

(2003) 07 BOM CK 0087

In the Bombay High Court

Case No : Civil Application No. 3032 of 2003 in Miscellaneous Civil Application
No. 234 of 1995 in Rejected First Appeal No. 169 of 1995

Prakash Dhawale

APPELLANT

Vs

Pramod Raut and Others

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 12A
Motor Vehicles Act, 1988 — Section 173, 173(1)

Citation : (2004) 2 ACC 759 : (2004) ACJ 896 : (2004) 2 BomCR 781 : (2003) 4
MhLj 742

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : Prafulla S. Khubalkar, for the Appellant; Nitin Bhisikar, for the
Respondent

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—Applicant Prakash Dnyaneshwar Dhawale filed an appeal u/s 173 of the Motor Vehicles Act, 1988 challenging the judgment and award passed by the Member, Motor Accident Claims Tribunal, Wardha, in Motor Accident Claims Case No. 33/1990 whereby it is ordered by the learned Member of the MACT that the original non-applicant/present appellant should pay compensation amount of Rs. 18,000/- to the applicants jointly and severally along with interest at the rate of Rs. 12/- % P.A. from the date of the application till realization of the said amount along with proportionate costs. The above said judgment and award dated 23-9-1993 was challenged by the present appellant before this Court in F.A. St. No. 1559/1995 u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for the purposes of brevity).

2. At the time of filing the appeal, in view of Rule 12A of Chapter IV of the Bombay High Court Appellate Side Rules, 1960 (hereinafter referred to as "the Rules" for the purposes of brevity) the appellant deposited Rs. 9000/- in this

Court. Rule 12A was introduced in the Rules by amendment dated December 18th 1990. Rule 12A reads as under :--

"12A. The Appeal memo under the Motor Vehicles Act, 1988, filed u/s 173 of the said Act, shall be accompanied by a certificate by the Registrar of the High Court that a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) or 50 per cent whichever is less of the amount awarded by the award appealed from has been deposited by the appellant in the High Court. The appeal which is not accompanied by such a certificate shall be placed before the Registrar for orders."

In pursuance of this Rule, what is directed is at the time of presentation of the appeal itself, the appellant has to submit as an accompaniment with the appeal a certificate issued by the Registrar of the High Court as regards such deposit. However, after having gone through the Rule, it is absolutely clear that this rule has been treated as a flexible one as it does not appear to have been made as a condition precedent for presenting the appeal. The last sentence in this Rule 12A clearly indicates that if the appeal is not accompanied with the certificate stated above, then that matter is to be placed before the Registrar for necessary orders. This clearly means that if no such payment is made, then it is yet open for the Registrar to pass appropriate orders directing the requisite payment to be made within two weeks and if in spite of such grant of two weeks if the appellant fails to deposit, then it was open for the Registrar to refuse the registration.

3. In this context it would be appropriate to refer further the Section 173 of the Act which reads 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 ten thousand rupees."

4. From Sub-section (1) of Section 173 of the Act it is clear that the first proviso thereof makes its imperative that the amount as contemplated in the said proviso should be paid with the appeal memo. However, it is further clear that from the reading of the above said provision minutely, it still leaves the subject open the way and the manner in which the deposit should be made is in the discretion of the High Court which is abundantly clear from the second proviso to Sub-section (1) of Section 173 of the Act.

5. In the matter in hand the appellant at the time of filing the appeal did deposit the amount of Rs. 9000/- i.e. 50% of the amount awarded. However, the registration of the appeal came to be refused on some other ground i.e. on the ground of condonation of delay in filing the appeal. Rejection of the condonation of delay application naturally resulted into rejection of the first appeal itself which clearly means that as if no appeal was filed. After the refusal of the registration of the appeal filed by the present applicant, it was naturally for the applicant to have moved an application for withdrawal of the amount of Rs. 9000/- which he had deposited in pursuance of Rule 12A of Chapter IV of the Rules. This is that application which is placed for consideration today before this Court.

