
(1997) 07 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Appeal No. 32/96

United India Insurance Co.Ltd.	Vs	APPELLANT
Sanjay Manmotra and Others		RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1998) KashLJ 1 : (1998) SriLJ 93

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

Advocate : R.P.Jamwal, D.C.Raina, Advocates appearing for the Parties

Judgement

G.D.Sharma. J.

1. Through the medium of this appeal, the insurer namely, United India Insurance Company Ltd. has challenged the order dated 22.12.95 passed by the learned Presiding Officer, Motor Accidents Claims Tribunal, Rajouri whereby the claim petition of the petitioners therein which was

dismissed in default on 22.4.91 was restored to its original number. The genesis of the claim petition is the accident which took place on 21.7.85.

Pt. Pitamber Dass who was the bread winner of the family of the respondents No.1 to 5 had lost his life in the accident leaving behind a widow

and four minor children. They filed claim petition in the MACT Jammu. During the pendency of the proceedings, separate Tribunals were created

to try the claim petitions. This petition was accordingly transferred for disposal to MACT Rajouri. It is averred that the relatives of respondent No.

1 to 5 raised voluntary contributions to help them and engaged the services of a lawyer at Rajouri to persue the proceedings. The claimant Smt.

Savitri Devi (widow of the deceased and respondent No.5 herein) was only major. She being illiterate and poor could not keep contact with her

lawyer who lost interest and subsequently absented at the dates of the proceedings. The result was that the petition was dismissed in default of

appearance. Petition for the restoration of the proceedings was filed and the learned Presiding Officer MACT Rajouri restored the claim petition

on the principle that refusal of condonation of delay might result in injustice and a good cause would be thrown out without trial.

2. The learned counsel appearing for respondents No.1 to 5 has raised the preliminary objection regarding the maintainability of the appeal. He has

pleaded that u/s 173 of the Motor Vehicles Act, the mode is prescribed for filing the appeal and only the person who is aggrieved by an award of

the claim has been empowered to file the appeal. Since the impugned order is an order of restoration of the claim petition, so it is not an award of

the claim petition and the appellant herein is not an aggrieved person of the award. This argument of the learned counsel has been controverted by

the counsel of the appellant by stating that the order of dismissal as well as the order of restoration of the claim petition was passed u/s 168 of the

Motor Vehicles Act and since it was an enquiry into the claim, so it is deemed an award under the wider scope for section 173 of the said Act.

3. On a careful analysis of section 168, it becomes clear that an award contemplated by it has four ingredients, these are.

(1) Whether any compensation is at all payable to the claimant;

(2) If so, what amount is payable which in the opinion of the Tribunal could be just;

(3) To whom it is payable; and

(4) Who out of the owner, the driver and the insurer of the vehicle is liable to pay the amount and to what extent?

4. A term 'Award' has also figured in section 173 and it shall be presumed that the Legislature intended that it should convey the same meaning in

each such provision. Section 168 no doubt postulates an enquiry with regard to the merits of the claim, which has to precede the award that finally

disposes of the claim petition, one way or the other, after expressly dealing with each of the aforesaid four ingredients. The Tribunal may on such

enquiry either reject or grant the petitioner's claim in toto, or grant it in part

only. Section 169 of the Act prescribes the procedure and powers of the claim tribunals. It is laid down that in holding any enquiry u/s 168, the claims tribunal may subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

5. The enquiry into the merits of the petitioner's claim contemplated by section 1684 is one that is necessary as well as feasible. No such enquiry,

for instance, would be needed where the opposite party straight way admits the claim of the petitioner, or where the petitioner himself does not

press his claim. Similarly, where the claimant after filing the claim petition fails to appear and prosecute the petition, no enquiry may be possible and

the Tribunal may have to finally dispose of the petition by dismissing it for default in his appearance. In each case, the order of the Tribunal finally

disposing of the claim petition, even without making any enquiry into the merits of the petitioner's claim would be an award within the meaning of

section 168, because in all these cases the tribunal would finally dispose of the claim petition either because there would be no need to make any

such enquiry, or because such enquiry would not be feasible at all. Such an order would obviously produce the same result as would be produced

by an order disposing of the claim petition after making a regular enquiry into the merits of the claim. To interpret ""award"" as an order that may be

passed only after making a regular enquiry into all the aforesaid ingredients of section 168 would not be possible, as it would defeat the very object

of the Act, which is to make the High Court and not Tribunal, as the final arbiter in the matter.

6. Viewed thus, the term 'award' shall be interpreted to include even an order whereby the claim petition is dismissed by the Tribunal for

nonappearance of the petitioner. Where a term is capable of two interpretations, it is well settled, the interpretation that advances the object of the

Legislation has to be preferred to the one that defeats it. In my view to achieve the object of the Act, the widest possible meaning could be given to

the term ""award"" to serve the purpose that no injustice is done to the victim of a road accident. Keeping this principle in mind, the Parliament in its

wisdom has even now deleted that clause from the statute which prescribed limitation for filing the claim petition.

7. Interpreting the word 'award' in the light of the above said discussion, it can

be said that only a person who is aggrieved by an award of a Claim Tribunal can prefer an appeal u/s 173. In the instant case, the Tribunal is just at the threshold of determining the above stated four ingredients of section 168 and by ordering the restoration of the claim petition the award was neither accepted nor rejected. So, it cannot be said that the insurer was aggrieved person by such an award and competent to file the appeal u/s 173 of the Act. Had the Tribunal refused the restoration of the claim petition then it would have amounted refusal of the award and the claimants (respondents No. 1 to 5) were deemed to be aggrieved persons by such an award as contemplated under section 173 of the Act and they were competent to file the appeal. On this view of the matter, this appeal has been found filed by an incompetent person and is not maintainable.

8. Be that as it may, Even on merits, the impugned order cannot be set aside. The claim petition was dismissed in default on 22.4.91 and the restoration application was filed on 25.1.94. Some of the petitioners respondents No. 1 to 4 herein) were minors at the time when the petition was dismissed. On attaining majority, they were entitled to file claim petition on their behalf. The learned Presiding Officer has in the impugned order even dealt with that aspect of section 166 which provides that where all the legal representatives of the deceased have not joined in any application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. The learned Presiding Officer has also stated that there was an affidavit filed by the applicant showing sufficient reasons for condoning the delay but there was no counteraffidavit filed by any of the nonapplicants therein. Even on these premises, the negligence of the Advocate or one of the applicants therein could not defeat the claim of the other petitioner. Viewed in this perspective, the appellant has also failed to make out a case for reversing the impugned order.

9. The net result of the above made discussion is that there is no force in this appeal which is dismissed. The accident in question took place eleven years ago and it is unfortunate that till day the claimants are unable to get a part of the claim even on the basis of no fault liability. In these circumstances, the teamed Presiding Officer MACT Rajouri is directed to decide

the claim petition within six months. The office is directed to send back the record immediately. The counsel for the parties are directed to enter appearance before the MACT Rajouri on 11.8.1997.