
(2008) 02 MP CK 0105
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Basakya and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 1038

Hon'ble Judges : N.L. Mody, J

Bench : Single Bench

Judgement

N.L. Mody, J.—This order shall also govern the disposal of M.A. Nos. 1762 and 2010 of 2007, as in all the appeals the impugned award is dated 6.4.2007 passed by Addl. M.A.C.T., Kukshi, District Dhar in Claim Case No. 44 of 2006 whereby the claim petition filed by respondent No. 1 was allowed and a sum of Rs. 1,00,000 was awarded on account of death of minor Mahesh, son of respondent No. 1.

2. M.A. No. 2015 of 2007 is filed by the appellant insurance company, wherein the appellant is aggrieved by the direction of the learned court below whereby appellant has been directed to pay the amount of Rs. 1,00,000 and recover the same from respondent Nos. 2 and 3. In M.A. No. 1762 of 2007, which is filed by respondent No. 1-claimant the grievance of respondent No. 1 is that the amount awarded by the learned Tribunal is on lower side, which deserves to be enhanced. In M.A. No. 2010 of 2007 which is an appeal filed by the respondent Nos. 2 and 3 wherein the grievance of respondent Nos. 2 and 3 are that the learned Tribunal committed error in giving right of recovery to the appellant.

3. Since respondent Nos. 2 and 3 are unrepresented in this appeal and all the appeals are arising out of one and same award, therefore, Mr. Pankaj Sohani is also directed to make appearance on behalf of respondent Nos. 2 and 3.

4. Short facts of the case are that respondent No. 1 filed claim petition before the learned Tribunal alleging that deceased Mahesh aged 10 years was the son of

the respondent No. 1, who was going in a mini truck (Tata) bearing registration No. MP09-K6716. It was alleged that the offending mini truck was being driven by respondent No. 2, owned by respondent No. 3 and insured with the appellant. It was alleged that because of rash and negligent driving of respondent No. 2 the accident occurred, in which Mahesh died. It was alleged that the accident occurred because of rash and negligent driving of respondent No. 2, therefore, respondent Nos. 2 and 3 and appellant be held liable for payment of compensation. The claim petition was contested by the appellant on various grounds including on the ground that appellant insurance company is not liable for payment of compensation as offending vehicle was a goods vehicle and was not for carrying passengers. After framing of issues and recording of evidence, learned Tribunal allowed the claim petition filed by respondent No. 1, awarded a sum of Rs. 1,00,000 and held that since the offending vehicle was a goods vehicle, therefore, appellant shall pay and recover the amount from the respondent Nos. 2 and 3.

5. Preliminary objections have been raised by Mr. Manish Jain, counsel for the respondent No. 1 regarding the maintainability of the appeal filed by the appellant and also by respondent Nos. 2 and 3, to the effect that the requirement of Section 173 of the Motor Vehicles Act has not been complied with. Learned Counsel submits that as per proviso of Section 173 of the Motor Vehicles Act, 1988, 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 Rs. 25,000 or 50 per cent of the amount so awarded, whichever is less, in the manner directed by the High Court. Learned Counsel submits that the award was passed on 6.4.2007 and the appeal was filed by the appellant on 16.6.2007. It is submitted that as per proviso to Section 173 of the Motor Vehicles Act, No. amount has been deposited by the appellant. It is also submitted that in the appeal filed by respondent Nos. 2 and 3 which is marked as M.A. No. 2010 of 2007, No. amount has been deposited by the respondent Nos. 2 and 3, therefore, both the appeals deserve to be dismissed at the threshold. For this contention reliance was placed on a decision of this Court in the matter of Gaya Prasad and Another Vs. Suresh Kumar, , wherein a Full Bench of this Court has held that an appeal cannot be entertained without making requisite deposit as provided u/s 173 of the Motor Vehicles Act. Further reliance is placed on a decision in the matter of Ashok Kohli Vs. Prakash Chand and Others, , wherein after placing reliance on a decision of this Court in the matter of Gaya Prasad v. Suresh Kumar (supra), it was held that non-compliance of deposit would render the appeal liable to be dismissed as not maintainable. It was held that since the appellant did not comply with the statutory requirement of deposit of half of the awarded amount or Rs. 25,000, appeal itself is not maintainable.

6. Reliance has also been placed on a decision of this Court in the matter of Anil Saraf Vs. Namboodas and Others, , wherein this Court has considered the stage of depositing the amount and held that the amount is required to be deposited before the appeal is entertained. Reliance was also placed on a decision in the

matter of Section S. Venkata Subbaiah Vs. Kodavali Chinnappa and Others, , wherein Andhra Pradesh High Court in a case where the appellant did not deposit any amount before filing of appeal but deposited half of the amount awarded by Claims Tribunal after filing of the appeal, it was held that appeal is not entertainable in the absence of enclosing a certificate evidencing deposit of requisite amount. It was also observed by Andhra Pradesh High Court that admission of appeal amount to entertaining while the appeal is liable to be rejected at the admission stage itself.

