

Baby Vs. Shyni

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Court : Kerala

Decided On : Jan-21-2000

Reported in : 2000ACJ994

Judge : K. Narayana Kurup and; T.M. Hassan Pillai, JJ.

Appeal No. : M.F.A. No. 577 of 1994

Appellant : Baby

Respondent : Shyni

Advocate for Def. : K.M. Sathyanatha Menon and; George Cherian, Adv.

Advocate for Pet/Ap. : Sunny Mathew, Adv.

Disposition : Appeal dismissed

Judgement :

K. Narayana Kurup, J.

1. In a road accident which took place on 9.4.1991 involving a jeep No. KL-II-6005 which capsized, 8 passengers in the jeep and one pedestrian died and four passengers in the jeep suffered injuries. The accident gave rise to 13 claim petitions before the Motor Accidents Claims Tribunal, Kozhikode. The Tribunal on an appreciation of the materials brought on the record, awarded varying sums as

compensation in favour of the claimants in the respective claim petitions as borne out by para 30 of the award. However, the Tribunal entered a finding exonerating the insurance company who is one of the respondents in all these appeals, from liability on the ground that there is violation of the conditions of policy. The finding of the Tribunal in this regard is contained in para 28 of the award which is extracted below:

The argument of the learned counsel that the passengers in the jeep were gratuitous passengers and not for hire or reward cannot be accepted for one more reason. When the vehicle had a taxi permit unless otherwise it is proved it has to be presumed that the passengers were for hire or reward. In these cases absolutely no contra evidence. So a presumption can also be taken that the vehicle was driven as a taxi jeep. Adding to that the acquisition of a taxi permit was deliberately suppressed from the insurer. Since the conversion of the jeep to a taxi was not informed on that reason also there would be violation. Since there is violation of the policy condition the respondent No. 3 would be exonerated from the liability. Issues found accordingly.

While exonerating the insurance company from liability, the Tribunal found that the accident has been caused by the negligent driving of the jeep by the driver and in that view, fastened the liability on the appellants who are the owner and the driver of the vehicle involved in the accident who figured as respondent Nos. 1 and 2 before the Tribunal. Being aggrieved by the award of the Tribunal fastening the entire liability on the owner and driver of the vehicle, they have preferred these appeals.

2. Though these appeals were admitted and conditional stay granted, subsequently the stay granted were vacated when it was brought to the notice of the court that the appellants have not complied with the mandatory provisions of law contained in the first proviso to Section 173 of the Motor Vehicles Act, 1988 which provides as follows:

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 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.

(Emphasis added)

The phraseology of the statutory provision admits of no ambiguity. It is clear and categoric and mandates that no appeal by the person who is required to pay any amount in terms of an award shall be entertained by the High Court unless he has deposited with it Rs. 25,000 or 50 per cent of the amount so awarded, whichever is less, in the manner directed by this court. Evidently, no amount as prescribed in the section has been deposited by the appellants till this date. Once the legislature in its wisdom has thought it fit to impose a condition for entertaining an appeal, this court may not be justified in sitting in judgment over the legislative wisdom and policy in regard to filing of appeals- however hard the case may be-more so when it is remembered that right of appeal is not a vested right or a constitutional right, but a creature of the statute. There is no inherent right of appeal from the original forum unless such a right is conferred by the statute which creates the forum. The legislature while creating a right of appeal can also impose conditions for the entertain ability of the appeal. We find implied support for the aforesaid view in the decision of the Hon'ble Apex Court in Ramesh Singh v. Cinta Devi 1996 ACJ 730 (SC), where the facts are as follows: The accident took place on 27.5.1988 which gave rise to a claim petition under the old Act. The claim petition was filed on 23.12.88. Thereafter, the new Act came into force with effect from 1.7.89. The claim petition which was instituted under the old Act was disposed of on 29.6.1992 after the new Act came into force. Thereafter, an appeal was preferred under the old Act on 25.9.1992. However, a Division Bench of the High Court dismissed the appeal on the ground that the appellant had not deposited the amount as required by the first proviso to Section 173 of the new Act. According to the High Court the appeal was not maintainable since the appellant has not deposited the amount as provided under the first proviso to Section 173 of the new Act. In appeal the Supreme Court held that 'the new Act does not expressly or by necessary implication make the relevant provisions retrospective in character; the right to

appeal crystallised in the appellant on the institution of the application in the Tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the new Act'. This observation of the Supreme Court by implication holds that the deposit as required under the first proviso to Section 173 of the Act is mandatory in respect of appeals preferred under the new Act. We are also fortified in our view by the decision of the M.P. High Court in *Anil Saraf v. Namboodas* 1997 ACJ 1411 (MP), wherein it has been held that the amount in question is required to be deposited before the appeal is entertained. In the aforesaid decision the Madhya Pradesh High Court referred the decisions of the Allahabad High Court in *Dhoom Chand Jain v. Chamanlal Gupta* AIR 1962 All 453; *Haji Rahim Bux & Sons v. Samiullah & Sons* AIR 1963 SC 320 and *Mahavir Singh v. Gauri Shankar* AIR 1964 All 289, wherein the expression 'entertain' has been interpreted as meaning 'adjudicate upon' or 'proceed to consider on merits'. This view of the High Court has been accepted as correct by the Apex Court in *Laxmiratan Engineering Works Ltd. v. Assistant Commissioner, Sales Tax, Kanpur* AIR 1968 SC 488.

In the light of the aforesaid discussion, these appeals are not liable to be entertained and accordingly they are dismissed.