6. In many cases this Court has come across such applications and in many of them the applications were opposed by the respondent contending that the amount deposited has to be treated towards the decretal amount or the amount awarded and hence the claimant or the opposite side was entitled to receive it by way of partial satisfaction towards the total claim. In the instant matter the application no doubt is vehemently opposed. However, to set the point at rest, this Court feels it appropriate at this stage to observe that the point definitely gathers importance so far as regards the refund of such a deposit is concerned.

7. First proviso of Sub-section (1) of Section 173 of the Act specifically speaks; 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 in the manner directed by the High Court. In the instant matter, there does not appear to any direction given by the High Court and that question did not arise because the amount was deposited at the time of filing of appeal itself. The question that has to be considered is whether this amount could be said to be towards the partial satisfaction of the award passed. In the opinion of this Court this can never be termed as an amount which is directed to be deposited towards partial satisfaction of the award passed. It is simply made a condition for filing the appeal and in appropriate cases the matter is left to the discretion of the Court the way and the manner in which the deposit is to be made. Therefore, unless the appeal is entertained, this amount has simply to lie with the Registrar which ultimately will be decided by the High Court as to how to dispose of the same when the appeal will be entertained and decided on merits or otherwise.

8. The word "entertain" used in first proviso to Sub-section (1) of Section 173 of the Act is the word around which the decision of the present application would depend. Word "entertain" is explained by the Supreme Court in its decision reported in *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another*, . While dealing with the subject, their Lordships of the Supreme Court observed that even according to the dictionary meaning entertain means "admit to consideration". In yet another decision reported in AIR 1970 SC 1348 in the matter of *Hindustan Commercial Bank Ltd. v. Punnu Sahu*. While dealing with the subject, while reiterating its earlier view the Apex Court had emphasized that the word "entertain" signifies "to adjudicate upon" or "proceed

to consider on merits". Shri Khubalkar, the learned advocate appearing on behalf of the applicant, to reinforce his argument which he based on the abovesaid decision, also invited attention of this Court to two more decisions reported in AIR 1982 Jammu and Kashmir 6 in the matter of Union of India vs. Manzoor Ahmad and others as also the judgment from Allahabad High Court reported in Director General, P.A.C.U.P., Lucknow and another Vs. Smt. Surya Kumari and others, . In the abovesaid decisions while dealing with the subject as regards what is to entertain, their Lordships of the respective High Courts relied on the earlier two decisions of the Supreme Court referred to above.

9. In view of the abovesaid observations, the question that needs consideration is what is the nature and the character of the amount deposited. Whether could it be said to have been deposited towards the partial satisfaction of the decretal amount or by way of a security towards that, as a partial satisfaction of the award if any passed ultimately against the appellant.

10. This Court is of the firm view that this amount deposited in view of first proviso to Sub-section (1) of Section 173 of the Act or in accordance with the Rule 12A of the Rules can never be treated as an amount towards the satisfaction or even partial satisfaction of any decretal amount or amount awarded. The intention behind such a deposit appear to be that if the matter i.e. the appeal is entertained by the High Court for consideration on merits, then to safeguard the interest of the opposite party, during that period by way of interim orders, and the Court may direct that amount be utilized by the claimant if the Court feels it appropriate while considering the appeal on merits, or it's adjustment at the time of passing final order.

11. In the instant matter, there was no question of the present appeal being considered on merits as the very registration of the appeal itself was refused. It clearly means that there was no appeal pending in the High Court much less for final decision, and hence the question of keeping that, amount with the High Court for any other purpose could not be there much less for the purpose of allowing it to be withdrawn by the claimant. Provisions of Section 173(1) of the Act or the provisions of Rule 12A of the Rules do not permit such type of method of recovery of the amount by circumventing execution proceedings though of partial amount out of the total amount awarded.

12. In view of this, this Court is of the opinion that this matter can be set at rest by directing the office that the amount of Rs. 9000/- deposited by the appellant be returned to the appellant himself as the remedy of execution is already open for the respondents/claimants to recover the amount awarded in their favour.

13. In the circumstances, the application is allowed. The amount be refunded to the appellant in accordance with the order passed. Application stands disposed of in the abovesaid terms. No costs.