

(2010) 12 KL CK 0043
In the High Court Of Kerala
Case No : M.A.C.A. No. 2565 of 2010

Habeeb

APPELLANT

Vs

Sebastian

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 367, 419, 425, 428, 442
Evidence Act, 1872 — Section 74, 76
Kerala Civil Rules of Practice, 1971 — Rule 239, 239(1), 239(3), 245, 246
Kerala Motor Vehicles Rules, 1989 — Rule 297(3), 396(2), 398
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 168(2), 173

Citation : (2011) 1 KLT 19 : (2011) 1 TAC 763

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Mathew John K, for the Appellant;

Judgement

A.K. Basheer, J.—In this appeal filed u/s 173 of the Motor Vehicles Act, Appellant/claimant challenges inadequacy of the amount of compensation awarded to him by the Motor Accidents Claims Tribunal.

2. The appeal has been filed with a "free copy" obtained from the Tribunal. The Registry noted that there was delay in filing the appeal, going by the endorsements noted on the free copy.

3. The award was passed by the Tribunal on December 31, 2009. The two endorsements available on the free copy are extracted hereunder.

Ready on 20.1.10. Issued on 23.1.10. Sd/-

4. Sri. Mathew John, learned Counsel for the Appellant points out that the appeal was filed on May 17, 2010, the day on which the High Court re-opened after summer recess and therefore the appeal is well within time.

5. But when the appeal was re-presented with the above reply, the Registry

persisted with its earlier stand on the question of delay and took the view that appeal had been instituted beyond the period of statutory limitation. It was also pointed out by the Registry that there was no authentication for the endorsements found on the free copy. At that stage the learned Counsel requested the Registry to post the matter before the Bench for appropriate orders.

6. As has been noticed already, the endorsements available on the free copy contain only two entries; viz. the date on which the copy was ready and the date on which it was issued to the party.

7. It may at once be noticed that there is no clue as to the designation of the signatory who made the above two endorsements, though of course, the name of the signatory can be discerned. There is no seal of the designated officer or the Tribunal beneath the endorsements. In that view of the matter, the objection raised by the Registry cannot be faulted at all.

8. It has come to the notice of this Court that the Motor Accidents Claims Tribunals in the State have been issuing free copies of the award without adhering to the procedure or norms prescribed for issue of such copies. The case on hand is one such classic example.

9. Any person aggrieved by an award of a Claims Tribunal may prefer an appeal to the High Court within 90 days from the date of the award as provided u/s 173 of the Motor Vehicles Act, 1988. Sub-section (2) of Section 168 stipulates that the Claims Tribunals shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of 15 days from the date of the award.

(emphasis supplied)

10. Sub-rule (2) of Rule 396 of the Kerala Motor Vehicles Rules, 1989 stipulates that an appeal against the award of a Claims Tribunal shall be accompanied by a copy of the judgment, the award appealed against and the fee prescribed in Sub-rule (3) of Rule 397.

11. This Court has been entertaining a memorandum of appeal u/s 173 of the Act if it is accompanied by a (free) copy of the award issued by the Tribunal. The Tribunals in the State have been issuing free carbon copies to the claimants on payment of a nominal "document fee" of Rs. 5/- soon after the awards are passed, though in some cases there occurs some delay. When such carbon copies are issued most of the Tribunals do not seem to follow any of the norms or procedure prescribed for issue of certified copies.

12. Rule 398 of the Kerala Motor Vehicles Rules reads thus:

398. Certified copies: The rules relating to the issue of certified copies obtaining in the Civil Rules of Practice, Kerala shall mutatis mutandis apply in the case of Claims Tribunal.

13. Chapter VII in the Civil Rules of Practice, Kerala deals with certified copies and printing rules. Rule 239 which is quite relevant for our purpose is extracted hereunder:

239. Application for copies:

(1) Any person entitled to obtain a copy of any proceeding or document filed in or in the custody of the Court, may present an application therefore as in Form No. 47 setting out the name of the applicant, his position in the suit or proceeding if he is a party thereto, and the description of the document of which copy is required.

(2) Copies of Judge's minutes or of correspondence, and other papers not strictly Judicial will be granted only under orders of the Judge.

