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**(2010) 09 AHC CK 0029**  
**In the Allahabad High Court**  
**Case No : Misc. Single No. 5556 of 2010**

Pushpa Verma and Others

APPELLANT

Vs

Motor Accident Claim Tribunal/Addl. District Judge

RESPONDENT

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**Date of Decision :** 15-09-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 162, 165, 165(1), 166, 168

**Citation :** (2011) 3 TAC 186

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Anil Kumar, J.—Heard Sri Rajesh Pandey, learned Counsel for the petitioner and Km. Deep Shikha, learned Standing Counsel on behalf of the opposite parties.

2. Facts of the present case are that on 17.04.2008 one Sri Ashok Kumar Verma was coming back to his home at about 5 p.m., when he reached near Kamakhya Petrol Pump, , P.S. Taru, District Faizabad a Bolero DI jeep No. U.P. 58-B/6070 driven rashly and negligently rammed into the bicycle of Sri Ashok Kumar Verma causing severe injuries to him and he was admitted into the hospital where he succumbed to the injuries caused in the accident.

3. In view of the abovesaid facts, a claim petition has been filed by the claimants (namely Smt. Pushpa Verma wife of the deceased, Alok Verma and Atul Verma, minor sons of the deceased and Sadhu Verma father of the deceased) u/s 166 of the Motor Vehicles Act registered as Claim Petition No. 205 of 2008 Pushpa Verma and Ors. v. National Insurance Co. Ltd. and Anr. before the Tribunal.

4. In the said claim petition, the insurer of the Bolero Jeep and its owner were impleaded as respondents. After exchange of the pleadings between the parties and perusal of material on record, the Tribunal framed four issues for adjudication of the dispute involved in the case. The issue No. 4 framed by the

Tribunal is to the effect that:

Whether the claimants are entitled to get compensation. If yes, how much and from which of the opposite party?

5. By means of the judgment and award dated 13th of April, 2010, the Tribunal has decided the issue No. 4, awarded a compensation for a sum of Rs. 7,13,264/- in favour of the claimants. The tribunal further held that the amount of compensation so awarded out of which 50,000/- shall be given to the father of the deceased, Rs. 2,50,000/- shall be given to both the minor children but to be deposited in Fixed Deposit scheme in any of the nationalized bank till they attain majority and remaining amount will be given to Smt. Pushpa Verma/Petitioner No. 1.

6. Aggrieved by the abovesaid action of the Tribunal, the present writ petition has been filed by the claimants/petitioners under Article 227 of the Constitution of India praying for modification of the award dated 13.04.2010 passed by the Tribunal to the extent that petitioner No. 1 (Smt. Pushpa Verma) be distributed at least 3,00,000/- (Rs. 3 lacs) and rest of the amount be distributed equally to the claimants/petitioners and the award be modified accordingly.

7. Km. Deep Shikha, learned Standing Counsel raised a preliminary objection that the present writ petition filed by the petitioner under Article 227 of the Constitution of India is not maintainable as the petitioner has got a statutory remedy of appeal u/s 173 of Motor Vehicle Act.

8. Sri Rajesh Pandey, learned Counsel for the petitioner in rebuttal submits that there is no justification or reason on the part of the Tribunal in disbursing of the amount of compensation of Rs. 7,13,264/- which is awarded in favour of the claimants/petitioners by means of the award dated 13.04.2010 and the petitioner is entitled for the amount of Rs. 3 lacs. So, for the said purpose, the present writ petition has been filed under Article 227 of the Constitution of India and the same is maintainable and there is no bar or legal impediment in the way of the petitioners to file an appeal u/s 173 of the Act in view of the following judgments namely Smt. Runna v. 5th Additional District Judge/Motor Accident Claims Tribunal, Gorakhpur 1998 (16) LCD-999, Tauseem Ahmad v. New India Insurance Co. Limited, Faizabad and Anr. 2005 (23) LCD 835 and Smt. Gayatri Devi and Ors. v. Motro Accident Claims Tribunals/5th Addl. District Judge, Faizabad 2003 (21)

9. I have heard the counsel for the parties and gone through the record.

10. Undisputed facts of the present case are that due to the accident which took place on 17.04.2008 one Sri Ashok Kumar Verma had died as a result of which a Claim Petition No. 205 of 2008 was filed by the claimants allowed by judgment and award dated 13.04.2010 thereby awarding the compensation to the tune of Rs. 7,13,264/- with 6% annual simple interest distributed in favour of the claimants in the manner provided in the award.

