
(2001) 04 AP CK 0031
In the Andhra Pradesh High Court
Case No : C.M.A. No. 2262 of 1998

S. Venkata Subbaiah

APPELLANT

Vs

Kodavali Chinnappa and Others

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 18(1)
Motor Vehicles Act, 1939 — Section 110
Motor Vehicles Act, 1988 — Section 173, 173(1), 173(2)

Citation : (2003) ACJ 308 : (2001) 2 APLJ 9

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : S.V. Bhatt and T.V. Kumar, for the Appellant; T. Niranjan Reddy, T. Nagarjuna Reddy and K.L.N. Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal arises out of the order and decree in O.P.No. 105 of 1994 on file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Madanapalle.

2. On 17.12.1993 at about 8 A.M. Kodavali Sekhar Babu, a boy aged 8 years, boarded a tractor bearing registration No. AP 03 8015 (to which a trailer bearing registration No. APK 2695 was attached), at Kondreddigaripalle to go to Vijaya Bharathi School at Madanapalle, with the permission of the driver of the tractor. He sat behind the driver of the tractor. When the tractor and trailer reached near the field of Bheemireddi, the driver of the tractor while driving the same in a rash and negligent manner, applied sudden brakes. Then Sekhar babu fell down from the tractor, he was ran over by the same and died on the spot. The claimants/respondents 1 and 2 herein, who are the parents of the deceased boy, filed the O.P. claiming a total compensation of Rs.1,00,000/- under all the heads put together.

3. The owner of the tractor (first respondent in the O.P. and the appellant herein) filed written statement contending that there was no rashness or negligence on

the part of the driver of the tractor in driving the same; that the driver of the tractor did not allow the deceased to board the tractor; and the deceased while running behind the tractor to catch the tractor came under the wheel of the tractor; that the trailer was having a load of manure; and that therefore the first respondent is not at all liable to pay any compensation to the claimants.

4. The United India Insurance Company (2nd respondent in the O.P and the 3rd respondent herein) filed its counter contending, inter alia, that the deceased was six years old by the date of the accident; that he tried to get into the tractor without the knowledge or permission of its driver, and he himself was responsible for the accident. It is further contended that even if it is presumed that the deceased was sitting on the tractor, the 2nd respondent/Insurance Company is not liable to pay any compensation as the vehicle is a goods vehicle and there was no permit to carry any passenger either for fare or free of charges. It is also contended that even if the deceased is considered to be a passenger, the vehicle in which he was travelling is not expected to take the passengers either for hire or for reward and, therefore, the second respondent/ insurance company is not liable to pay any compensation to the claimants.

5. On the above pleadings, the tribunal framed the following issues for trial:

1. Whether the petitioners are the legal representatives of the deceased?
2. Whether the deceased died due to the fault of the driver?
3. What is the compensation the petitioners are entitled (to)?
4. Which of the respondents are liable to pay the compensation?
5. For what share the petitioners are entitled for compensation inter se ?
6. To what result?

6. On behalf of the claimants, PWs. 1 and 2 are examined and Exs.A.1 to A.4 are marked. On behalf of the respondents R.Ws.1 to 3 are examined and Exs.B.1 and B.2 are marked.

7. The Tribunal after considering the entire material available on record held that the claimants are the legal representatives of the deceased; that the accident occurred due to rash and negligent driving of the driver of the tractor; that the claimants are entitled to a total compensation of Rs.38,000/-i.e., Rs.25,000/- under "no fault liability", Rs.8,000/- towards "fault liability", and Rs.5,000/- towards funeral expenses; that the owner of the vehicle alone is liable to pay the compensation to the claimants and that the claimants are entitled to equal shares in the compensation.

8. Aggrieved by the same the present appeal has been preferred by the owner of the vehicle/1st respondent in the O.P.

9. When the matter came up for hearing today the learned Standing Counsel for the Insurance Company took an objection that the appeal is not maintainable on

the ground that the owner of the vehicle had not complied with the provisions of Section 173(1) of the Motor Vehicles Act 1988 by depositing the requisite amount before filing the appeal, and hence the same is liable to be dismissed.

