
(2004) 08 KL CK 0030

In the High Court Of Kerala

Case No : Unnumbered M.A.C.A. of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Ravi

RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2004) 3 ACC 245 : (2004) 3 KLT 22 : (2004) 4 RCR(Civil) 822

Hon'ble Judges : K. Thankappan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P.A. Raziya, for the Appellant;

Judgement

J.B. Koshy, J.—This is a petition to condone the delay of 130 days in re-presenting the appeal after curing the defects. Appeal was filed on 16.1.2004 without producing evidence for deposit of the amount required under the proviso to Section 173(1) of the Motor Vehicles Act, 1988. Receipt was produced subsequently. That shows that cheque for Rs. 25,000/-dated 18.3.2004 was deposited before the Motor Accidents, Claims Tribunal on 2.4.2004.

2. First proviso to Section 173(1) reads as follows:

"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."

The above provision was incorporated to avoid hardship to the poor motor accident victims. When a competent Motor Accidents Claims Tribunal finds that claimants are entitled to compensation, at least, some amount should be received by them, even if an appeal is filed. It is true that unlike Section 30 of the Workmen's Compensation Act, deposit of the amount is not a condition precedent in filing the appeal memorandum as the word used is no appeal "shall be entertained" by the High Court.

3. In *Baby v. Shyni* (2000 (1) KLT 718), a Division Bench of this Court, after considering various decisions, held that the deposit of Rs. 25,000/- or 50% of the amount awarded whichever is less is a mandatory condition for entertaining the appeal. In *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another*, , the Supreme Court was considering the meaning of the word "entertain" in Section 9 of the U.P. Sales Tax Act and Rule 66(2) of the Rules framed thereunder. The Supreme Court held that when the proviso to the above section speaks of entertainment of the appeal, it means that appeal, even if was filed, will not be admitted for consideration, unless there is satisfactory proof available of the making of the deposit of the admitted tax. After considering various case laws, the Supreme Court held as follows:

"10. In our opinion these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration". It would therefore appear that the direction to the court in the proviso to Section 9 is that the Court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the court for the first time."

But, paragraph 11 of the above judgment would show that in that case, deposit was made within the time. Delay was only in producing the receipt. As far as this case is concerned, eventhough it is stated in the appeal that the required amount as per the proviso to Section 173(1) was remitted, the amount was not remitted within time and cheque was deposited only on 2.4.2004. When appeal was presented, it was returned to cure the defect within 15 days. The defect was not cured even within 15 days. Amount was not paid. Proof of deposit was not produced. Thereafter, the appeal was re-presented with this delay condonation petition to cure the defect after depositing a cheque.

4. In *Anil Saraf Vs. Namboodas and Others*, , the Madhya Pradesh High Court held that the amount is required to be deposited before the appeal is entertained. The word "entertain" was considered in the above decision. Paragraph 13 of the decision is as follows:

"13. 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"."

Rajasthan High Court in *Rajasthan State Road Transport Corporation Vs. Smt. Santosh and Others*, held that appeal can be filed even without depositing the amount. But, it cannot judicially be considered or entertained before deposit is made. From the above decisions, it would show that even though appeal can be filed, it cannot be entertained by the High Court and it cannot be sent up for admission before deposit is made as per the proviso. When this appeal was filed

before the Registry, Registry correctly returned the appeal for curing the defect within 15 days. The amount was not paid even within that time. Cheque for the required amount was deposited in the Tribunal only on 2.4.2004 and it cannot be contended by the insurance company that they were unable to deposit Rs. 25,000/- before filing the appeal. When they have decided to file the appeal, they should make the required deposit. They cannot unnecessarily delay the deposit and desist the execution petition on the ground that an appeal is filed in the High Court. Being a welfare legislation, we cannot ignore the purpose and impose such a condition. If no appeal is filed, the entire amount ought to have been deposited. Therefore, if appeal is to be filed, before filing the appeal, appellant is expected to deposit minimum amount as required under the proviso to Section 173(1).

5. In this appeal, only quantum of compensation is questioned and the injured-claimant is not paid any amount. No satisfactory reasons are stated for the long delay in re-presenting the appeal and payment of the required amount. But, since amount was deposited before entertainment of the appeal, re-presentation delay can be condoned on conditions.

In the above circumstances, delay in re-presenting the appeal after the time fixed by the High Court in curing the defect is condoned on condition that the entire amount as awarded by the Tribunal is deposited before the Tribunal within two months from today.

Appeal be numbered. Send the appeal for admission after producing proof of deposit of the entire amount awarded by the Tribunal.