11. Now in order to adjudicate and decide the preliminary objection raised by the learned Standing Counsel that the present writ petition filed by the petitioner under Article 227 of the Constitution of India is not maintainable as the petitioner has got statutory remedy of appeal u/s 173 of the Motor Vehicles Act. It is necessary to have a glance to the relevant provisions of the Motor Vehicles Act which governs the field in respect to which controversy involved in the present case.

12. Chapter XII of Motor Vehicles Act deals with the matter in question and Section 165 of the Act provides in respect to the formation of Tribunal, Section 166 provides the procedure for making an application for compensation. The relevant portion of the same is quoted hereinbelow:

166. Application for compensation. - (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

13. Section 168 of the Act empowers Tribunal to give the award and the manner in which the compensation shall be made to the claimants and from whom relevant portion of the same is reproduced here in below:

168. Award of the Claims Tribunal. - (1) On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

14. Further Section 173 of the Act provides as under:

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.

(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.

15. In view of the above said mandatory provisions it is clear that if a person aggrieved by an award given by the Motor Accident Claims Tribunal on a claim petition before it u/s 168 of the Act and an application for compensation filed before it u/s 166 of the Act he has got a statutory right of appeal u/s 173 of the Act subject to conditions mentioned therein.

16. Needles to mention herein that if a statutory remedy of appeal is available under a particular statute then the same must be availed and cannot be by passed.

17. In the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, Hon''ble Supreme Court has held that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of.

18. In the case of Karnataka Chemical Industries and Others Vs. Union of India and Others, Hon''ble Supreme Court has held that when there is no challenge to the validity of any statutory provision, we see no reason as to why a writ petition should have been filed bypassing the alternative remedy which is provided under the statute. On the short ground we dismiss this appeal, vacate the interim orders, direct the payment of the balance amount of duty along with interest @ 15% per annum with yearly rests. It will be open to the appellant to avail of such statutory remedy as may be available to it. If an appeal is filed within four weeks from today, the Department will take a lenient view in condoning the delay.

19. In the case of Central Coalfields Ltd. Vs. State of Jharkhand and Others, Hon''ble Supreme Court held that if there is statutory alternative remedy available to a person under an statute itself, in that case the writ petition should not be entertained under Article 226 of the Constitution of India and the petitioner should be directed to avail the alternative statutory remedy.

20. In view of the abovesaid facts, if the petitioners are aggrieved by the award in any manner whatsoever then they have right to challenge the same u/s 173 of

the Motor Vehicles Act.

21. In the case of Tauseem Ahmad v. New India Insurance Company Limited, Faizabad and Anr. 2005 (23) LCD 835, this Court has held as under:

Now, coming to the question of maintainability of the writ petition, Section 173 should be read in its letter and spirit. Section 173 provides that any person aggrieved with the award of the claims tribunal may within 90 days from the date of the award, prefer an appeal to the High Court. The Section 173 does not provide that in case, a person is aggrieved with a portion of the finding of the award given by the tribunal will not be empowered to prefer an appeal. A plain reading of Section 173 of the Act shows that in case a person is aggrieved by the entire findings of the award or its fraction, he can file an appeal to ventilate his grievance. Accordingly, the petitioner has got alternative remedy to prefer an appeal u/s 173 of the Act, on the ground he had approached this Court under Article 226/227 of the Constitution of India. The power of appellate Court is wider than the power of this Court while exercising jurisdiction under Article 226/227 of the Constitution of India.

