

(1996) 03 AHC CK 0087**Allahabad High Court****Case No:** Civil Misc. Application of 1994 in First Appeal From Order No. 58 of 1994

Commandant, P.A.C.

APPELLANT

Vs

Smt. Sushila Devi and Others

RESPONDENT

Date of Decision: March 12, 1996**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 173, 173(1), 173(2)

Hon'ble Judges: S.P. Srivastava, J**Bench:** Single Bench**Advocate:** G.L.Tripathi, for the Appellant; S.K. Singh and V.K. Singh, for the Respondent**Final Decision:** Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned Standing Counsel for the Appellants and the learned Counsel representing the claimant Respondents No. 1, 2, 3 and 4.

2. Ram Naresh met with an accident on 9.3.1991 which resulted in his death leaving behind his wife, two minor daughters and his dependent mother and the father. The accident was caused by the truck owned by the Appellants and driven by the Respondent No. 6. The Motor Accident Claims Tribunal found that the death of Ram Naresh was caused due to rash and negligent driving by the driver of the vehicle in question as alleged in the claim petition. It was also found that in the facts and circumstances of the case, the question of contributory negligence pleaded by the Appellant did not arise. The claim petition was allowed in part on 7.7.1993 awarding an amount of Rs. one lac in all to be shared equally, together with interest at the rate of 12% per annum from the date of the petition till the date of the recovery of the amount out of which the wife, father and mother were to get one-fifth share each and the remaining amount was to be deposited in the name of minor daughters in an interest bearing account in any nationalised bank as to yield an income of interest per month which could so be collected by the wife of Ram Naresh

till the minor daughters attained majority.

3. Although the certified copy of the judgment impugned in the appeal was supplied to the Appellants on 29.7.93, the appeal was presented for reporting before the Stamp Reporter of this Court on 4.11.1993 and was returned on the same date to the learned Standing Counsel with a note that the appeal was not accompanied by a certificate of deposit. The Stamp Reporter had indicated in his report that the appeal was within time upto 16.11.1993.

4. The learned Standing Counsel representing the Appellants took back the appeal from the Stamp Reporter and kept it with him. It was filed on 10.5.1994.

5. In the meanwhile, an amount of Rs. 25,000 as contemplated u/s 173 of the Motor Vehicles Act was deposited in this Court on 1.4.1994. On the deposit of the amount, the learned Standing Counsel again presented the appeal which had been held back by him, before the Stamp Reporter to make an endorsement thereon that the certificate of deposit had been filed and the defect stood removed. This report was made on 4th April, 1994. The appeal was thereafter presented in Court on 10.5.1994 alongwith an application seeking condonation of delay in filing the appeal.

6. Section 173 of the Motor Vehicles Act is 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 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.

The first proviso to Section 173(1) of the Motor Vehicles Act, 1988 prohibits entertainment of an appeal unless the Appellant has deposited with it Rs. 25,000 or 50% of the amount awarded which ever is less in the manner directed by the High Court.

The second proviso vests High Court with the jurisdiction to entertain the appeal after the expiry of the period of 90 days if it is satisfied that the Appellant was prevented by sufficient cause from preferring the appeal in time.

7. Considering the provisions referred to hereinabove, it is apparent that the only bar contemplated u/s 173 is in regard to the entertainment of an appeal in the absence of the deposit required to be made as contemplated under the first proviso to Section 173(1) of the Act.

8. It may be noticed that the Legislature, though not at loss for words for expressing itself, has omitted to use the word "file" or "shall be received" while providing for the prohibition indicated hereinabove but has used the word "entertain" which must be accepted to have been used advisedly.

9. This Court in its decision rendered by a Division Bench in the case of *Haji Rahim Bux and Sons v. Firm Samiullah and Sons AIR 1963 All 320*, while interpreting the scope of the use of the word "entertain" had observed that the word entertain means not "receive" or "accept" but to proceed to consider on merit or "adjudicate upon".

10. The Apex Court in its decision in the case of Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, had approved of the aforesaid view of this Court observing that the word "entertain" even according to dictionary means "admit to consideration". In an other decision of the Hon'ble Supreme Court In the case of *Hindustan Commercial Bank Ltd. v. Punnu Sahu AIR 1970 SC 1348*, while reiterating its earlier view the Apex Court had emphasised that the word "entertain" signifies "to adjudicate upon" or "proceed to consider on merits".

11. It seems to me that the real significance of the expression "entertained" as occurring in the first proviso to Section 173 is indicative of the legislative intention that in the absence of the requisite deposit contemplated therein, the appeal shall not be adjudicated upon or the Court shall not proceed to consider the same on merits.

12. In the aforesaid view of the matter, it seems to me that the proviso to Section 173 referred to hereinabove could not be taken to be such a impediment which could Justify the withholding of the filing of the memorandum of appeal which was got reported on 4.11.93. The appeal could have been filed within the period of limitation which was upto 16.11.1993. An application seeking condonation of delay in making the requisite deposit could have been filed even later on and if sufficient ground for the same was made out, the appeal could be considered on merits. In the affidavit filed alongwith the application seeking condonation of delay in making the deposit various assertions have been made which indicate bureaucratic methodology imbued with passing the buck ethos. However, in paragraph 21 of the affidavit, it has been asserted that from 1.4.1994 and thereafter till 5.5.1994, Sri Ram Gopal Sharma, the Deputy Superintendent of Police, 15th Batalian P.A.C., Agra who had been deputed to file the affidavit could not do so on account of his illness due to dog bite and remained under treatment since 1.4.1994.

13. The affidavit required to be filed in support of the application seeking condonation of delay could be of any Pairokar who was posted with the correct information in regard to the relevant facts. Such a person could file an affidavit as provided under the Rules of the Court. There could be no justification for not deputing any such officer to file the affidavit even if Ram Gopal Sharma was not available. In any view of the matter, the affidavit could be sworn before Notary Public at Agra to avoid the delay.

14. In any case, there could be absolutely no justification for withholding the filing of the memo of appeal which was got reported on 4.11.1993 and was taken back for the purpose of filing the same on or before 16.11.1993 as pointed out by the Stamp Reporter, The memo of appeal was detained by the learned Standing Counsel in his office and was presented on 10.5.1994, long after 1.4.1994 on which date the requisite amount contemplated under the proviso to Section 173 had been deposited.

15. Considering the facts and circumstances as brought on record, there is no escape from the conclusion that the Appellants have been grossly negligent and inspite of ample opportunity to do so, they failed to file the appeal within the time prescribed under the law. No such ground has been made out which may be taken to be sufficient for condonation of delay as sought for.

The application is accordingly rejected.