
(1994) 05 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 86 of 1994

Rajasthan State Road Trans. Corporation

APPELLANT

Vs

Hakam Ali Khan and Others

RESPONDENT

Date of Decision : 11-05-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Provincial Small Cause Courts Act, 1887 — Section 17

Citation : (1996) ACJ 1018 : (1994) 1 RLW 648 : (1994) 2 WLC 749

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : R.N. Munshi, for the Appellant;

Judgement

R.R. Yadav, J.—The instant miscellaneous appeal u/s 173 of the Motor Vehicles Act, 1988, has been filed against the award dated 30.9.1993 passed by the learned Judge, Motor Accidents Claims Tribunal, Churu, in M.A.C.T. Case No. 52 of 1993, whereby the learned Tribunal has awarded compensation to the respondents-claimants of Rs. 1,75,000/-.

2. The aforesaid appeal was presented on 27.1.1994 within limitation and now after presentation, the office of the Registry vide its order dated 10.2.1994 posted the aforementioned appeal for admission and for disposal of the stay application in utter ignorance of the provisions of Section 173 of the Motor Vehicles Act, 1988. The aforesaid Section 173 of the Motor Vehicles Act, 1988, is reproduced below in extenso:

Section 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 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.

3. It is true that the appeal lies against an award under the aforesaid section, which, before amendment, used to be filed u/s 110-D of the Motor Vehicles Act, 1939, where there was no provision for making a deposit upon filing of an appeal in the High Court.

4. Now first proviso of Sub-section (1) of Section 173 of the Motor Vehicles Act, 1988, makes a specific provision for such deposits where an appeal is filed by a person aggrieved from an award by the Motor Accidents Claims Tribunal, who is required to pay any amount under the award, the appeal will not be entertained by the High Court unless the appellant has deposited:

(a) a sum of Rs. 25,000/- or

(b) 50 per cent of the amount awarded against the appellant, whichever is less.

5. The dictionary meaning of word "entertain" is either "to deal with or admit to consideration". The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of admission and disposal of the stay application within the meaning of proviso of the aforesaid section, which clearly provides that appeal will not be entertained by the High Court unless the appellant has deposited the requisite amount mentioned in the said section.

6. Numerous cases exist in law reports where the word "entertained" or similar cognate expressions have been interpreted by the courts. If the legislature intended that the word "file" or "receive" was to be used, there was no difficulty of using those words. In some of the statutes, such expressions have in fact been used, e.g., under Order 41, Rule 1, Civil Procedure Code, it is stated that a memorandum shall not be filed or presented unless it is accompanied, etc. Similarly in Section 17 of the Small Causes Courts Act, 1870 (Act No. VII of 1870), the expression is "at the time of presenting the application". Thus, it would appear from this that the legislature was not at a loss for words if it had wanted to express itself by using any phraseology. The legislature has used the word "entertain" and it must be accepted that it has been used advisedly.

7. The expression "entertain" is explained by a Division Bench of the Allahabad High Court as denoting the point of time at which an application to set aside the same is heard by the court. The expression "entertain" does not mean same thing as filing of the application. The aforesaid view was expressed by the Allahabad High Court in Kundan Lal Vs. Jagan Nath Sharma, A similar view was again taken in Dhoom Chand Jain Vs. Chaman Lal Gupta and Another, in which

the learned Chief Justice Mr. Desai and Mr. Justice Dwivedi gave the same meaning to the expression "entertain".

8. In my humble opinion, the High Court u/s 173 of the Motor Vehicles Act, 1988, cannot refuse to take an appeal, which is not backed by deposit of Rs. 25,000/- or 50 per cent of the amount awarded against the appellant, whichever is less, but it cannot judicially consider such appeal either for admission or for disposal of the stay application, therefore, I hold that the mere filing of an appeal and stay application by the appellant u/s 173 of the Motor Vehicles Act, 1988, will not be entertained by the court unless the mandatory provision contemplated in the aforesaid section is complied with by the appellant by depositing Rs. 25,000/- or 50 per cent of the amount awarded against the appellant, whichever is less, in pursuance of the direction of this court prescribing manner of deposit.