10. The contention of the learned Standing Counsel for the Insurance Company is that as per Section 173 of the Motor Vehicles Act the owner of the vehicle/appellant herein, before filing appeal shall deposit Rs.25,000/- or fifty per cent of the amount awarded whichever is less. But, unfortunately, in this appeal the owner of the vehicle/appellant herein, has not deposited any amount before filing the appeal and had deposited half of the amount only after filing the appeal. Therefore, it is contended that the owner of the vehicle/appellant herein, failed to comply with the provisions of Section 173 of the Motor Vehicles Act and hence the appeal is not maintainable and liable to be dismissed.

11. Further the learned Standing Counsel for the Insurance Company relied upon the decision of the Madhya Pradesh High Court in Ashok Kohli Vs. Prakash Chand and Others, , wherein it was held that where the appellant did not comply with the statutory requirement of deposit of half of the awarded amount or Rs.25,000/- the appeal is not maintainable.

12. The point for determination in this case is:

Whether the owner/driver or the insurer of a motor vehicle, against whom a decree is passed by the Motor Accidents Claims Tribunal to pay compensation to the claimants, can maintain an appeal in the High Court without complying with the requirements of the provisions of Section 173 of the M. V. Act, 1988, i.e., without depositing the requisite amount ?

13. One of the contentions advanced in this appeal is that as per the language incorporated in the first proviso to Section 173(1) of the M.V. Act 1988, deposit of Rs.25,000/- or 50% of the awarded amount, whichever is less, is a mandatory precondition for entertaining the appeal. On the other hand, the learned Counsel for the appellant contended that the appeal is maintainable even though the requisite amount is not deposited as contemplated under the proviso to Section 173(1) of the M.V. Act 1988, and such requirement of deposit is only directory and not mandatory.

13-A. Before considering the rival contentions raised by both the counsel, it is just and necessary to notice the subtle distinction between the appeal provision (Section 110-D) in the Old Act (Motor Vehicles Act 1939) and the corresponding provision Section 173 in the New Act (Motor Vehicles Act 1988), to ascertain the true meaning and intent of Section 173 of the Motor Vehicles Act, 1988.

13-B. Section 110-D of the Motor Vehicles Act 1939 (Old Act) reads thus:

"110-D. 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 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 two thousand rupees".

13-C. In the New Act (Motor Vehicles Act 1988), the corresponding appeal provision is Section 173. It reads thus:

"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 the award shall be entertained by the High Court unless he has deposited with it twenty five thousand 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"

14. If we read the provision of appeal as contained in Section 173 of the New Act (1988 Act) in juxtaposition with the corresponding provision, Section 110-D of the Motor Vehicles Act, 1939 (the Old Act), it is clear that the first proviso to Section 173(1) of the Motor Vehicles Act 1988 was advisedly inserted by the Legislature in the New Act with a specific object and intent.

14-A. The scope and functions of a proviso engrafted to a particular Section in a statute are well settled. The proviso operates the field covered by the main Section to which it is appended. The Legislature may insert a proviso to a particular Section of an enactment either to clarify, explain or to serve as an exception to the main Section to which it is engrafted. Of course, a proviso to a particular Section in an enactment cannot override or nullify the main Section.

14-B. On a plain reading of the first proviso to Section 173(1) of the New Act (1988 Act), the aims, objects and the intention of the Legislature, it is clear that the aggrieved party is required to deposit Rs.25,000/- or 50% of the awarded amount whichever is less as a mandatory precondition for preferring the appeal. A bare reading of the proviso shows that the Legislature, by introducing the first proviso to Section 173(1) of the Act, clearly intended that during the pendency of the appeal filed against the award, the claimant or victim in the motor accident must be able to get some amount of compensation by way of relief, because if such provision is not there, by virtue of filing an appeal by the person who is directed to pay compensation by the tribunal, the claimant/ victim has to

indefinitely wait till the disposal of that appeal, even if the appeal was preferred without any substance. It appears that the intention of the Legislature to include the said first proviso to Section 173(1) of the Motor Vehicles Act 1988 is to ensure payment of reasonable amount to the claimant and also to prevent the possibility of filing appeals on frivolous grounds only to cause delay in payment of compensation.