(3) Any party to the proceeding may, immediately after the judgment or order is pronounced, apply orally to the Court for a carbon copy or photostat copy thereof, and, if the court so directs, a carbon copy or photostat copy duly certified shall be issued to the party on his making an application for an urgent copy under Rule 246 accompanied by the copying charges required by Rule 248, Provided that in cases where the State Government or the Central Government is a party, a carbon copy may be issued to the State Government or the Central Government, as the case may be, by the office free of cost, on receipt of a written requisition for the same.

(4) In LAR cases, a copy of the judgment and decree will be supplied to the concerned Government Pleader representing the State, free of cost, if applied for.

Provided that the grant of a free copy under Sub-rule (4) will not affect the requirements of Rule 258.

14. Sub-rule (1) of Rule 239 provides that any person entitled to obtain a copy of any proceeding or document filed in or in the custody of the Court, may present an application therefore as in Form No. 47 setting out the name of the applicant, his position in the suit or proceeding if he is a party thereto, and the description of the document of which copy is required.

15. Sub-rule (3) provides that any party to the proceeding may, immediately after the judgment or order is pronounced, apply orally to the Court for a carbon copy or Photostat copy thereof, and, if the court so directs, a carbon copy or Photostat copy duly certified shall be issued to the party on his making an application for an urgent copy under Rule 246 accompanied by the copying charges required by Rule 248. (emphasis supplied).

16. The other rules in Chap. VII lay down the procedure as to how stamp papers required for the purpose are to be called for, how intimation of date of delivery of copy is to be given and order in which the copies are to be prepared and how the list of copies ready for delivery is to be published etc. Rules 253 and 254 which are relevant in this case are extracted hereunder:

253. Sealing and certificate: All copies furnished by the Court shall be certified to be true copies by the officer appointed for the purpose and shall be sealed with the seal of the Court.

254. Endorsement of copies: Every copy shall bear an endorsement initialled by the Fair Copy Superintendent or the Examiner, as the case may be, showing the following particulars:

1. Name of the Court.
- 2 Year & No. of the suit or other proceeding.
3. Name of the applicant.
4. Number and date of the application.
5. Date of calling for stamp papers.
6. Date of production of papers.
7. Date of calling for additional papers.
8. Date of production of additional papers.
9. Date when copy was ready.
10. Date notified for appearance to receive the copy.
11. Date when copy was delivered.

17. As has been noticed already, the free copy of the award produced by the Appellant along with the memorandum of appeal does not contain any certification by the Officer appointed for this purpose; nor does it contain the seal of the Tribunal as provided under Rule 253. Still further, the endorsements to be made on a certified copy as provided in Rule 254 are conspicuously absent.

18. It may be true that in the case of a free carbon copy, entry Nos. 5 to 8 enumerated in Rule 254 may not have any relevance. But still it may be borne in mind by the Tribunals that the mandate in Rule 398 of the Kerala Motor Vehicles Rules will have to be necessarily complied with. A carbon copy issued without a proper certification by a duly appointed Officer and without the seal of the Court cannot be treated as a certified copy at all. In the absence of the particulars enumerated in Rule 254 as regards the number and date of application, the date when the copy is ready and also the date when the copy was delivered etc., it will be difficult for the appellate court to process the appeal before entertaining it. It is surprising that most of the Tribunals in the State seem to be oblivious of the wisdom of the rule making authority. In any view of the matter, the failure of the Tribunals to comply with the procedural rules cannot be countenanced. The Tribunals must ensure that henceforth the procedural rules are strictly adhered to, in the matter of issuance of copies of the awards.

19. It may incidentally be noticed that the carbon copies that are being issued

from many of the Tribunals in the State are typed on stationery which is of very poor quality. These carbon copies become totally unreadable after a few months, if not weeks. The low quality paper gets crumpled and withered up in no time. In some cases it has been noticed that even the so called fresh copies are also not legible or readable at all.

20. It is true that the Tribunals are helpless in these matters since it is the duty of the State to provide proper and adequate infrastructure. But sadly the authorities do not seem to take note of these inadequacies and deficiencies in spite of best efforts made by this Court on the administrative side. Anyhow it is hoped that the State machinery will take these observations as a wake up call and take ameliorative steps in this regard without any further delay.

