Vehicles Act (for short called "the Act"). In other words, the appellant prays that she be exempted from depositing any amount, i.e., whether Rs. 25,000 or 50 per cent of the awarded amount as may be directed by the High Court as a condition precedent for entertainment of this appeal. So, the question that arises for consideration in this appeal is whether appellant can be exempted from ensuring compliance of the requirement of proviso to Section 173(1) *ibid*.

3. In order to answer the question posed *supra*, it is necessary to state relevant facts.

4. On 11.11.2005 one lady, Jyoti, died in vehicular accident. It is this incident which gave rise to filing of claim petition by respondent No. 1 to respondent No. 3 (claimants) claiming to be the legal representatives of deceased u/s 166 of the Act before the Claims Tribunal seeking compensation for her death. The claim petition was filed against the driver (non-applicant No. 1), owner (non-applicant No. 2) and insurer (non-applicant No. 3) of the offending vehicle (No. MP 45-F 0128). It was contested by non-applicants. So far as non-applicant Nos. 1 and 2 were concerned, they filed a common written statement, whereas non-applicant

No. 3 filed their separate written statement. According to non-applicant Nos. 1 and 2, they were not liable but it was non-applicant No. 3, who was liable to suffer the liability arising out of the accident, they being the insurer of offending vehicle. So far as non-applicant No. 3, i.e., insurer was concerned, their case was that the driver of the offending vehicle was not having a driving licence hence, no liability could be fastened upon non-applicant No. 3 arising out of the accident. Parties then adduced evidence. By impugned award, Claims Tribunal partly allowed the claim petition and awarded a total sum of Rs. 1,64,500. The Tribunal held that all the non-applicants, i.e., driver, owner (insured) and insurer are liable to suffer the liability jointly and severally arising out of the accident. However, the Tribunal permitted the insurance company (non-applicant No. 3) to recover the awarded sum from the owner of the offending vehicle (insurer) after satisfying payment of awarded sum to claimants. The insurance company (non-applicant No. 3) in compliance to the impugned award deposited the entire sum in Tribunal. It is against this award, the owner of offending vehicle (non-applicant No. 2) has filed the present appeal being M.A. No. 2470 of 2007 contending, inter alia, that Tribunal erred in fastening liability on the owner whereas, claimants have filed an appeal being M.A. No. 2138 of 2007 praying for enhancement in the compensation awarded by Claims Tribunal.

5. As observed supra, by making an application under consideration (I.A. No. 7965 of 2007), the appellant (owner of the offending vehicle) has prayed that she may be exempted from ensuring compliance of proviso to Section 173(1) *ibid.* According to appellant, since the insurance company (non-applicant No. 3) has already deposited the whole awarded sum in the Tribunal and hence, there arises no occasion for the appellant to again deposit any money, i.e., whether Rs. 25,000 or otherwise as may be directed by this Court u/s 173(1) proviso as a pre-condition for entertainment of appeal filed by her u/s 173 of the Act against the impugned award.

6. Notice of this application was served on non-applicants. Since the issue under consideration was legally debatable specially in view of divergent views of different High Courts including the view taken by the Madhya Pradesh High Court in two decisions hence, we requested Mr. B.L. Pavacha, Senior Advocate of this Court to assist the Bench as *amicus curiae* for resolving the issue under consideration.

7. Having heard the learned Counsel for the parties and learned *amicus curiae*, we are of the considered view that the application made by the appellant (I.A. No. 7965 of 2007) is liable to be dismissed.

8. Section 173(1) of the Act which is relevant for disposal of this application reads 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.