9. From the perusal of the aforesaid mandatory provision of Section 173 of the Motor Vehicles Act, 1988, now, the High Court has not been given any discretion to reduce or enhance this amount, which is to be deposited by the appellant in court before filing the appeal could be judicially considered by the High Court.

10. Keeping in view the aforesaid mandatory provision as contemplated u/s 173 of the Motor Vehicles Act, 1988, it is hereby directed that the appellant should deposit in the Tribunal an Account Payee Demand Draft of Rs. 25,000/- in the name of respondent-claimant No. 1, Hakam Ali Khan s/o Fateh Khan, by caste Musalman (Kayamkhani), r/o Ratan Nagar, Tehsil & Distt. Churu (Rajasthan) in compliance of Section 173 of the aforesaid Act and after deposit of the said amount, it should be handed over by the Tribunal to respondent-claimant No. 1, Hakam Ali Khan, on his behalf and on behalf of respondent-claimant Nos. 5 to 7. Out of the aforesaid amount, Rs. 16,000 will be equally distributed among the respondent-claimant Nos. 1 to 4, who are major and rest of Rs. 3,000/- each will be deposited in the name of respondent No. 5, Najma, respondent No. 6, Nisar Ahmed and respondent No. 7, Sattar Khan in long term fixed deposit in a scheduled bank till they attain majority. The bank account of such fixed deposit will be operated by respondent-claimant No. 1, Hakam Ali Khan, on behalf of minors Najma, Nisar Ahmed and Sattar Khan, who is their natural guardian. The amount so deposited in the names of Najma, Nisar Ahmed and Sattar Khan (respondent Nos. 5 to 7), the natural guardian Hakam Ali Khan (respondent-claimant No. 1) will be at liberty to apply for withdrawal in ease of emergency for the benefit of the minors above-named, with prior permission of the Motor Accidents Claims Tribunal, Churu.

11. It is well to remember that after deposit of Rs. 25,000/- in the present case in the manner prescribed by the court under the preceding para, the office will register the present appeal as a regular appeal. It is made clear that when the present appeal is listed for admission and disposal of the stay application before an appropriate Bench having the jurisdiction under the Motor Vehicles Act, 1988, the said appropriate Bench may pass a fresh order enhancing further deposit of the amount so awarded to the respondents-claimants by the Tribunal according

to its own discretion.

12. In view of the aforementioned discussion in order to implement Section 173 of the Motor Vehicles Act, 1988, in letter and spirit the following consequential orders are passed and office of this court is directed henceforth to follow the same:

(a) Whenever an appeal is presented before the office of this court u/s 173 of the Motor Vehicles Act, 1988, then instead of registering of such appeal as regular appeal, such appeal be registered as defective appeal and defective number be given by adopting the same procedure, which is being adopted in those appeals which are filed in deficiency of court-fees.

(b) Henceforth whenever appeal u/s 173 of the Motor Vehicles Act, 1988, is presented before the office of this court under the aforesaid section, then instead of listing such appeal for admission and disposal of the stay application, such appeal be posted for orders before the appropriate Bench having jurisdiction to entertain such appeal for direction about the manner of deposit of Rs. 25,000/- or 50 per cent of the amount so awarded against the appellant, whichever is less.

(c) After compliance of the directions regarding manner of deposit indicated by this court, the office will register such appeal u/s 173 of the said Act as regular appeal by adopting the same procedure which is being adopted in those appeals which are filed in deficiency of the court-fees and such appeals are registered as regular appeals when deficiency of court-fee is" made good by the appellant.

(d) When the direction given by this court about the manner of deposit is complied with and regular number is given to such appeals then such appeals be posted for admission and disposal of the stay application.

(e) The procedure indicated above, i.e., (a), (b), (c) and (d) will not be attracted in those appeals which are filed u/s 173 of the Motor Vehicles Act, 1988, by the respondents-claimants, who are aggrieved either by dismissal of their claim petition or the amount awarded by Motor Accidents Claims Tribunal. Such appeals can be listed for admission straightaway as regular appeals.

(f) A copy of this order may be supplied to the O.S.D. (Rules) at Jodhpur for information.