21. In the course of hearing of the issue which we have dealt with already, we put a query to Mr. Mathew John as to whether an appeal would be maintainable if it is not accompanied by a certified copy. What prompted us to put the above query is not only the poor quality of the stationery on which the free copies of awards are being prepared by the Tribunals or the slipshod manner in which they are being issued. There is yet another valid reason.

22. It has been noticed already that every Tribunal is bound to arrange to deliver copies of the award to the parties concerned expeditiously, and in any case within a period of 15 days from the date of the award. This mandate contained in Sub-section (2) of Section 168 obligates every Tribunal to deliver copy of the award with expedition, apparently to ensure that the claimants are able to enjoy the fruits of the award without much delay. But it has to be noticed that these free copies obtained by the claimants are being used by them to prefer appeals rather than for the purpose of executing the award. It is also a fact that most of the Insurance Companies satisfy the award only when coercive steps are initiated. But still, we have referred to this aspect only to indicate that the salutary purpose that the Legislature had in its contemplation while enacting Sub-section (2) of Section 168, has not been fulfilled in its true sense. It is in the above background we thought whether it would not be proper to lay down that an appeal under Section. 173 of the Act need be entertained only if it is accompanied by a duly certified copy of the award as provided under Rule 245 of the Kerala Civil Rules of Practice.

23. In The State of Uttar Pradesh Vs. C. Tobit and Others, the issue that came up for consideration before the Supreme Court related to interpretation or meaning of the word "copy" u/s 419 of the Code of Criminal Procedure, 1898 (Section 382 of the 1973 Code). The question was whether the memorandum of criminal appeal presented by the State of Uttar Pradesh against an order of acquittal passed by the Sessions Court along with a "plain copy" of the judgment was properly instituted or not. In other words, the question raised was whether the word "copy" used in Section 419 of the Code was to be understood as a certified copy or not.

24. A perusal of the above judgment will show that the State of Uttar Pradesh had presented the memorandum of appeal with a "plain copy" of the impugned judgment in an attempt to save the period of limitation. It came on record that the Appellant had nevertheless filed an application to obtain a certified copy of the impugned judgment. After obtaining certified copy, the Appellant had later produced it before the High Court. However the Appellant was directed to file an application u/s 5 of the Limitation Act to condone the delay in presenting the appeal within time. When the matter came up for consideration before the Division Bench, the learned Judges differed on the question as to whether filing of a plain copy of the judgment was sufficient compliance with the law. The matter was referred to a third Judge who took the view that the word "copy" in Section 419 meant a certified copy and held that the appeal presented with the plain copy could not have been treated as "properly instituted". Since the certified copy was produced after the expiry of the period of limitation, the appeal was dismissed by the Division Bench. The above order was challenged by the State of Uttar Pradesh before the Apex Court.

25. Section 419 of the old Code reads thus:

419. Every appeal shall be made in the form of a petition in writing presented by the Appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded u/s 367.

After noticing the context in which the word "copy" is used in Section 419 and also in some other sections like 425, 428, 442 and 511 of the old Code, their Lordships observed that the "question whether a copy in a particular section means a plain copy or a certified copy must depend on the subject or context in which the word "copy" is used in such section". Their Lordships had also considered the provisions contained in Sections 74 and 76 of the Indian Evidence Act.

26. After an elaborate consideration of the relevant provisions contained in the Code apart from Sections 74 and 76 of the Evidence Act, the case law on the point and also after noticing the observations in Maxwell's Interpretation of Statutes (10th Edn, Page 52), their Lordships held thus:

It is well settled that the "the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not So much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.

Their Lordships further held that so far as Section 419 is concerned, the copy to be filed along with the memorandum of appeal must be a certified copy. Though the Court did not enter upon a discussion as to the true interpretation of the

word "copy" occurring in any of the other sections in the Code, their Lordships observed that each section in each Act must, in its true meaning and effect, depend on its own language, context and setting.

27. The above observation, in our view, must act as a guiding beacon in deciding the question whether a memorandum of appeal preferred u/s 173 of the Motor Vehicles Act should be entertained if it is accompanied by a free carbon copy obtained by the claimants.

