

(2000) 09 PAT CK 0099

In the Patna High Court

Case No : Miscellaneous Appeal No. 32 of 1998 (R)

New India Assurance Co. Ltd.

APPELLANT

Vs

Shri Madan Goari and Others

RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Motor Vehicles Act, 1988 — Section 173, 173(1)

Citation : (2001) 1 PLJR 80

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Judgement

A.K. Sinha, J.—Heard Mr. Alok Lal, learned Counsel for the Appellant and Mr. P.K. Bhowmik, learned Counsel for the Respondents.

2. The instant appeal has been filed against the claim preferred u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Old Act") without paying the statutory amount as required to be paid under the provisions of Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter to be referred to as "the New Act").

3. Mr. Bhowmik, learned Counsel for the Respondents strongly argued before me that the Old Act stood repealed as soon as the New Act came into force. So, the appeal is not maintainable before this Court unless the Appellant deposits the statutory amount as provided under the New Act.

4. On the contrary, Mr. Alok Lai, learned Counsel for the Appellant submits that right of appeal accrued to the Appellant under the Old Act and the new provision of appeal u/s 173 of the New Act is not retrospective, hence, the Appellant Insurance Company is not bound to deposit the statutory amount as provided u/s 173 of the New Act. In support of his contention, reliance has been placed on the case of Ramesh Singh and another Vs. Cinta Devi and others, wherein it has been held as under:

In all these decisions the view taken is that unless the new Act expressly or by necessary implication makes the provision applicable retrospectively, the right to appeal will crystallise in the Appellant on the institution of the application in the Tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the new Act. In other words, the Appellant would be entitled to file the appeal without being required to make the deposit under the proviso to Section 173 of the new Act. The law, therefore, seems to be fairly well settled by the said decisions of this Court.

5. In view of the decision cited by Mr. Alok Lal, it is amply clear that the Appellant is not required to deposit the statutory amount as provided under the new Act and this appeal can very well be entertained without such deposit.

6. This appeal is admitted for hearing.

7. Call for the lower court records. No notice is required to be issued since the Respondents have put in their appearance.

8. It is, however, observed that the Insurance Company should deposit a sum of Rs. 15,000/- which is the limited liability of the Insurance Company under the Old Act. The amount must be deposited within two months from the date of this order.