

(2008) 11 AHC CK 0050
In the Allahabad High Court

Shanti Shukla

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) ACJ 1052

Hon'ble Judges : V.M. Sahai, J;R.V. Singh, J

Bench : Division Bench

Judgement

V.M. Sahai and R.V. Singh, JJ.—We have heard Mr. P.K. Jain, learned Counsel for the appellant.

2. The appellant has not made statutory deposit of Rs. 25,000 u/s 173 of the Motor Vehicles Act, 1988, for maintaining this appeal. The learned Counsel for the appellant has urged that since the insurance company has deposited the entire amount of compensation before the Tribunal, therefore, the appellant is not required to deposit the statutory deposit of Rs. 25,000 for maintaining this appeal u/s 173 of the Motor Vehicles Act, 1988 and he filed an application for Exempting the appellant from making the statutory deposit of Rs. 25,000.

3. Learned Counsel for the appellant has further submitted that the requirement of Section 173 of the Motor Vehicles Act, 1988 is satisfied as the insurance company has already deposited the entire amount to pay the compensation and no useful purpose will be served directing the appellant to deposit Rs. 25,000 for filing the appeal. The purpose of the section is to ensure deposit of Rs. 25,000 only with a view to pay the same amount to the aggrieved party. Here in the present case since the entire amount has already been deposited, therefore, the object of Section 173 has already been achieved and, therefore, there will be no use to direct the appellant to deposit Rs. 25,000 more for the same award under challenge. In his submissions, if the application is not allowed serious prejudice be caused to the appellant, therefore, his exemption application should be allowed.

4. Before examining the prayer of the appellant with regard to the exemption to deposit Rs. 25,000 for filing the present appeal, the language used in Sub-section (1) of Section 173 of the Motor Vehicles Act, 1988 is required to be looked into which is reproduced below:

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 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.

5. On a plain reading of the proviso to Sub-section (1) of Section 173, it is apparent that any person who is required to pay any amount under an award passed by the Tribunal, 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 amount under award has already been deposited by another co-respondent.

6. The first and the preliminary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. The question of interpretation arises only when the language is ambiguous and is capable of other interpretation also.

7. From the bare perusal of the language of the proviso of Sub-section (1) of Section 173 of the Motor Vehicles Act, 1988, it is apparent that the language is clear and unambiguous and no second meaning as contained in the section itself can be given.

8. The Supreme Court in the case of Nelson Motis Vs. Union of India and another, Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, State of Jharkhand v. Govind Singh has held that if the words of statute are clear plain or unambiguous they are reasonably susceptible to only one meaning are bound to give effect to that meaning irrespective of consequences.

9. The Apex Court in the case of Tamil Nadu State Electricity Board Vs. Central Electricity Regulatory Commission and Others, has held that the results of construction are not matter for the court even though they may be strange or surprising, unreasonable or unjust or oppressive.

10. In view of the decision of the Apex Court we do not find any substance in the

argument of the learned Counsel for the appellant in saying that there will be serious prejudice to the appellant in case he is required to deposit Rs. 25,000 as required u/s 173 of the Motor Vehicles Act for entertaining the appeal.

11. The matter can be examined from another angle also. The proviso to Sub-section (1) of Section 173 of the Motor Vehicles Act contains the word "shall" and where in the statute the word "shall" is used, it is normally read as must and in other words mandatory.

12. The Apex Court in the case of The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, has held that the use of word "shall" raises presumption that particular provision is imperative.

13. The decisions are otherwise also. The Supreme Court in the case of Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, has held that the word "shall" is ordinarily mandatory but it is sometimes not so interpreted if the context or intention otherwise demands.

14. The Supreme Court in the case of Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, has held that when the statute uses word "shall" prima facie, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

15. From the perusal of the above decisions of the Apex Court, it is clear that the word "shall" used in the statute is normally mandatory and sometimes it is directory also if the circumstances so demand but here in the particular case since the Tribunal has found the liability of the appellant to pay the amount of compensation to the claimant and only given a breathing time to the appellant by directing the insurance company to pay the awarded amount to the claimant and then recover from the appellant, therefore, the initial liability is of the appellant and not of the insurance company. In view of this, it cannot be said that any prejudice will be caused to the appellant in case he is required to deposit Rs. 25,000 as required u/s 173 of the Motor Vehicles Act as ultimately the appellant has to return this amount awarded by the Tribunal and paid to the claimant by the insurance company. In case the right of recovery was not given to the insurance company then it was liability of the insurance company to deposit Rs. 25,000 before filing the appeal against the award.

16. Since the insurance company has not come before this Court and the owner of the vehicle has filed the present appeal and in view of the Tribunal's judgment awarded amount paid to the claimant has to be recovered from the appellant, therefore, prerequisite condition of deposit of Rs. 25,000 or 50 per cent whichever is less in view of Section 173 of Motor Vehicles Act for the purposes of filing the appeal is applicable in full force in view of the language used in the section.

17. In view of that we are of the opinion that the proviso of Sub-section (1) of

Section 173 of the Motor Vehicles Act 1988 is mandatory and the appellant is required to deposit Rs. 25,000 as per the scheme of the Act and without statutory deposit by the appellant, the appeal will not be maintainable.

18. Learned Counsel for the appellant prays for and is allowed 10 days" time to make statutory deposit of Rs. 25,000.

19. In case the statutory deposit is made by the appellant, the office shall obtain fresh report from the stamp reporter and thereafter list this appeal for admission on 4.12.2008.