
(2022) 10 BOM CK 0117
In the Bombay High Court
Case No : First Appeal No. 521 Of 2022

Madhav

APPELLANT

Vs

Mohammad Ali And Others

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173, 173(1), 173(2)

Citation : (2022) 10 BOM CK 0117

Hon'ble Judges : Abhay Ahuja, J

Bench : Single Bench

Advocate : Vivek Awchat, Yowash Salve, John Anthony, Lalit Limaye

Final Decision : Dismissed

Judgement

Abhay Ahuja, J

1. This is an appeal challenging the order dated 25th March 2022, passed by the Motor Accident Claims Tribunal (Tribunal), Kelapur, Yavatmal, in an application under Section 140 of the Motor Vehicles Act, 1988 (M.V. Act) in Motor Accident Claim Petition No.51 of 2017.

2. The Appellant is the Claimant, who has filed the Motor Accident Claim Petition No.51 of 2017 before the M.A.C.T. Kelapur under Section 166 of the M.V. Act, 1988 for grant of compensation of Rs.5 lakhs for the injuries and permanent disablement caused to him due to the accident between the tractor trolley in which he was travelling and a truck which came and hit the tractor trolley from behind. It is claimed by the Appellant that he sustained grievous injuries over his body and has become permanently disabled. That he has lost his working and earning capacity, and therefore, the claim petition. In the claim petition, the Appellant had made an application under Section 140 of the M.V. Act seeking compensation of Rs.25,000/- under the principle of "No Fault Liability." Vide its order dated 25th March 2022 impugned in this appeal, the tribunal on the basis of prima facie findings that at the time of the accident, the offending truck was

driven by a cleaner, who was not possessing a valid license to drive the truck, held that the truck owner but not the Insurance Company was liable to pay Rs.25,000/- to the Appellant.

3. Being aggrieved by the exoneration of the Insurance Company, the Appellant has filed this appeal on the grounds mentioned therein.

4. When the matter was heard on the 11th October 2022, the following order came to be passed :

" This is an appeal impugning the order dated 25-03-2022 passed in an application under Section 140 of the Motor Vehicles Act seeking compensation of Rs.25,000/-under the No Fault Liability. Mr. Awchat, learned Counsel would submit that the order should have directed the payment of No Fault Liability amount jointly and severally upon the owner as well as on the Insurance Company, but it has gone ahead on an prima facie finding in the matter. The issues have not been framed and the Tribunal has saddled the liability only on the owner of the offending truck. He would submit that such a finding would come in his way at the time of final decision in the claim pending before the Tribunal. The learned Counsel for the offending vehicle submits that he has already filed reply and the same may be perused.

2. A perusal of Section 173(2) of the Motor Vehicles Act indicates that there is a minimum amount in respect of which an Appeal can be filed against the award of the Claims Tribunal and that is Rs.1 Lakh. The amount involved in this Appeal is Rs.25,000/- and as such there would be an issue of maintainability of the Appeal.

3. Let the learned Counsel for the parties address the Court on this issue on the next occasion.

4. Mr. Awchat, learned counsel for the appellant to inform Mr. Lalit Limaye, Advocate for respondent no.3.

5. List the matter on 18-10-2022."

5. On the 18th October 2022, when the matter was called out, Mr. Awchat, learned counsel for the Appellant, would submit that the appeal is maintainable in as much as the orders passed by the Tribunal under Section 140 of the M. V. Act are appealable under Section 173 of the Act. Learned counsel relies upon the following three decisions in support of his contention :

(i) United India Insurance Company Ltd. vs. Serj Rao and Others, 2008 (7) Supreme Court Cases 425,

(ii) Yallwwa and Others vs. National Insurance Company Ltd. & Another, 2007 AIR (SC) 2582,

(iii) Shriram General Insurance Company Ltd. vs. Smt. Umadabi W/o. Mohd. Satar and Others, in First Appeal No.658 of 2011, dated 19.06.2012.

Learned counsel would submit that, in view of the aforesaid decisions, even if the

amount involved in the appeal is less than One lakh rupees, the same would be maintainable.

6. I have heard learned counsel for the parties and given my thoughtful consideration to this matter.

7. There is and there cannot be any doubt that the order passed under Section 140 of the M. V. Act would be an award for the purposes of Section 173 of the Act. Therefore, the ratio and the principles laid down in the aforementioned decisions relied upon by the learned counsel for the Appellant are good law and cannot be disputed. However, the question here is not whether the order passed by the Tribunal under Section 140 of the M. V. Act is appellable or not but the question that arises here is, whether the said order under Section 140 is subject to Section 173(2) of the M. V. Act. To answer this question, let us first appreciate the provisions of law.

8. Before proceeding further, it would be apposite to quote Section 173 of the M. V. Act 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 percent 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 one lakh rupees."

(Emphasis Supplied)

9. A perusal of the aforesaid provision clearly indicates that sub-section (1) which permits the filing of an appeal against an award of a claims tribunal is subject to the provisions contained in sub-section (2) of the said Section. Sub-section (2) of the said Section clearly provides that no appeal shall lie against any award of a claims Tribunal if the amount in dispute in appeal is less than One lakh rupees. The amendment to sub-section (2) has come into effect from 1st September 2019. Earlier the amount was Rs.10,000/- and with effect from 1st September 2019, it has been enhanced to One lakh rupees. The impugned order is dated 23rd March 2022 and as such, the enhanced amount of One lakh rupees would be applicable to the appeal that has been filed against the order.

10. There is no doubt, as held in the decisions cited above that, an award passed under Section 140 of the M. V. Act is also an award that is appellable under

Section 173(1) of the M. V. Act. However, the sub-section (1) as observed above is subject to sub-section (2) which provides for a minimum amount involved in the dispute of One lakh rupees subject to which an appeal may be preferred. The provisions of Section 173 are quite clear. In my view, unless the amount involved in the dispute is atleast One lakh rupees, no appeal is maintainable under this provision of the M. V. Act.

11. Admittedly, the amount in dispute in the appeal is Rs.25,000/- which is below the threshold limit of One lakh rupees. In view of the above discussion, I am of the view that this appeal is not maintainable and deserves to be dismissed on this ground alone.

12. Mr. Awchat would submit that the Appellant is a person who does not have many means and the dismissal of this appeal on a technical ground of maintainability would have an adverse effect on the Appellant.

13. In my view, the apprehension expressed by Mr. Awchat is misplaced, in as much as the award passed under Section 140 has been passed on the basis of prima facie findings of the Tribunal. The grounds taken up in this appeal can also be taken up before the passing of the final order while arguing the main claim before the Tribunal, which is still pending.

14. The Appeal is dismissed as not maintainable. Liberty is granted to the appellant to take up the grounds taken in this appeal before the Tribunal.