15. A careful reading of the first proviso appended to Section 173(1) of the New Act (1988 Act), in conjunction with the entire provisions of Section 173, would clearly indicate that the language employed in the first proviso to Section 173(1) of the Act, especially the words, "unless he has deposited with it", is explicit, emphatic and unambiguous. The other expression used in the proviso, particularly the words "in the manner directed by the High court" shall be construed strictly. Moreover, a wholesome reading of the provisions of Section 173 of the Act would clearly demonstrate the manifest intention of the Legislature in introducing the first proviso to Section 173(1) of the Act. That is to say, that the Legislature advisedly contemplated the deposit of certain amount as prescribed in the first proviso to Section 173(1) of the Act and in the manner directed by the High court as an indispensable and mandatory pre-requisite for entertaining an appeal filed by any person in the High Court against the award of a Motor Accidents Claims Tribunal. Coming to the place of deposit, i.e., whether the deposit as contemplated in the first proviso to Section 173(1) should be made either in the Tribunal concerned or in the High Court, it may be noted that the High Court of Andhra Pradesh felt it fit and expedient in the interests of justice to permit deposit of the amount in the Tribunal concerned. Accordingly, the High Court decided the proper forum for making the deposit of amount to be the Motor Accidents Claims Tribunal concerned. Obviously, it appears, that this decision is taken by the High Court keeping in view the distance of the seat of the High Court from the place of various Tribunals which are situate at the headquarters of the Districts, and also the hardship and difficulty that may ensue to both the parties, i.e., for deposit of the amount by the party appealing and the withdrawal of the same by the claimants.

16. The expression "entertained", as it appears in the first proviso to Section 173(1) indicates that the intention of the Legislature is that in the absence of enclosing a certificate, evidencing deposit of requisite amount as contemplated in the first proviso to Section 173(1) of the Act to the memorandum of grounds of appeal filed in the High Court against the order and decree of the Tribunal, the appeal shall not be entertained, i.e., the appeal shall not be entertained or adjudicated or proceed with further. In essence, if the first proviso to Section 173(1) of the Act is not complied with prior to filing of the appeal, the appeal is liable to be rejected at the admission stage itself, as taking up the matter for admission amounts to entertaining the appeal on merits.

17. While considering the first proviso Section 173(1) of the Motor Vehicles Act 1988, the Bombay High Court in *Devidas v. Chandrakala and Ors.* (1996(1) ACJ

566) held that the court can refuse to register the appeal if the deposit is not made within the stipulated period. It was held (at paragraphs 7 and 8) thus:

"In fact the language of Section 173 of the M. V. Act itself has left a complete discretion to the High Court. The language of the proviso suggests that it is imperative that the amount as completed in the proviso should be paid with the appeal. The words "with it" signify the same. However, the manner of this payment has been left to the High Court which is significant from the words of the last part of the proviso, being "in the manner directed by the High Court".

"The contention of Mr. Mohta that the registration of appeals cannot be refused at all and the appeals are to remain pending and it would be left to the sweet discretion of the appellants to decide as to when they would make the payment as contemplated in the proviso is obviously incorrect as the language of the proviso itself read on the rule 120A does not permit the same. In fact the very purpose of proviso in that case would be defeated if the proviso is Interpreted as suggested by Mr. Mohta. The party concerned would be in a position to stall the payment of Rs.25,000/-or half the amount of the award, whichever is less, for a considerable time thereby making it difficult for the respondents even to contest the appeals. After all the optimum limit of this deposit is Rs.25,000/-. The intendment of the proviso is obviously to see that a person filing an appeal does not get an opportunity to deprive the party who has suffered the accident of atleast some amount, so that the party concerned gets the minimum relief and has even able contest the appeal. That very purpose would be defeated, If it is ruled that once the appeal u/s 173(1) of the M. V. Act is filed, its registration cannot be refused on account of nonpayment and non-payment would merely result in the appeal remaining pending for indefinite time in the dockets of the High Court. After all once the appeal is filed it would be perfectly within the powers of the Registrar to deal with it in accordance with the appellate side rules and there is nothing in the language of Section 173 of M. V. Act which brings any clouds on the right of the Registrar to deal with these appeals, particularly on account of non-payment of necessary amounts by the appellants."

