

(2005) 05 AHC CK 0207

In the Allahabad High Court

Case No : First Appeal From Order (D) No. 399, 400 and 401 of 2005

Ram Kishan

APPELLANT

Vs

Shiv Ram and The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 3 AWC 2187 : (2006) 2 CivCC 510

Hon'ble Judges : K.N. Ojha, J

Bench : Single Bench

Advocate : R.K. Porwal, for the Appellant;

Final Decision : Disposed Of

Judgement

K.N. Ojha, J.—Heard Sri R.K. Porwal learned counsel for the appellant and have gone through the record.

2. All the above three appeals have been filed against common judgment and award dated 3.2.05 passed by the Motor Accident Claims Tribunal Etawah (Spl. Judge D.A.A.) in Motor Accident Claim Case No. 342 of 1993 Sheo Ram v. Ram Kishan whereby an award of Rs. 27000/- alongwith interest @ 6% per annum has been made in favour of Sheo Ram, Motor Claim Case No. 311 of 1993 Santosh Kumar v. Ram Kishan wherein an award of Rs. 13,000/- alongwith 6 % interest has been made in favour of Santosh Kumar, in Motor Claim Case No. 343 of 1993 Kishan Singh v. Ram Kishan wherein an award of Rs. 15000/- alongwith 6% interest has been made in favour of Shri Krishan. In all these Claim Petitions award has been made against the owner of the vehicle Ram. Kishan who is appellant in this case but a direction has been made that Opposite party No. 2 the New India Assurance Company, Etawah will make payment of the amount of award to the award holders respondents-claimants and the Insurance Company may recover it from owner of the vehicle who is appellant in this case. Objection of Stamp reporter in all the three above appeals is being decided by a common order.

3. These appeals have been preferred u/s 173 of the Motor Vehicles Act 1988 which contemplates that any person aggrieved by an award of Claims Tribunal may, within 90 days from the date of award, prefer an appeal to the High Court. Proviso 1 of Section 173 of the Act contemplates that, "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 Rs. 25,000/- or 50% of the amount so awarded, whichever ever is less, in the manner directed by the High Court."

4. The Stamp Reporter Section of this Court has raised objection that the provision of the proviso clause of Section 173 of the Motor Vehicles Act has not been complied with by the appellants in these appeals. Amount awarded is less than Rs. 50,000/= therefore half of the amount of the award including interest is to be deposited before the Appeal is entertained.

5. Sri Porwal learned counsel for the appellant submits that the award has been made against the Insurance Company and not against the appellant who is the owner of the vehicle and therefore proviso clause of Section 173 of the Act is not applicable in these appeals and therefore the appellant is not liable to deposit these amount and the appeals may be entertained. It may be significant to mention that all these Claim Petitions were decided by a common judgment dated 3.2.05 because these Claim petitions from which these appeals have arisen related to one and the same accident which is said to have taken place on 24.5.93 at 8 a.m. by Truck No. UAN 8527 and the truck was owned by the appellant which was carrying goats. After appreciating the evidence the Motor Accident Claims Tribunal held that the fact of accident was proved that due to rash and negligent driving of the truck the injuries were caused to the respondent No. 1 of these Appeals in respect of which compensation has been awarded but it was held that the persons who was driving the truck was not having driving license and therefore the owner of the vehicle i.e. truck was liable to make payment of the amount of compensation but relying on 2004 ACJ 1 National Insurance Company v. Swaran Singh, it was held by the Tribunal that Hon. the Apex Court has laid down that if there is breach of the terms of Insurance Company the owner of the vehicle is liable to make payment of compensation but first payment will be made to the victims by the Insurance Company which will be entitled to recover it from owner of the vehicle. In this case award has been made against the appellant owner of the vehicle but a direction has been made that first payment will be made by Insurance Company to award holders and Insurance Company would be entitled to recover it from the appellant.

6. Now question arises as to whether the liability of the appellant is covered by Section 173 of Motor Vehicles Act or not. A perusal of the memo of appeals itself shows that these appeals have been preferred by the owner of the vehicle u/s 173 of the Motor Vehicles Act.

7. Section 173 of the Act contemplates a mandatory provision that no appeal

shall be entertained by the High Court if a person who is required to pay any amount in term of such award files it but does not deposit the amount in terms of proviso. A perusal of the award dated 3.2.05 shows that the liability of making payment has been fixed on the appellant. It is the pocket of the appellant wherefrom the recovery is to be made. In order to facilitate the recovery and in order to make the recovery sure and safe the Insurance Company has been directed to make payment to injured persons and get it recovered from the owner of the vehicle. If Insurance Company has been involved in making payment and getting it recovered from the owner of the vehicle it does not mean Tat award has not been made against the owner of the vehicle who is appellant in this case. Section 173 of the Act is manifestly clear that if any person is required to make payment of the amount of award and if he files an appeal his appeal will not be entertained unless amount required by the proviso clause is deposited. The proviso clause of Section 173 of the Act is so clear that it admits no argument that award has not been made against the appellant. It has been held by Hon. the Apex Court in Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another, "It is well settled principle in law that the Court cannot read anything into statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "

8. The principle laid down by Hon. the Apex Court in the above mentioned case has been followed by Full bench of this Court in Civil Misc. Writ Petition No. 16755 of 2001 Dr. Chandra Bhushan Dwivedi v. The Rajya Pal and Ors. decided on 14.10.2004.

9. Thus when the language of the proviso clause of Section 173 of the Act is clear that the person who has been liable to make payment of amount of award is required to make deposit of the amount as contemplated by proviso clause of Section 173 of the Act, now it is not open for the owner of the vehicle, appellant to say that he is not liable to make deposit of the amount. If Insurance Company prefers appeal it is liable to deposit the amount as provided by proviso clause of Section 173 of the Act while it is not the real liable person who makes payment. When Insurance Company is liable the liability of the principal person who is required to pay cannot be less than that of Insurance Company. Merely because Insurance Company is involved in getting the payment made to the injured persons it does not mean that the appellant is absolved from the liability to make deposit of the amount.

10. In these appeals petitioners award holders and Insurance Company have been arrayed as respondents. Due to filing of these appeals notice is to be issued to the respondents who may contest the appeal. The petitioner award holders also have to contest the appeal because there interest is more safe if recovery is

made through Insurance Company and direct liability is not fixed on the owner of the vehicle when recovery becomes more difficult task. Besides it if the Insurance Company makes the whole payment and only Rs. 25,000/- is deposited at the time the appeal is instituted by owner of the vehicle. There appears to be no illegality or injustice if the proviso clause is applicable to the appellants. The learned counsel for the appellants has not cited any law wherein it has been laid down that if Insurance Company has to make payment to the award holder and has to recover the amount from the owner of the vehicle proviso clause of pre-deposit of the amount upto the extent of Rs. 25,000/= is not to be complied with. The cases which have been cited contained mere order in the particular case and do not lay down law as how the owner of the vehicle is exempted from the proviso clause.

11. In view of the above discussions in the opinion of this Court the objection raised by the Stamp Reporter of this Court is maintainable. The First Appeals From Order are not maintainable without deposit. The appellants are required to deposit the amount as required by proviso clause of Section 173 of the Motor Vehicles Act by 26.5.05. In case the appellant deposits the amount, earlier, the cases may be taken up on a date earlier to 26.5.05 as fresh case for admission.