7. On the strength of aforesaid position of law learned Counsel for respondent No. 1 submits that both the appeals deserve to be dismissed. Learned Counsel further submits that so far as M.A. No. 1762 of 2007 filed by respondent No. 1 is concerned, deceased was aged 10 years and was student, therefore, the amount awarded by the learned Tribunal is on the lower side. It is submitted that even in a case of child death notional income ought to have been taken into consideration and after deducting 1/3rd amount towards personal expenses, multiplier of 15 ought to have been applied for the purpose of assessing the loss of dependency.

8. Mr. H.G. Shukla, learned Counsel for the appellant submits that interim award was passed by the learned court below on 5.10.2006 and in compliance of that a sum of Rs. 50,000 was deposited by the appellant on 4.12.2006. It is submitted that since an amount of Rs. 50,000 has already been deposited by the appellant in compliance of the interim award, which has been merged into the final award, therefore, appellant is not required to deposit any amount. For this contention reliance is placed on a decision of Division Bench of this Court in the matter of Oriental Insurance Co. Ltd. Vs. Gopal Singh and Others, , wherein it was held that this Court in its discretion while entertaining the appeal may direct that interim compensation already paid would be the requisite deposit giving effect to the expression "in the manner directed by the High Court.

9. Learned Counsel for the appellant and also respondent Nos. 2 and 3 submits that there is No. documentary evidence on record to show that deceased was student. It is also submitted that in a case of child death the amount awarded by the learned Tribunal is just and proper.

10. So far as Full Bench decision of this Court in the matter of Gaya Prasad and Another Vs. Suresh Kumar, , is concerned the question which was referred and the facts of the case were altogether different. In this case the appeal was filed by the owner against an interim award passed u/s 140 of the Motor Vehicles Act and in that case the date of accident and the date of filing of claim petition was prior to the date when the Motor Vehicles Act 1988 came in force. The question which was referred to the Hon"ble Full Bench was whether any appeal filed on or after 1.7.1989 challenging an order of compensation passed by Motor Accidents Claims Tribunal in terms of provisions of Section 140 of the Motor Vehicles Act or the final award passed u/s 168 of the Act, can be entertained without the appellant fulfilling the requirement of the provisions contained in Section 173 of

the Act of making requisite deposit of the sum contemplated thereunder? In the present case appeal is not against the interim award.

11. In the present case the interim award was dated 5.10.2006, wherein appellant and respondent Nos. 2 and 3 were directed to deposit a sum of Rs. 50,000 in a death case. The amount was deposited by the appellant on 4.12.2006. Final award was passed on 6.4.2007 and appeal was filed by the appellant on 19.6.2007. Along with the appeal for fulfilling the compliance of proviso of Section 173 of the Act receipt of depositing the interim award has been filed and in the memo of appeal it is mentioned that the requisite amount of Rs. 50,000 as per Section 173 of the Motor Vehicles Act has been deposited. This submission is completely against the record. The amount of Rs. 50,000 was deposited in compliance of interim award. Misstatement was made in the memo of appeal. If the appellant insurance company intends to take the benefit of the amount deposited in compliance of interim award to be a deposit under the proviso of Section 173 of the Act, then it was the duty of the appellant insurance company to move an appropriate application and get specific order from the court, which has not been done in the present case. Similarly, in the appeal filed by the owner and driver which is numbered as M.A. No. 2010 of 2007 No. amount has been deposited by respondent Nos. 2 and 3 to fulfil the requirement of Section 173 of the Act. No. application has been filed along with the appeal, with a prayer to dispense with the respondent Nos. 2 and 3 from depositing the amount as the appellant insurance company has already deposited. In the circumstances both the appeals filed by the appellant and respondent Nos. 2 and 3 cannot be allowed to be entertained. In view of this both the appeals filed by appellant and respondent Nos. 2 and 3 stand dismissed.

12. So far as appeal filed by the respondent No. 1 is concerned, respondent No. 1 lost his son in the motor accident. In a case of death of a son the amount of Rs. 1,00,000 awarded by learned Tribunal appears to be on the lower side. The same is enhanced by Rs. 50,000. The enhanced amount shall carry interest at the rate of 7.5 per cent per annum from the date of application. So far as the liability of appellant and respondent Nos. 2 and 3 are concerned the findings of the learned Tribunal shall remain unaltered.

13. With the aforesaid modification appeal stands disposed of. No. order as to costs. A copy of this order be placed in the record of M.A. Nos. 1762 and 2010 of 2007.