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**(1996) 04 GAU CK 0016**  
**In the Gauhati High Court**  
**Case No : Misc Appeal (First) No. 14 of 1994**

Union of India

APPELLANT

Vs

Gita Banik

RESPONDENT

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**Date of Decision :** 12-04-1996

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173, 173(1), 173(1)

**Citation :** (1996) 1 GLJ 527 : (1996) 2 GLT 246

**Hon'ble Judges :** N.G.Das, J and N.Surjamani Singh, J

**Bench :** Division Bench

**Advocate :** S.Talapatra, K.N.Bhattacharjee, S.B.Dutta, Advocates appearing for Parties

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## Judgement

1. This appeal under section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) has been filed against the judgment and award dated 12.1.94 passed by the Additional District Judge, West Tripura (Motor Accident Claim Tribunal) in TS (MAC) 162 of 1992.

2. Today the case was not listed for hearing but both the lawyers have : approached the Court for disposal of the case after hearing them. We have, therefore, taken up this case for hearing and after the arguments were over we now proceed to dispose of this appeal by the following judgment.

3. The motor accident relating to which this case was filed took place on 7.12.91 at 7 PM on Agartala Airport Road near Natunnagar Cooperative Society. Smti Gita Banik, the respondent who filed the claim petition stated that on that date at the relevant point of time her husband Jiban Banik who was 30 years of age was driving a jeep bearing No.580 towards Agartala. At that time another vehicle bearing No.TRA 2506 which was also coming towards Agartala was behind the jeep of the husband of the respondent. It was alleged that to overtake the jeep driving by the husband of the respondent, the driver of the other vehicle most negligently and rashly drove his vehicle and as a consequence of such rash driving it dashed the jeep No.TRT 580 causing not only damage to it but that

jeep went out of the road and dashed against a tree. As a result of this violent collision, the driver cum owner of the jeep No. TRT 580 died instantaneously. The respondent, therefore, claimed compensation to the tune of Rs. 20 lakhs.

4. The present appellant resisted this claim petition by filing a written objection. Learned Tribunal, however, appreciated the evidence on record and came to a conclusion that the accident occurred on account of negligent and rash driving of the jeep No. TRA 2506 and with this finding he also came to the conclusion that the income of the deceased Jiban Banik was not less than Rs. 1,500/ per month and that he would, at least, contribute a sum of Rs. 1,000/ to his family for maintenance. The claimant was, therefore, awarded compensation for a sum of Rs. 2,40,000/ with interest at the rate of 12% per annum.

5. Now at the very outset, Mr. S. Talapatra, the learned counsel for the respondent has raised a preliminary objection as to the maintainability of this appeal. It is submitted by Mr. Talapatra that in view of the decision rendered by the Division Bench of this Court in the case of New India Assurance Co Ltd vs. Birendra Mohan Dey & others reported in 1995 (3) Civil Law Judgment 536 [1995 (1) GLJ 328} this appeal is not maintainable because the amount of Rs. 25,000/ which is required to be deposited along with the memo appeal has not been deposited within the prescribed period of limitation. It is also submitted by the learned counsel for the respondent that even though the amount of Rs. 25,000/ was deposited after the prescribed period of limitation, the appellant did not take any step for filing necessary application for condonation of delay. But Mr. KN Bhattacharjee, learned Senior Central Government Standing Counsel for the appellant has submitted that the prayer for condonation of delay cannot arise in this case because this Court by its order dated 20.4.94 allowed the oral prayer of the appellant for a month to deposit the amount of Rs. 25,000/. That depositing of an amount of Rs. 25,000/ is a statutory requirement is not disputed.

6. It, therefore, needs examination as to whether the appellants were actually allowed to deposit the amount of Rs. 25,000/ after expiry of the period of limitation. The impugned award was passed on 12.1.94. Such an award in a Motor Accident Claim case can be challenged before the appellate Court within 90 days. So, according to law the appellants are entitled to challenge the award latest by 10th of April, 1994. But the memo of appeal was presented on 7.3.94 without the amount of Rs. 25,000/. The record does not indicate that along with the memo of appeal the appellants filed any application for allowing time to deposit the amount of Rs. 25,000/. The note of the Registrar dated 29.3.94 given on the margin of the first page shows that on that very date it was pointed out by the learned counsel for the respondent that such an appeal cannot be entertained unless the amount of Rs. 25,000/ was deposited. It is admitted that the appellants did not file any written application for condonation of delay. However, Mr. Bhattacharjee submits that the order dated 20.4.94 will indicate that on that date he made an oral prayer to the Court and the Court also allowed on month's time to deposit the amount of Rs. 25,000/. But the question which

remains to be considered is whether by granting this one month's time the appellants can claim that their prayer for condonation of delay for the entire period was granted. Mr. Talapatra has argued that even though the learned counsel for the respondent pointed it out on 29.3.94 that such an appeal cannot be entertained unless the amount of Rs.25,000/ is deposited, the appellants did not file any application whatsoever for condoning the delay.

7. After hearing the learned counsel for the parties and on going through the materials on records, we do not find that the appellants filed any application for condonation of delay in depositing the amount of Rs.25,000/. It is true that by order dated 20.4.94 one month's time was granted for depositing a sum of Rs.25,000/. But the order is in respect of the period of 30 days starting from 20.4.94. We have already pointed out above that the memo of appeal along with a sum of Rs.25,000/ ought to have been submitted latest by 10th of April, 1994. But that having not been done we are unable to entertain the condonation of delay. There is nothing in record to show that the appellants made any sort of a prayer for condonation of the delay for the period preceding 19.4.94.

8. In course of his submission Mr. Bhattacharjee has also argued that after filing of the memo of appeal the Court did not give any direction regarding the manner of deposit. We are unable to appreciate this contention as Chapter XVII of the Gauhati High Court Rules deals with deposit and payment of money. Rule 1 and subsequent rules indicate the exact manner in which the money is to be deposited in the Court. We are of opinion that the manner of deposit prescribed in Chapter XVII of the Gauhati High Court Rules constitutes "manner directed by the High Court" for the purpose of 1st proviso to section 173 (1) of the Act

9. This being the position we find that this case is covered by the decision of 1995 (3) CJL 536 [1995 (1) GLJ 328] (supra). In that case the Division Bench held that such an appeal cannot be entertained until and unless an amount of Rs.25,000/ is deposited within the prescribed period of limitation.

10. For the reasons stated above, we are of the view that this appeal is not entertainable on the ground of objection raised by the learned counsel for the respondent and accordingly the appeal is dismissed. But in the circumstances, there shall be no order as to costs.