

(2009) 03 RAJ CK 0072
In the Rajasthan High Court

Ghanshyam

APPELLANT

Vs

Addl. District Judge (Fast Track) No. 4, M.A.C.T. Cases and
Others

RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 1946

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—On 16.5.1999, while travelling as a passenger in a bus bearing registration No. RJ 21-P 0450 from Khinvsar to Jodhpur, the petitioner sustained injuries when the said bus collided with an oncoming truck bearing registration No. AS 25-8813. The petitioner and so also several other victims of such vehicular accident filed their respective claim applications seeking compensation; and the Motor Accidents Claims Tribunal [Additional District Judge (Fast Track) No. 4], Jodhpur, proceeded to make a common award in their relation on 26.11.2005. So far the petitioner's case (Claim Case No. 884 of 2004) was concerned, the learned Tribunal awarded him compensation in the sum of Rs. 9,000 together with interest at the rate of 7.5 per cent per annum while fastening equal liability on the insurer of the bus and the owner of the truck involved in the accident.

2. Being aggrieved of the quantum of compensation awarded and seeking enhancement, the petitioner has chosen to prefer this petition for writ under Articles 226 and 227 of the Constitution of India against the said award dated 26.11.2005.

3. Perusal of the record makes out that petitioner applied for the certified copy of the award on 29.11.2005 and received the same on 5.1.2006. However, this writ

petition was filed only on 26.7.2006 and was admitted for consideration on 21.8.2007 after noticing the contention urged on behalf of the petitioner that the Tribunal has not taken into consideration his earnings in the range of about Rs. 8,000 to Rs. 9,000 per month.

4. On the notices issued, the respondent Nos. 1,2,4 and 5 have been served; but, for want of service of notices on the respondent No. 3, the petitioner was required to file process fees and notices afresh; and for default in compliance, the matter was placed before the court for orders on 6.3.2009.

5. On 6.3.2009, though the matter was placed on board for default on the part of the petitioner, however, after examining the subject-matter and noticing that by way of this petition, the petitioner seeks enhancement of the amount of compensation as awarded by the Tribunal with a prayer that the award amount may be enhanced as per the claim petition wherein he sought compensation in the sum of Rs. 9,50,000, this Court expressed prima facie doubts on the competence of this writ petition for such enhancement of the amount of compensation particularly because of availability of statutory remedy of appeal u/s 173 of the Motor Vehicles Act 1988 ("the Act"). The learned Counsel for the petitioner prayed for some time to satisfy the court about the competence of this writ petition and at his request, the matter was adjourned for consideration today.

6. Today, learned Counsel for the petitioner, apart from referring to Sub-section (2) of Section 173 of the Act for contending on the competence of this writ petition, also attempted to make submissions on the merits of the case that petitioner is entitled to be awarded compensation as claimed and that the amount as awarded by the Tribunal remains too low and insufficient. However, so far the submissions on the merits of the case are concerned, the same are not being gone into for the reasons that the very competence of this writ petition is in question and rather on 6.3.2009, this Court specifically posted the petition today for consideration of this question only.

7. On the competence of this writ petition, the learned Counsel for the petitioner has essentially referred to Sub-section (2) of Section 173 of the Act and has contended that there being a bar on maintainability of appeal if the amount in dispute is less than Rs. 10,000; and in the present case, the Tribunal having awarded an amount of Rs. 9,000 only, the petitioner has rightly preferred this writ petition challenging the award made by the Tribunal. In support of his submissions, learned Counsel has also referred to a decision of Hon'ble Andhra Pradesh High Court in the case of National Insurance Company Limited, Kakinanda Vs. Illapu Seethamma and others, The submissions remain bereft of logic or substance. Section 173 of the Act 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 for 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.

8. Per Sub-section (1) of Section 173, any person aggrieved by the award of the Claims Tribunal could prefer appeal to the High Court within 90 days from the date of award. The provisos to Sub-section (1) of Section 173 are to the effect that no appeal by the person who is required to pay any amount under the award would be entertained by the High Court unless a sum of Rs. 25,000 or 50 per cent of the award amount, whichever be the less, has been deposited; and that the appeal could be entertained even after expiry of period of 90 days upon the appellant satisfying the High Court that he was prevented by sufficient cause from preferring the appeal in time. Sub-section (2) of Section 173, however, bars an appeal if the amount in dispute in the appeal is less than Rs. 10,000. It is not the award amount that Sub-section (2) of Section 173 refers to; but it is the amount in dispute in appeal that alone is relevant.

