

(2010) 08 MP CK 0047
In the Madhya Pradesh High Court
Case No : M.C.C. No. 133 of 2010

Sagar Singh

APPELLANT

Vs

Gajraj Singh and Others

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 10, Order 16 Rule 11, Order 16 Rule 12, Order 16 Rule 13, Order 16 Rule 14
Madhya Pradesh Motor Vehicles Act, 1988 — Section 165(1), 166, 168, 169, 173(1)
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 240
Payment of Wages Act, 1936 — Section 17(1)
Workmens Compensation Act, 1923 — Section 30

Citation : (2012) ACJ 321 : AIR 2011 MP 59 : (2010) 4 MPJR 110 : (2010) 4 MPLJ 410 : (2011) 1 TAC 1027

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

An application under Order 44 Rule 1 CPC seeking leave to prefer appeal as an indigent person is submitted by the driver against an award dated 26.2.2010 passed by the Motor Accident Claims Tribunal, Shivpuri, in Claim Case No. 113/09, which is accompanied by memo of appeal.

Claims Tribunal has granted an award for compensation to the tune of Rs. 2,13,000/- against the owner as well as driver of the offending motor vehicle. Applicant has submitted memo of appeal without making statutory deposit in compliance of the first proviso to Sub-section (1) of Section 173 of M.P. Motor Vehicles Act, 1988.

Applicant has stated in his application under Order 44 Rule 1 CPC that he is an indigent person and may be exempted from the payment required statutorily under the said proviso. Reliance has been placed for this purpose on National

Insurance Co. Ltd. and etc. Vs. Shrikanl Vinod Tiwari and Others, and R. Govindarajulu Naidu and Another Vs. S. Dharman and Another,

Shri Vivek Jain and Shri O.P. Mathur, learned Counsel appearing for the respondents opposed the prayer under Order 44 Rule 1 CPC on the ground that the same has no application in the matter of payment required to be made under the said proviso.

Considered the submissions in the light of the law governing the situation.

The Motor Vehicles Act 1988 is a beneficial legislation with an object of social security. Section 166 thereof enables a claimant to submit an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165. Section 168 empowers the Claims Tribunal to hold an enquiry into the claim after providing opportunity of hearing to the opposite party to make an award determining the amount of compensation. Sub-section (1) of Section 173 of the said Act provides for an appeal by any person aggrieved by an award. First proviso to Sub-section (1) reads as under:

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.

Thus, the claimants/respondents in an appeal at the instance of owner/driver/Insurance Company under Sub-section (1) of Section 173 is obviously a person whose claim has been adjudicated upon and who is found entitled to compensation by the Claims Tribunal. Appellant in such a case is obviously under the responsibility/liability to pay the amount of compensation to the claimant unless the award is revised or modified by the High Court. Until such revision or modification, the appellant in a claims appeal continues to remain liable and is under an obligation to make the payment of amount of compensation in the absence of an order staying the execution. Legislature has deliberately imposed a condition on the appellant to make deposit of rupees twenty five thousand or fifty percent of the amount so awarded, whichever is less before getting his appeal entertained and adjudicated. Division Bench of this Court in the case of Oriental Insurance Co. Ltd. Vs. Gopal Singh and Others, has observed that a dual purpose of requiring payment of some minimum amount of compensation a pre condition of appeal is not to keep the claimants waiting indefinitely for relief and to insist on the appellants to file appeals on substantial and genuine grounds after showing their bonafides by depositing a certain percentage of amount awarded.

Division Bench of Punjab and Haryana High Court in the case of Sohan Singh Vs. Kushla Devi and others, has observed:

5. The object behind incorporating the proviso to Section 173(1) of the Act is remedial and beneficial. The requirement of the deposit of the amount as a

condition precedent to the entertainability of the appeal protects the interest of the claimant in whose favour an award has been made. By making it obligatory to deposit the amount specified in the proviso to Section 173(1), it has been made clear by the Legislature that one who wants to challenge the award of compensation must part with a specific amount which can in appropriate cases may be made available to the claimants even before final adjudication of the appeal.

Order 44 Rule 1 of CPC has not been included in specific in Rule 240 of the Madhya Pradesh Motor Vehicles Rules, 1994, which make certain provisions of CPC applicable to the proceedings before a Claims Tribunal. Rule 240 (supra) reads as under:

240. Procedure to be followed by Claims Tribunal in holding enquiries.- Application of certain provisions of CPC 1908; Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rules 9 to 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.

