
(2007) 08 GAU CK 0076
In the Gauhati High Court

Oil India Limited	Vs	APPELLANT
Shri Neil Rose and Others		RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) ACJ 1176 : AIR 2008 Guw 35 : (2007) 4 GLT 446

Hon'ble Judges : I.A. Ansari, J;D. Biswas, J;Amitava Roy, J

Bench : Full Bench

Judgement

D. Biswas, J.—The question referred to this Court for answer by the learned single Judge vide order dated 10-6-2005 reads as follows:

Whether an appeal u/s 173 of the Motor Vehicles Act. 1988, without the statutory deposit but otherwise filed in time, can be entertained if such deposit is eventually made beyond the period of limitation without the delay being condoned by the Court?

2. We have heard Mr. S. N. Sharma, learned Counsel for the appellant and Mr. M. Bhuyan, learned Counsel for the respondents.

3. MAC Appeal No. 38 of 2005 has been preferred against the award dated 15-10-2004 passed by the Motor Accident Claims Tribunal, Kamrup in MAC Case No. 809/1995 directing the appellant to pay an amount of Rs. 2,00,000/- as compensation for accidental death of Smt. Julima Rose involving a bus pressed into service by the appellant on hire. Being aggrieved thereby, the appellant has preferred MAC Appeal No. 38 of 2005 controverting the legality and propriety of the judgment on various grounds set forth in the memo of appeal.

4. The prime question amongst others canvassed, during the course of hearing of the appeal, before the learned single Judge relates to the maintainability of the appeal. Mr. Bhuyan, learned Counsel argued that the appeal is not maintainable for the reasons that the statutory deposit was made after expiry of the period of limitation as prescribed in Sub-section (1) of Section 173 without the delay being

condoned by an order of the Court. Mr. S. N. Sarma, learned Counsel for the appellant argued at length to justify that the appeal filed within time cannot be thrown away merely because the statutory deposit was made after expiry of the period of limitation.

5. We may now have a look at the decisions relied upon by the learned Counsel for the parties. In the *New India Assurance Co. Ltd. v. Shri Birendra Mohan De* reported in 1995 (2) GLT 218, a Division Bench of this Court in session with the similar issue held as follows:

7. Mr. A. Chakraborty, learned senior counsel appearing on behalf of the respondents No. 1 and 2, namely, the claimant petitioners has submitted that this appeal is liable to be dismissed ab-initio as the Insurance Company did not deposit the amount of Rs. 25,000/- was deposited by the Insurance Company after expiry of prescribed period of limitation and, hence, such an appeal cannot be entertained. Mr. Dhar, learned Counsel appearing on behalf of the appellant, in his reply has submitted that since the memo of appeal was presented before this Court in time i.e. within the prescribed period of limitation the amount of Rs. 25,000/- though deposited after expiry of the period of limitation, the Court is entitled to entertain this appeal. But on perusal of the provision of Section 173 of the M.V. Act, we are of the view that such an appeal cannot be entertained unless and until the amount of Rs. 25,000/- is deposited within the prescribed period of limitation. For the reasons stated above, we are of the view that this appeal is devoid of merit and, accordingly, it is dismissed. No costs.

6. In similar tune with the judgment in *Shri Birendra Mohan De (supra)*, Division Bench of this Court in *Union of India v. Smt. Gita Banik* reported in 1996 (2) GLT 246 dismissed the appeal holding that the appeal is not maintainable as the amount of Rs. 25,000/- was not deposited within the prescribed period of limitation.

7. View contrary to what is reflected in the above two Judgments is available in a Division Bench Judgment of this Court in *New India Assurance Co. Ltd. v. Md. Makubur Rahman* reported in (1993) 2 GLR 430. In this appeal, Hon'ble Mr. Justice U.L. Bhat, the then Chief Justice speaking for the Bench held:

7. Having regard to the language used in first proviso to Section 173(1) of the Act, the ordinary meaning of the expression "entertain" contained therein must receive its ordinary meaning, namely, "admit for consideration". It must follow that deposit need not be made at the time of filing though it could be made at that stage. For the purpose of proviso, it is sufficient that deposit is made when appeal comes up for admission or consideration. If deposit is not so made, it will be open to the Court to reject the appeal; it is also open to the Court to adjourn consideration of appeal to another date. As to which course is to be adopted in a given case depends upon the facts and circumstances of the case.

8. It would appear from above that deposit need not be made at the time of filing of the appeal though it could be made at that stage and for the purpose of first

proviso, it would be sufficient if the deposit is made when the appeal comes for admission or consideration. The Division Bench further held that it was open to the Court to reject the appeal if the deposit is not made, or to adjourn the appeal for consideration to another date. The decision in *Md. Makubur Rahman (supra)* has been followed by another Division Bench in *New India Assurance Co. Ltd. v. Smt. Rita Devi* reported in 1997 (2) GLT 406. The Division Bench in para 10 observed as follows:

10. In view of the foregoing discussion, really speaking the matter would have been remanded back to the learned single Judge making the reference but that would have resulted in further delay of disposal of miscellaneous appeal which is pending for almost a year, that too at the stage of admission. It is for this reason that in view of the foregoing discussion we would prefer the view expressed in *New India Assurance Co. Ltd. v. Makubur Rahman* 1994 (1) TAC 366 to *New India Assurance Co. Ltd. v. Shri Birendra Mohan De.* 1995 (2) GLT 218. There is already a direction for depositing the amount of Rs. 25,000/- by the appellant in favour of the Deputy Registrar of the Gauhati High Court, Kohima Bench.