9. The Tribunal in the present case has awarded to the petitioner an amount of Rs. 9,000 together with interest at the rate of 7.5 per cent per annum. Even if the component of interest is left aside and the principal amount as awarded by Tribunal is taken into consideration, the fact remains that the said amount of Rs. 9,000 is the one that has been awarded to the petitioner and is not the amount in dispute. If the said award amount of Rs. 9,000 alone was sought to be questioned in appeal by the person(s) against whom the award has been made, may be the question of competence of such an appeal would have arisen for the bar as spelt out in Sub-section (2) of Section 173 of the Act. The non-applicants are not questioning the award amount and the said amount of Rs. 9,000 as awarded by the Tribunal is not at all the amount in dispute in this matter. Reference to the decision in National Insurance Company Limited, Kakinanda Vs. Illapu Seethamma and others, , appears to be entirely misplaced. The said common judgment relates to nine appeals preferred by the insurer of the vehicle involved in the accident against whom the award had been made by concerned Tribunal; and in the said decision, such appeals (four in number) wherein the amount in dispute was found to be less than Rs. 10,000 were held to be incompetent. In the present case, the person against whom the award has been made is not challenging the award; but it is the claimant-petitioner who is seeking enhancement over the award amount.

10. This Court is unable to find even a logic that the plain language of Sub-section (2) of Section 173 has been sought to be given a different meaning so as

to maintain this writ petition. The relief as claimed in this writ petition makes it absolutely clear that the petitioner seeks modification of the impugned award so as to enhance the amount of compensation as per the claim application. In the claim application, the petitioner did claim compensation in the sum of Rs. 9,50,000. Looking to the grounds urged in this writ petition, the amount in dispute is the amount over and above the amount of Rs. 9,000 that is sought to be claimed by the petitioner. It is not the case of the petitioner that he is claiming enhancement only to the extent it is referable to Sub-section (2) of Section 173 of the Act, i.e., Rs. 10,000. The writ petition as filed in this case could only be said to be misconceived.

11. It is also noticed that the limitation for filing the appeal u/s 173(1) of the Act remains 90 days from the date of award. The award in question was made on 26.11.2005, the petitioner applied for a copy of the award on 29.11.2005 and did receive the same on 5.1.2006. It is at once evident that limitation for filing the appeal had expired long before petitioner chose to file this writ petition on 26.7.2006. Not even a specific statement has been made in the petition as to why the petitioner chose to file writ petition seeking enhancement of the award amount instead of resorting to the regular remedy of appeal except a cursory and general statement in para 10 of the petition that the petitioner has no other alternative efficacious remedy.

12. The overall circumstances compel this Court to deduce that after having lost the limitation for filing the appeal and having no ground to urge for condonation of delay, the petitioner took the recourse to the writ jurisdiction of this Court. In the face of clear and unambiguous provisions of Section 173 of the Act providing for a regular remedy of appeal to this Court; and there being no valid reason that petitioner has not taken recourse to such remedy of appeal, this writ petition remains incompetent and does not appear to be bona fide either.

13. In the aforesaid view of the matter, there appears no necessity of affording any further time to the petitioner to get the respondent No. 3 served. The present one being frivolous petition, deserves to be dismissed with costs at this stage itself.

14. This Court is constrained to comment that the extraordinary writ jurisdiction is intended to prevent miscarriage of justice but such jurisdiction itself cannot be permitted to be misused by a litigant in order to cover up his own faults and defaults nor such jurisdiction is available to be utilised as a substitute of regular remedies even when there is no justification for not resorting to the regular remedy within time; and in any case, it could be least permitted to be used as a substitute of regular remedy of appeal to this Court, as attempted in this case.

15. In view of the aforesaid, this writ petition deserves to be and is hereby dismissed with costs quantified at Rs. 2,200 (rupees two thousand two hundred) payable by the petitioner equally to the contesting respondent Nos. 4 and 5.