

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

&

THE HONOURABLE SMT. JUSTICE P.V. ASHA

WEDNESDAY, THE 15TH DAY OF OCTOBER 2014/23RD ASWINA, 1936

MACA.No. 168 of 2006 ()

AGAINST THE AWARD IN OPMV 78/2000 of MACT, THODUPUZHA DATED 17-02-2005
APPELLANT(S)/ADDL. 7TH RESPONDENT:

PAREETH, S/O.ABDUL RAHIMAN,
AYAPPURA HOUSE, 63RD MILE BHAGOM, PERIYAR VILLAGE
IDUKKI DISTRICT.

BY ADVS.SRI.P.C.CHACKO (PARATHANAM)
SMT.ASHA P.KURIAKOSE

RESPONDENT(S)/PETITIONERS 1 & 2/R1 TO 6:

1. JANAIYA @ KARUPPUSWAMY, S/O.DURAIRAJ,
NO.II, DIVISION, WALLARDIE ESTATE
VANDIPERIYAR P.O.

2. SIVAKUMAR, S/O.JANIYA, NO.II DIVISION,
WALLARDIE ESTATE, VANDIPERIYAR P.O.

3. SHAJI, S/O.JAMES, OFFICE ACCOUNTANT,
WALLARDIE ESTATE, VANDIPERIYAR P.O.

4. SHIHAB, S/O.SHAMSUDEEN,
PATTARIYIL (H), KANJIRAPPALLY ESTATE
VALLARDIE JUNCTION, VANDIPERIYAR P.O.

5. THE NEW INDIA ASSURANCE CO LTD.,
KOTTAYAM P.O.

6. N.E.GOVINDAN NAMBOOTHIRI,
KAILASABHAVAN, THRIKKOTHAMANGALAM, VAKATHANAM P.O.
KOTTAYAM DISTRICT.

7. ZAKEER K.M., S/O.MOIDEEN ,
KOLLAMKUZHI, KUMALY P.O.

8. THE ORIENTAL INSURANCE CO LTD.,
RANNI P.O., KOTTAYAM.

R,R5 BY ADV. SRI.N.S.MOHAMMED USMAN
R,R1 & R2 BY ADV. SMT.A.K.PREETHA
R,R8 BY ADV. SRI.M.JACOB MURICKAN

THIS MACA HAVING HEARD ALONG WITH CONNECTED CASES ON
25.9.2014, THE COURT ON 15.10.20014 PASSED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR,
A.V. RAMAKRISHNA PILLAI &
P.V. ASHA, JJ.**

**M.A.C.A.NOS.168/2006, 2216/2011, 2272/2013 &
CONNECTED UN-NUMBERED CASES**

DATED THIS THE 15th DAY OF OCTOBER, 2014

ORDER

Ramachandran Nair, J.

These matters have been referred to the Full Bench in the light of the apparent conflict of the views expressed in the judgments reported in **Abdul Rahiman v. Rajan** (2004 (2) KLT 113) and **Sridharan v. Prasad** (2011 (2) KHC 777). The legal issue that comes up for consideration is in regard to the true interpretation of the first proviso to Section 173 of the Motor Vehicles Act, 1988 (for short “the Act”). In these cases appeals have been filed by the respective appellants who are parties before the Motor Accidents Claims Tribunal. The contention raised is that when there is a direction in the respective awards, to the insurer to pay the amount awarded as compensation to the claimant, and when an appeal is filed by the owner (or driver as the case may be) challenging the direction to recover the amount from him, is it necessary to make a pre-deposit to maintain the appeal in tune with the proviso to Section 173 of the Act?

2. In the decision reported in **Abdul Rahiman's case** (2004 (2) KLT 1113) a Division Bench of this Court held, in an appeal filed by the owner, that when the insurance company is directed to deposit the entire amount of compensation awarded by the Tribunal and the company is given the right to get reimbursement of the amount from the insured, the first proviso to Section 173 of the Act regarding pre-deposit is not applicable.

3. In the subsequent decision in **Sridharan's case** (2011 (2) KHC 777), after relying upon the decision of the Apex Court in **Trilochan Singh v. Kanta Devi and others** {(2000) 9 SCC 223}, another Division Bench held that so long as the ultimate liability to satisfy the award is there on the person who files the appeal, even if the Tribunal has directed the insurance company to deposit the award amount, the requirement to make pre deposit in the appeal has to be complied with.

4. We heard learned counsel for the appellants Shri Jose Matheikel, Shri P.C. Chacko, Shri P.V. Kunhikrishnan, Shri Johnson Gomez and Shri P.K. Ravi Sankar and learned counsel for the insurance company Shri Ajith Kumar, Shri Jacob Murikkan and Smt. P.K. Santhamma.