9. There is no dispute that the learned single Judge was placed with conflicting views of different Benches of this Court during the course of hearing of the preliminary issues and, for this reason, preferred to make the reference to this Larger Bench for obviating the confusion thus created. In search of an answer to the reference made, we would like to refer to the relevant provisions of the Motor Vehicles Act. Sub-section (1) of Section 173 reads as follows:

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 per cent 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.

10. It would appear from above provision that the substantive provision in Sub-section (1) primarily relates to filing of appeal by a person aggrieved by an award within 90 days from the date of the award. So far this part is concerned, there appears to be no confusion that an appeal has to be preferred within 90 days. Second proviso to this Section authorizes the Court to entertain an appeal after 90 days for sufficient cause. The second proviso is of no relevance to the issue at hand. It is the first proviso which calls for an interpretation in answering the reference. The language employed in the first proviso clearly shows that it imposes an embargo in entertaining an appeal by the High Court unless the statutory deposit is made in the manner as may be directed by the High Court.

This proviso does not provide that the deposit will have to be made along with the memo of appeal or within the period of limitation as incorporated in the substantive provision of Sub-section (1). While the substantive part of Sub-section (1) provides for filing of appeal within 90 days, the first proviso puts an embargo in entertaining the appeal by the High Court, the provisions in both the clauses are, therefore, distinct and separate. A careful reading of this section would suggest that an appeal even if filed within the period of limitation will not be entertained by the High Court unless the statutory report is made. This makes it clear that "filing an appeal" and its "entertaining" are two different facets. The provisions quoted above do not speak of any limitation in so far the deposit is concerned. Therefore, the phrase "no appeal...shall be entertained by the High Court" will have to be interpreted on the basis of the true meaning and purport of the word "entertain".

11. In search of this, we may straightway refer to the decision in Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, . In that case, the Supreme Court was required to interpret the purport of Section 9 of the U.P. Sales Tax Act, 1948 and Rule 66(2) framed under the provisions of the said Act. The right of appeal u/s 9 of the said Act has been made subservient to the payment of admitted tax. Rule 66 requires that the memorandum of appeal shall be accompanied by the challan showing payment of tax. The Supreme Court interpreted the word "entertain", after considering a number of its judgments, in the following words:

10. In our opinion these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration". It would therefore appear that the direction to the Court in the proviso to Section 9 is that the Court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the Court for the first time. In the decision." on which the Assistant Commissioner relied, the learned Chief Justice (Desai, C. J.) holds that the words "accompanied by" showed that something tangible had to accompany the memorandum of appeal. If the memorandum of appeal had to be accompanied by satisfactory proof, it had to be in the shape of something tangible, because no intangible thing can accompany a document like the memorandum of appeal. In our opinion, making "an appeal" the equivalent of the memorandum of appeal is not sound. Even under Order 41 of the Code of Civil Procedure, the expressions "appeal" and "memorandum of appeal" are used to denote two distinct things. In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decisions by a higher Court of the decision of an inferior Court. The appeal is the judicial examination: the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed. When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof

available of the making of the deposit of admitted tax.

12. It would appear from above that if the provision of a statute speaks of entertainment of appeal, it denotes that the appeal cannot be admitted to consideration unless other requirements are complied with. In the instant case, as discussed above, the provisions of Sub-section (1) of Section 173 permits filing of an appeal against an award within 90 days with a rider in the first proviso that such appeal filed cannot be entertained unless the statutory deposit is made. The period of limitation is applicable only to the filing of the appeal and not to the deposit to be made. It therefore, appears that an appeal filed u/s 173 cannot be entertained i.e. cannot be admitted for consideration unless the statutory deposit is made and for this purpose the Court has the discretion either to grant time to make the deposit or not. No formal order condoning the delay is necessary, an order of adjournment would suffice. We may, therefore conclude that the provisions of limitation embodies in the substantive provision of the Sub-section (1) of Section 173 of the Motor Vehicles Act does not extend to the provision relating to the deposit of statutory amount as embodied in the first proviso. The decisions of this Court in Md. Makubur Rahman (supra) and Smt. Rita Devi (supra) appear to be in tune with the decision of the Hon"ble Supreme Court.

12.1 For reasons above, we dispose of this reference in terms of the decision in M/s. Lakshmiratan Engineering Works Ltd. (supra). We make it clear that an appeal filed within the period of limitation or within the extended period of limitation, cannot be admitted for hearing on merit unless the statutory deposit is made either with the memo of appeal or on such date as may be permitted by the Court. No specific order condoning any delay for the purpose of deposit under first proviso to Sub-section (1) of Section 173 is necessary.