
(2009) 10 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 5191 of 2009

Dhillon Roadways

APPELLANT

Vs

Ram Dev and Others

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

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

Citation : (2009) 4 AICJ 703 : (2009) LabIC 4024 : (2010) 1 RCR(Civil) 665

Hon'ble Judges : Rakesh Kumar Garg, J

Advocate : Mr. G.L. Bajaj, Advocate., Advocates for appearing Parties

Judgement

Rakesh Kumar Garg, J.

1 This appeal has been filed by the owner of the offending vehicle challenging the impugned award whereby claimantrespondent No. 1 has been awarded compensation on account of death of Ms. Kavita @ Soni in a motor vehicular accident caused due to rash and negligent driving of the offending vehicle by respondent No. 4.

2 Along with this appeal, an application has been filed seeking exemption from deposit of Rs. 25,000/ which is a prerequisite for maintaining an appeal on the ground that award has already been satisfied in favour of the claimant.

3 It is well settled that right of appeal is a statutory right and the same can be availed in accordance with the provisions of law. Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") which regulates the filing of appeal challenging the award passed by the Motor Accident Claims Tribunal reads as follows :

"Appeals :

(1) Subject to the provisions of subsection (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 twentyfive 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."

4 Thus, deposit of an amount of Rs. 25,000/ or 50% of the amount so awarded, whichever is less, is a prerequisite for filing of the appeal. There is no provision under the Act under which exemption from making the deposit under First Proviso to Section 173(1) of the Act can be granted. A Division Bench of this Court in the case of Harbans Lal and another v. Nazar Singh and others 2001(4) RCR(Civil) 523 : 2002 ACJ 1827 has held as under :

"Moreover, the appellants have not deposited the statutory amount as required under Section 173.(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). They have moved an application for exempting them from depositing the amount. No provision of the Act has been shown to us by which the court could grant such an exemption. This appeal also deserves to be dismissed on this count. It may be noted that in the application, there is no request for postponing the date of the depositing of the amount."

5 In the case of Sohan Singh v. Kushla Devi and others, 1996(2) RRR 263 : AIR 1996 Punjab and Haryana 256, this Court has held as under :

"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)".

6 In view of the aforesaid Division Bench judgments" of this Court, the argument of the learned counsel for the appellant that in this case the claim of the claimant respondents has been satisfied, and therefore, there is no need to deposit the amount of Rs. 25,000/ as envisaged under the Act, is not sustainable. Thus, the application for granting exemption from deposit of the amount as aforesaid is rejected. No prayer has been made by the counsel for the appellant to permit him to deposit the aforesaid amount.

7 Since it is prerequisite to deposit the amount under Section 173 of the Act and no deposit has been made by the appellant in this appeal as aforesaid, there is

no properly constituted appeal before me and therefore, this appeal is dismissed as not maintainable. Appeal dismissed.