28. In *Thatha v. Paru* 1985 KLT 1069 His Lordship Thomas J. (as His Lordship then was) had occasion to consider the question whether a Civil Miscellaneous Appeal instituted before the District Court with a carbon copy of the order was maintainable or not. The preliminary objection raised by the Respondent in the appeal was over-ruled by the learned District Judge. The said order was challenged before this Court in the civil revision petition. It was noticed by this Court that the carbon copy was issued by the Munsiff Court pursuant to a request made by the party in the nature of the urgency of the case. The learned. Munsiff had recorded in the order thus:

Counsel for the Petitioner-Plaintiff orally prays for issue of a carbon copy of this order. Issue carbon copy on payment of requisite charges.

The learned Munsiff had put his signature beneath that order. The order further contained the appendix regarding witnesses, exhibits etc. The Examiner of the Court had endorsed that the carbon copy was being granted as ordered by the Court. In addition to the above, the carbon copy contained the seal of the court. This Court had after taking note of the above aspects held that the carbon copy produced along with the Civil Miscellaneous Appeal was a "certified copy" of the order appealed against and as such the presentation of the appeal with that carbon copy could be treated as a valid presentation.

29. In this context the learned Judge had referred to Sub-rule (3) of Rule 239 to which we have already referred in the earlier part of our judgment. Sub-rule (3) enables a party to a proceeding to make an oral request to the Court to issue a carbon copy or a photostat copy of the judgment immediately after the judgment or order is pronounced. If such a request is made for an urgent copy, the Court may issue a "duly certified carbon copy". The Court may issue a carbon copy by making an order for precedence as provided under Rule 246. Thus it can be seen that a duly certified carbon copy or photostat copy can be issued by a Court considering the urgency of the case. Rule 246 provides for giving precedence to an application made for issue of an urgent carbon copy.

30. The short question that arises for consideration is whether an appeal u/s 173 of the Motor Vehicles Act should be entertained if it is filed by a claimant along with a carbon copy and that too seeking enhancement of compensation. By no stretch of imagination it can be said that there is urgency in the matter. Therefore the answer to the above question has to be in the negative.

31. The free copy which is to be issued to a claimant as provided under Sub-section (2) of Section 168 of the Act is obviously to enable a claimant to get the award executed without any delay. Similarly, the Insurance Company can take steps to disburse the award amount promptly if the carbon copy is made available expeditiously. That seems to be the whole idea behind the legislative exercise in directing to make available "free carbon copy" to the parties. Viewed from this angle, we do not find any reason to hold that a claimant would be entitled to prefer an appeal seeking enhancement of compensation by utilising the free carbon copy.

32. In several cases we have noticed that appeals are being preferred by claimants only after obtaining certified copy in the usual course. In many cases though we have noticed that claimants come before this Court with an appeal along with carbon copy after inordinate delay of several months and even years. But such appeals are also entertained by this Court Why? We do not find any justification in entertaining appeals seeking enhancement with the aid of free carbon copies. In our view, an appeal for enhancement of compensation by a claimant need be entertained only if it is instituted with a certified copy issued by the Tribunal as provided in Chap. VII of the Civil Rules of Practice, Kerala. We hold so.

All appeals that may be preferred u/s 173 of the Act before this Court from January 1, 2011 shall be entertained only if it is accompanied by a duly certified copy as provided in Chap. VII of the Civil Rules of Practice, Kerala. But we make it clear that this direction is subject to Sub-rule (3) of Rule 239 read with Rule 246. In case of urgency, the aggrieved party Can file an appeal with a free carbon copy issued under Rule 239(3) of the Civil Rules of Practice.

34. Registry shall issue appropriate Office memorandum/circular to the Tribunals in the State directing them to ensure that the rules prescribed under Rule 398 of the Kerala Motor Vehicles Rules and Chap. VII of the Kerala Civil Rules of Practice are strictly complied with while issuing copies of awards.

35. In the case on hand the Registry shall number the appeal since we are satisfied that the memorandum of appeal has been presented within time.

36. A copy of this judgment shall be sent to the, Chief Secretary of the State for appropriate action in the light of the observations made by us as regards the steps to be taken to provide adequate infrastructure in the Motor Accidents Claims Tribunals, especially in the matter of providing sufficient number of good quality stationery, photostat machines and such other paraphernalia.