22. From the law as laid down by this Court in the case of Tauseem Ahmad (Supra) it is clear that a person who is aggrieved by an award given by the Motor Accident Claims Tribunal shall file an appeal u/s 173 of the Act and not under Article 226/227 of the Constitution of India.

23. In the case of Smt. Gayatri Devi and Ors. v. Motor Accident Claims Tribunals/5th Addl. District Judge Faizabad 2003 (21) LCD 281 in paragraphs No. 5 the court inter alia stated as under:

Para No. 5 - In the instant case the Claims Tribunal has already awarded the amount to which the petitioner were entitled. The Claims Tribunal has not made any such arrangement restricting the withdrawal of the said amount. The amount was also deposited by the insurance company obviously for the purposes of withdraw by the claimants in terms of the award. Since the said amount could not have been withdrawn by the petitioner without permission of the Court, it appears that the application for withdrawal of the said amount was moved. The Additional District Judge instead of permitting the petitioners to withdrawal the said amount passed the order for deposit of the same in long term fixed deposit. He even did not specify as to what should be the period of the deposit and the payment of timely interest. The Additional District Judge fell into grave error in passing orders restraining the petitioners/claimants for withdrawing the amount and directing them to get interest only on certain intervals. The Additional District Judge was having no jurisdiction to pass any such order on the application for withdrawal of the amount awarded by the Claims Tribunal. There was no reason for the Additional District Judge to make any order, which has the effect of modifying the award passed by the Tribunal. The interference of the Additional District Judge was wholly uncalled for. The application for withdrawal of the amount awarded by the Tribunal ought to have been allowed as no order

staying the implementation of the execution of the award was produced before the Additional District Judge.

24. From the perusal of the abovesaid judgment, it is clear that Additional District Judge/Motor Accident Claims Tribunal has modified the award, earlier given, and as the said action was uncalled for and without jurisdiction, so this Court exercised the power under Article 226/227. So the law as laid down by this Court in the aforesaid judgment is not applicable in the present case, and the petitioner cannot derive any benefit in his favour.

25. So far as the reliance placed by the learned Counsel for the petitioner in the case of Smt. Runna v. 5th Additional District Judge/Motor Accident Claims Tribunal Gorakhpur 1998 (16) LCD-999 this Court has held as under:

The petitioner's husband died in a motor accident and she was awarded a sum of Rs. 75,000/- by the Lok Adalat and the amount has been deposited by the insurance Company in Court. By the impugned order dated 16.5.96 it has been directed that only Rs. 10,000/- be paid to the petitioner out of the aforesaid amount amount of Rs. 75,000/- and the balance be deposited in some nationalized bank for a long term. I cannot understand how such order be passed by the trial court. There is no dispute that the petitioner is major and hence it is for her to decide what to do with the money which has been awarded. Hence I set aside the order dated 16.5.96 and direct that the sum of Rs. 75,000/- and any interest which may have accrued therein be paid to the petitioner forthwith.

26. Accordingly, this Court in the case of Smt. Runna (Supra) has entertained the petition under Article 226/227 of the Constitution of India on the ground that once the petitioner is a major then there is no justification or reason on the part of the court below in not awarding the entire amount which is awarded in his favour as settled in the Lok Adalat and payable by the insurance company as such the ratio as laid down by this Court in the said judgment is not applicable in the facts and circumstances of the present case where is entirely different and in the instant case Tribunal had directed to deposit Rs. 2,50,000/- each, the compensation awarded in favour of the children of the deceased Ashok Kumar Verma in fixed deposit in a nationalized bank. Further in the said case, the Court had not considered the matter in regard to the availability of statutory alternate remedy available u/s 173 of the Act to a person who is aggrieved by an award. Hence the petitioner cannot derive any benefit from the said judgment and the reliance placed by the learned Counsel for the petitioner on the said judgment is misconceived and rejected.

27. For the foregoing reasons, present writ petition filed by the petitioner lacks merit and is dismissed. However if the petitioners so advised they may approach appropriate forum for redressal of their grievances by filing an appeal u/s 173 of the Motor Vehicles Act, 1988.