9. The Division Bench of this Court had the occasion to interpret Section 173 and its proviso in the case in *Oriental Insurance Co. Ltd. Vs. Gopal Singh and Others*, . The learned Judge Dharmadhikari (as his Lordship then was) speaking for the Bench held as under:

(10) The aim and object of requiring deposit of Rs. 25,000 or fifty per cent amount of the award whichever is less, as a pre-condition of appeal, appear to be with twin purposes. The legislature by introducing first proviso u/s 173 clearly intends that during pendency of appeal against the award the victim of the accident must be provided with certain percentage of amount of compensation as minimum required relief and he should not be allowed to wait indefinitely until the decision of the appeal. The other purpose is that the appellants should not be allowed to prefer an appeal on frivolous grounds just to delay the payment of compensation under the award. Only such appeals which are bona fide and backed by payment of reasonable amount under the award should be allowed to be entertained.

(11) The language of the first proviso quoted above uses the expression "unless he has deposited with it". It prima facie conveys that the requisite amount of Rs. 25,000 or fifty per cent of the award whichever is less should be deposited along with the memo of appeal in the High Court.

(12) In construing the proviso, the proviso has to be read as a whole and apart from the above language, on which much emphasis has been laid, the other expression used in the same proviso particularly the words, "in the manner directed by the High Court", cannot be ignored. The first proviso has to be read as a whole in all its parts to ascertain the meaning conveyed by the language employed, particularly the expressions "unless he has deposited with it" and the latter part "in the manner directed by the High Court" should both be given full meaning and effect.

(13) On reasonable construction of the language employed by the proviso, we are of the considered opinion that the requisite amount, as a pre-condition for preferring appeal, can be deposited in the High Court and if the High Court directs, it can be deposited in the Tribunal which is the proper forum where the amount should be deposited. From there, it may be collected by the claimants without much difficulty.

10. The issue under consideration in this case came up for consideration before

Punjab and Haryana High Court in the case in Sohan Singh Vs. Kushla Devi and others, . It is clear from the very question posed by the Bench at the outset:

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 Accidents Claims Tribunal can be entertained by a court without compliance of the proviso to Section 173(1) of the Motor Vehicles Act, 1988?

11. Learned Judge G.S. Singhvi (as his Lordship then was) speaking for the Bench held that no exemption can be granted to the appellant from depositing the amount as required by the proviso to Section 173 *ibid* in any circumstances. Since we respectfully concur with the reasoning and conclusion rendered in this case, it being in accord with the true interpretation of Section 173 *ibid* and hence, it is proper to reproduce the reasoning of their Lordships in detail *infra*. This is what the learned Judge held in paras 4, 5 and 13:

(4) A careful reading of the above quoted provision shows that Sub-section (1) of Section 173 gives a right of appeal to any person aggrieved by an award of the Claims Tribunal. The period of limitation for filing such appeal is 90 days from the date of award. Second proviso to Section 173(1) empowers the High Court to entertain the appeal after the expiry of the period of 90 days in case the High Court is satisfied that appellant was prevented by sufficient cause from preferring an appeal in time. First proviso to Section 173(1) refers to an appeal by a person who is required to pay any amount in terms of the award. It lays down 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 such person deposits with the High Court Rs. 25,000 or 50 per cent of the amount so awarded by the Tribunal, whichever is less. The deposit is required to be made in the manner directed by the High Court. The significant difference between the language used in Sub-section (1) of Section 173 and the first proviso to that whereas the expression "any person aggrieved by the award" has been used in the main subsection, the proviso uses the expression "by the person who is required to pay any amount in terms of such award". This clearly means that the appeal can be filed by a person who may be aggrieved by the award but who may not be required to pay any amount in terms of the award. Ordinarily an appeal by the claimant will be covered by this category. However, the legislature has thought it proper to impose a restriction to the entertainability of the appeal by the High Court by a person who is required to pay any amount in terms of the award appealed against by requiring deposit of Rs. 25,000 or 50 per cent of the amount awarded by the Tribunal, whichever is less. The legislature must be deemed to be fully cognizant of the fact that the award can be against one party or more than one party and such parties may be jointly or severally made liable to satisfy the award. Keeping in view these situations, the legislature has incorporated the requirement of the deposit by a person who wants to prefer an appeal against the award and who is required to pay any amount in terms of the award. If the

legislature intended that out of several respondents before the Tribunal, deposit of amount only by one should be sufficient to enable the filing of the appeal by more than one person who may be aggrieved by the award, then, the proviso would have altogether been differently worded and we do not find any reason to interpret the proviso in a manner which would lead to rewriting of the same.

