
(2012) 05 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 116 of 2009

Hans Raj Bhagat	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(2)
Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2013) 2 ACC 334 : (2013) ACJ 1834 : AIR 2013 J&K 15

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : Ved Bhushan Gupta, for the Appellant; Vishnu Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Yaqoob Mir, J.—One Ramesh Kumar, sustained fatal injuries in a road accident allegedly due to rash and negligent driving by the driver of the vehicle (Tractor) and finally succumbed to the injuries. Petition for compensation u/s 166 of Motor Vehicles Act (for short the Act) has been filed by the respondents (widow and son of the deceased). Alongside an application u/s 140 of the Act has also been filed, which has been disposed of by the Tribunal vide its order dated 22nd of July, 2009 where under an amount of Rs. 50,000/- as interim compensation has been granted on the basis of 'No Fault Liability'. The owner of the vehicle has been fastened with the liability to pay the said amount with a condition that finally if he proves liability of the Insurance Company, then shall have the right to recover the said amount from the Insurance Company. Why Insurer (Insurance Company) respondent No. 1 has not been asked to pay the compensation of Rs. 50,000/- is reflected in the

order where it is stated that the license of the driver of offending vehicle was endorsed for P.S.V. (sic) in the year 2002, which was required to be

renewed after three years but had not been renewed. It is now the owner of the offending vehicle who has filed the instant Revision Petition,

projecting the grievance only to the limited extent i.e., fastening of the liability to pay the compensation.

2. Learned counsel for the respondent No. 1 (Insurer) questioned the maintainability of the Revision Petition on two counts:-

(i) that the Claims Tribunal is not a Civil Court subordinate to the High Court, so is not subject to the revisional jurisdiction of the High Court;

(ii) that the order is appealable so revision against such order is not maintainable.

(i) The first question as to whether the orders of the Tribunal are not amenable to the revisional jurisdiction, has to be answered in affirmative

because the controversy has been settled in the judgment rendered by the Division Bench of this Court in Abdul Gaffar Gujree Vs. Mohammad

Phaphoo and Others, paragraph No. 25 of the said judgment reads as under:

25. Therefore, we have no doubt in our mind that neither the language of the relevant provisions of the Motor Vehicles Act nor the Rules framed

thereunder suggest that the Claims Tribunal was constituted as a civil Court. In fact it is constituted as an Administrative Authority and has no

trappings or attributes of a civil Court. It, therefore, follows that the Claims Tribunal is not a civil Court subordinate to the High Court or subject to

its revisional jurisdiction.

(ii) In view of the determination of the question No. (i), question No. (ii), is not required to be dealt with, but however it has to be made clear that

even if Section 115 of CPC (for short C.P.C.) would be applicable still revision against such order is barred. Section 115(2) of C.P.C. provides

that High Court shall not under this Section vary or reverse any order against which appeal lies to the High Court.

3. Now again the question as to whether the order passed u/s 140 of the Act whereunder an amount of Rs. 50,000/- as an interim compensation

has been granted would fall within the scope of Award, so as to attract the applicability of Section 173 of the Act, which provides for appeals.

This question already stands settled in C.I.M.A. No. 198 of 2009 titled Bajaj Allianz Vs. Mst. Fareeda and Others, wherein it has been held that

the compensation granted on the principle of ""No Fault Liability"" is governed by Section 140 of the Act constitute award so appealable u/s 173 of the Act.

4. Law laid down by the Hon'ble Apex Court in the judgment Smt. Yallwwa and Others Vs. National Insurance Co. Ltd. and Another, has to be

followed. The relevant portion governing the issue from paragraph 30 of the judgment is quoted as under:-

30. In our opinion an order of the Tribunal awarding compensation u/s 140 of the Act is appealable u/s 173 as it amounts to an award u/s 173.

5. The legal position is clear that the award though styled as interim compensation, in terms of Section 140 of the Motor Vehicles Act is appealable

and appeal lies to the High Court. Therefore, in view of the clear bar envisaged by Section 115(2) of C. P.C., revision is not maintainable.

6. Viewed thus, Revision Petition being not maintainable is accordingly, dismissed. Copy of the order along with record of the Tribunal be sent

back forthwith.