Provisions of CPC not made applicable in specific by virtue of Rule 240 (supra), may be invoked in suitable cases, if the claims Tribunal thinks fit by virtue of Section 169 of the Motor Vehicles Act.

The provisions of CPC which are excluded expressly or by necessary implication, may not be invoked even under the shelter of Section 169 (supra). However, the claims Tribunal, if thinks fit, may apply certain provisions of Code of Civil Procedure, which in its opinion are liable to be invoked provided there is no exclusion in express manner or by necessary implication. This being so, provisions contained in Rule 1 of Order 44 of CPC may be applied in the proceedings or appeals under Motor Vehicles Act to the extent indicated therein. I am fortified in my this view by the decision of Division Bench of Madras High Court in the case of R. Govindarajulu Naidu and Another Vs. S. Dharman and Another, , wherein it is observed:

18. Thus, we find that uniformly it has been countenanced that the High Court, while hearing an appeal under the Act, exercises its ordinary appellate powers and should follow its practice and procedure as are normally attributable to it as an ordinary appellate Court; and in the absence of any circumspection or regulation of the said powers, the rules of practice and procedure, and power as per the provisions of the Code can be legitimately invoked for the purposes set out therein in the matter of dealing with such an appeal. Order 33 of the Code deals with institution of proceedings by indigent persons. O.44 deals with appeals by indigent persons and it contemplates that appeals by indigent persons shall be dealt with in the same manner as institution of original proceedings by

indigent persons. In this view, we have to hold that it will be competent for the appellants to invoke the aid of Order 44 and thereby O.33 of the Code.

Now the crucial question before this Court is whether the appellant/applicant preferring an appeal u/s 173(1) of Motor Vehicles Act may be exempted from making deposit of rupees twenty five thousand or fifty percent of the amount awarded, whichever is less and whether his appeal u/s 173(1) of the Motor Vehicles Act 1988 may be entertained and adjudicated upon without making statutory deposit.

At this juncture, it would be apposite to consider the language of Rule 1 of Order 44 of CPC which is as under:

1. Who may appeal [as an indigent person].-- (1) Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable.

The word "fee" denotes "amount", which is liable to be deposited in lieu of the service rendered. "Fee" is always imposed in lieu of the service liable to be rendered by the authority, who is in receipt of fee. Amount liable to be deposited on account of proviso to Sub-section (1) of Section 173 of the Motor Vehicles Act is obviously not in the nature of fee, but is a pre condition for the appellant to get his appeal against the award granted by the Claims Tribunal entertained and adjudicated upon. Such pre conditions are prescribed in various other social beneficial legislations like;

(i) The Workmen's Compensation Act, 1923

Section 30. Appeals.---

Provided further that no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(ii) The Payment of Wages Act, 1936

Section 17. Appeal.

(1A) No appeal under Clause (a) of Sub-section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

In none of such cases, the pre condition could be legally successfully disputed and the amount liable to be deposited as a pre condition has not been equated with the term "fee".

Right of appeal is not a vested right, but a right created by the statute. Therefore, the legislature was well competent to prescribe a pre condition of making deposit vide proviso to Sub-section (1) of Section 173 of the Motor Vehicles Act. Hon''ble Supreme Court of India in the case of Smt. Ganga Bai Vs. Vijay Kumar and Others, has observed:

Right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given.

Again in the case of The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc., Hon''ble Supreme Court has observed that right of appeal which is a statutory right, can be conditional or qualified.

By virtue of the said proviso to Section 173(1), the right of appeal by the applicant can be exercised only after fulfillment of the pre condition i.e. by making the statutory deposit under the said proviso. This having not been made, the appeal would be incompetent. On this point, I may successfully refer the following decisions of this Court:

1. M.A. No. 129/2002 - Ramnaresh v. Smt. Maltidevi and Ors. decided on 25th June 2007.

M.A. No. 886/04 - United India Insurance Company v. Ajeet Kumar Jain and Ors. decided on 5.9.2005.

M.A. No. 143/04 - Ramgopal v. Janved and Ors. decided on 13.8.2008.

In the result, it is held that provisions of Order 44 Rule 1 CPC can not be legally invoked to seek exemption from making statutory deposit under the proviso to Section 173(1) of Motor Vehicles Act, 1988. Accordingly, MCC is hereby dismissed, however, with no order as to costs.