The learned Judge further went on to hold in para 5:

(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.

Lastly, the learned Judge held in para 13:

(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 corespondent 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).

(Emphasis supplied)

12. A more or less similar question arose before the Division Bench of this Court (Gwalior Bench) in the case of Anuradha Kaushik and Others Vs. Varun Ground Water Development Corporation and Others, , as to whether cross-objection filed by owner/driver under Order 41, Rule 22 of the CPC who have suffered an award can be entertained on merits in an appeal filed by the claimant without ensuring compliance of the requirement of proviso to Section 173 *ibid*? The Division Bench in para 5 of the judgment held that it is mandatory on the part of owner/driver who has filed the cross-objection under Order 41, Rule 22 of the CPC to first comply with the requirements of Section 173 *ibid* then only his cross-objection can be entertained on merits. Similar is the view taken by single Bench of Kerala High Court in the case in Kesavan Nambeesan v. Madhavan 2004 ACJ 315 (Kerala), wherein the learned Judge has held that High Court has no power to dispense with the requirement of deposit u/s 173 *ibid*.

13. Learned Counsel for the appellant placed heavy reliance upon the decision rendered by the Division Bench of Kerala High Court in the case in Abdul Rahiman Vs. Rajan, , as also one decision of this Court (SB) in Kamlesh Vs. Madan Singh and Others, and contended that in the light of view taken in these two decisions the appellant can be exempted from making deposit of amount u/s 173 ibid. We have carefully perused the reasoning and ratio of these decisions. With great respect, we express our dissent to the view taken by Kerala High Court in the case of Abdul Rahiman (supra) as also of the view taken by single Bench of this Court in the case of Kamlesh (supra). Instead, we respectfully follow the well considered view taken by Punjab and Haryana High Court in the case of Sohan Singh Vs. Kushla Devi and others, , so also the view taken by Division Bench of this Court in the case reported in Anuradha Kaushik and Others Vs. Varun Ground Water Development Corporation and Others, and single Bench of Kerala High Court in the case of Kesavan Nambeesan Vs. Madhavan, .

14. In the first place, view taken by Kerala High Court in the case of Abdul Rahiman Vs. Rajan, , is contrary to the view taken by the same High Court in the case of Kesavan Nambeesan Vs. Madhavan, . Secondly, though the view taken in Kesavan Nambeesan's case was earlier in point of time, yet it was not taken note of by the same High Court in Abdul Rahiman (supra), which was subsequent in point of time. Thirdly, it does not take into account the law laid down by Apex Court in the case of Trilochan Singh Vs. Kanta Devi and Others, and other High Courts on the issue. Fourthly, we are bound by the view taken by our High Court, in the cases in Oriental Insurance Co. Ltd. Vs. Gopal Singh and Others, and Anuradha Kaushik and Others Vs. Varun Ground Water Development Corporation and Others, , wherein the two Division Benches of this Court have interpreted Section 173(1) proviso and have held that deposit of money specified in Section 173(1) is mandatory.

15. It is for all these reasons, we respectfully disagree with the view expressed by Kerala High Court in the case of Abdul Rahiman Vs. Rajan, and follow the view taken by two Division Bench decisions of our High Court in Oriental Insurance Co. Ltd. Vs. Gopal Singh and Others, and Anuradha Kaushik and Others Vs. Varun Ground Water Development Corporation and Others, .