18. In *Sohan Singh v. Kushla Devi and Ors.* (1988(1) ACJ 472), an appeal filed by the driver of a motor vehicle came up for consideration before the Division Bench of the Punjab and Haryana High Court. Prior to the filing of the said appeal, against the very same award and decree of the tribunal the owner of the motor vehicle had already filed a separate appeal by making the requisite deposit as contemplated under the Act. The question that arose for consideration before the Panjab and Haryana High Court was, whether the driver of the motor vehicle is also required to make the requisite deposit for preferring the appeal, especially when the owner of the motor vehicle had already deposited the required amount while preferring the other appeal against the very same order and decree of the tribunal. The Punjab and Haryana High Court, while considering the first proviso to Section 173(1) of the Act, held that even though the owner of the motor vehicle had already preferred the appeal after making necessary deposit, the

driver of the motor vehicle is also required to make the requisite deposit of the amount, if he wants to file a separate appeal against the very same order and decree of the tribunal, for entertaining the appeal by the High Court. In that context, it was held (at paragraph-13) thus:

"Applying the above referred rule of interpretation, we are clearly of the opinion that on a plain reading of the proviso to Section 173(1) any person who is required to pay any amount under an award passed by the Claims Tribunal, prefers an appeal, his appeal can be entertained by the High Court only if he makes deposit of a specific amount as required by the said proviso and he cannot claim exemption from making the deposit on the ground that a co-respondent before the Tribunal has filed an appeal and has made the requisite deposit. It is a different thing that the High Court will not order the disbursement of the entire amount deposited by different parties under the proviso to Section 173(1)".

19. In *Anil Saraf v. Namboodas and Ors.* (1997(1) ACJ 1411), the Madhya Pradesh High Court while considering the first proviso to Section 173(1) of the M. V. Act held that for "entertaining" an appeal u/s 173 of the Act, deposit of requisite sum by the appellant concerned is a mandatory pre-requisite and such deposit should be made before the appeal is "entertained". It was held (at paragraphs 11,12,13 and 14) thus:

"It may further be noted that the legislature has used the word "entertain" advisedly in its wisdom.

Provision of Section 18(1), CPC also requires to be taken notice of which has used the words "entertain" and "disposed of. The word "entertain" has been defined in the legal Glossary published by the Government of India, 1992 Edn, as to "admit in order to deal with" and the Hindi translation is "grahan karna". There is a difference between the words "entertain" and "hear". The word "entertain" means "to admit for hearing" and "hear" means "to hear for decision" and Hindi equivalent of these two words are "grahan karna" and "sunana".

In view of the above, the condition precedent for entertainment of the appeal, i.e., for the admission of the appeal for hearing is the deposit of the amount as provided by the first proviso to Section 173(1) of the M.V. Act 1988".

20. In *New India Assurance Co., Ltd., v. Md. Makubur Rahman and Ors.* 1995 ACJ (1) 34, a Division Bench of the Gauhati High Court while considering the first proviso to Section 173(1) defined the word "entertained" and held that entertainment of appeal means admission for consideration. It was held (at para 7) thus:

"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 significant that the 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".

21. In view of the facts and circumstances, I am of the opinion that an appeal is not maintainable without complying with the requirement of the first proviso to Section 173(1) of the Motor Vehicles Act, 1988.

22. In the instant case it is an admitted fact that the owner of the vehicle/ appellant herein, did not comply with the statutory requirement of deposit of half of the awarded amount or Rs.25,000/-before filing the appeal. In view of the said position, the appeal is not maintainable and is liable to be dismissed.

23. Accordingly the Civil Miscellaneous Appeal is dismissed. However, there shall be no order as to costs.