16. In our considered opinion and with respect the view taken by learned single Judge of this Court in the case in Kamlesh Vs. Madan Singh and Others, , is not the correct view and hence, liable to be overruled being per incuriam. In the first place, it is in conflict with the view taken by Division Bench of this Court in Anuradha Kaushik and Others Vs. Varun Ground Water Development Corporation and Others, , which was already in force but was not taken note of by single Bench while deciding the case of Kamlesh. Secondly, the view taken by the Division Bench was binding on single Bench and, therefore, the single Bench had no jurisdiction to take a contrary view on the issue except to follow the view taken by the Division Bench. Thirdly, the single Bench as observed supra, did not take note of the view of the Division Bench which was holding the field on that

day and proceeded to take a view contrary to Division Bench by placing reliance on the decision of Kerala High Court in Abdul Rahiman Vs. Rajan, . Fourthly, as held supra, since we have expressed our dissent to the view taken by Kerala High Court in the case of Abdul Rahiman (supra) and hence, as a necessary corollary, the view taken by single Judge in the case of Kamlesh (supra) stands overruled and lastly our view finds support from the view taken by Supreme Court in the case in Trilochan Singh Vs. Kanta Devi and Others, and two decisions of this Court. It is for all these reasons, we overrule the decision of single Bench rendered in the case in Kamlesh Vs. Madan Singh and Others, .

17. Even independent of aforesaid decisions and on plain reading of Section 173(1) proviso, we are of the view that legislature while enacting Section 173(1) proviso did not intend to provide grant of exemption from deposit of the whole awarded sum but only relieved the appellant from full deposit. It is clear from the ceiling limit of Rs. 25,000 or 50 per cent of awarded sum whichever is less provided in proviso to Section 173(1). In no case, therefore, the appellant can be compelled to deposit the whole awarded sum. This itself, in our opinion, is in the nature of relieving factor for the appellant. It is a settled rule of interpretation that when the language of statute is plain and unambiguous, effect has to be given to such words without reading anything more in them. If the intention of the legislature was to provide exemption from deposit then the same would have found place in the section itself. A provision to grant exemption from deposit has to be made in the statute in express terms. It cannot be inferred nor can be read down while interpreting the section. It cannot be said that legislature while drafting proviso to Section 173(1) was not aware of the situation which has arisen in this case. Despite that no provision was made for grant of exemption. Indeed whenever the legislature has decided to grant exemption from making deposit of any demand in any statute then, it has always made specific provision to that effect. Such is not the case here when we read Section 173(1) proviso.

18. We also find support to our reasoning and conclusion from the decision of Apex Court in Trilochan Singh Vs. Kanta Devi and Others, . In this case also, the High Court had dismissed the appeal filed by owner of offending vehicle on the ground of non-compliance of Section 173(1) proviso despite the fact that insurance company had paid the full awarded sum to claimants thereby satisfying the award passed in favour of claimants. Feeling aggrieved by this dismissal, the owner filed SLP before Apex Court. Their Lordships took note of the fact of deposit made by the insurance company and yet declined to grant exemption to owner of offending vehicle from making deposit of sum specified in Section 173(1) *ibid*. Their Lordships, however, directed the owner to deposit a sum of Rs. 10,000 as a pre-condition for entertainment of his (owner's) appeal filed u/s 173(1) *ibid* and accordingly, remanded the case to the High Court for its disposal on merits. As observed supra, the issue involved in the present case is similar to the one decided by the Apex Court in the case of Trilochan Singh (supra).

19. In view of foregoing discussion, we hold that appellant (owner of offending

vehicle) cannot take any benefit of deposit made by insurance company of the awarded sum in the Tribunal and is required to ensure compliance of the provisions of Section 173(1) *ibid* as a pre-condition for entertainment of the appeal filed by her u/s 173(1) of the Act.

20. Accordingly, the application made by appellant seeking exemption from deposit of amount in term of Section 173(1) proviso (LA. No. 7965 of 2007) is rejected. However, looking to the facts of the case, the appellant is granted 3 weeks" time to deposit a sum of Rs. 25,000. In case, if the amount as directed is deposited by the appellant within the time granted then the appeal shall be placed for admission, failing which the appeal shall stand dismissed for non-compliance of the requirement of Section 173(1) proviso.

21. Before parting with the case, we express our sincere gratitude to Mr. B.L. Pavecha, Senior Advocate, for his valuable assistance which he rendered on our request.