5. For easy reference, we extract Section 173 of the Motor Vehicles

Act hereunder:

“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 percent 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.”

Sub-section (1) confers the remedy of filing an appeal to any person aggrieved by an award and the period of limitation provided is 90 days from the date of award. The proviso insists that an appeal filed by the person who is required to pay any amount in terms of the award shall not be

entertained by the High Court unless he has deposited twenty-five thousand rupees or fifty percent of the amount so awarded, whichever is less, in the manner directed by this Court. The second proviso confers power to condone delay.

6. Shri Jose Matheikel submitted that going by the award passed by the Tribunal, the Insurance Company is directed to pay the amount awarded as compensation. Even though there is a provision allowing the insurer to recover the amount from the owner, the only aspect to be considered for applicability of the proviso to Section 173(1) is to see from the award as to which respondent is directed to deposit the amount. The words “required to pay” under the proviso are thus attracted. It is therefore submitted that the idea given under the proviso being clear, no two interpretations are possible. He therefore invited our attention to the judgment in **Abdul Rahiman's case** (2004 (2) KLT 1113) wherein the said view has been taken. It is submitted that the reasoning adopted in the said judgment is sound and cogent and therefore the same will have to be upheld. He also relied upon a decision of the Apex Court in **Premanand and others v. B. Mohan Koikal and others** {(2011) 4 SCC 266} which

explained the relevant principles of interpretation of statutes and the importance of literal interpretation.

7. Shri P.V.Kunhikrishnan, learned counsel appearing for some of the appellants submitted that for the purpose of application of the proviso to Section 173 of the Act, the only aspect to be looked into is as to who has been ultimately directed to pay the amount in the award. It is submitted that when such a direction is issued to the Insurance Company, the pre deposit provided in the proviso cannot be insisted when the appeal filed by the owner or driver comes up for consideration. It is further submitted that the appellants are not challenging the provision for pre-deposit, but according to them, it is not applicable in the special facts and circumstances of the appeals filed by them. It is also submitted, by placing reliance upon Section 168 of the Act, that when the direction to pay is issued to the insurance company, it is part of the award and that alone need be looked into by the court. Shri Johnson Gomez also supported the said arguments.

8. Shri P.C. Chacko, learned counsel appearing for some of the appellants also supported the said arguments. According to the learned counsel, what is necessary is to consider only one issue, viz. whether the

victim has obtained the money pursuant to the award passed. Therefore, when the direction is to the Insurance Company to deposit the amount and when the other persons aggrieved by the award are filing appeals, this Court need not look beyond the same. If the said contingency is considered by this Court as the true import of the proviso, there cannot be two interpretations also, according to the learned counsel. He relied upon the decision of the Apex Court in **Municipal Corporation of Delhi v. Gurnam Kaur** (AIR 1989 SC 38) to contend for the position that the latter decision of the Division Bench in **Sridharan's case** (supra) has relied upon the decision of the Apex Court in **Trilochan Singh's case** (supra) wrongly. A reading of the said judgment of the Apex Court will show that it is rendered only on the facts of the said case and therefore it cannot be treated as a binding precedent, in the absence of any declaration of law, which principle has been explained by the Apex Court in **Gurnam Kaur** (AIR 1989 SC 38). He also relied upon a decision of Madras High Court in **P. Anwer Batcha and another v. Tamilarasai and others** (2002 ACJ 931) to contend that pre deposit cannot be insisted in cases where direction is

issued to the Insurance Company to deposit the amount, and further relied upon the decision of the Apex Court in **S. Sundaram Pillai v. V.R. Pattabiraman** (AIR 1985 SC 582) to explain the functions of a proviso.

9. These contentions were supported by Shri P.K. Ravisankar. He invited our attention to the facts of the case from which the appeal has been filed by the second respondent before the Tribunal. Therein, the direction to deposit is only to the third respondent, viz. the State. It is therefore submitted that the proviso will be inapplicable in such cases.

10. Learned counsel for the Insurance Company, Shri Jacob Murikkan, Shri Ajith Kumar and Smt. P.K. Santhamma opposed the above contentions by submitting that the provision for pre deposit is mandatory and no power is given to the court to exempt or dispense with the same. There is no merit in the submission that since there is a direction to the Insurance Company to deposit the amount, the other respondents before the Tribunal can maintain the appeal even without complying with the proviso. It is submitted that ultimately the liability on the owner is not wiped off by any such direction and even if the Company deposits the amount, they can seek recovery of the amount from the owner easily. Therefore, when there

is an award against the appellants making them liable for the amount, the said factor alone need be looked into. In this context, learned counsel relied upon the following decisions:

“Baby v. Shyni (2000 (1) KLT 718), Kesavan Nambeesan v. Madhavan (2003 (2) KLT 785), Unni P.N. And others v. Baby John and others (2008 (1) KHC 987) and Oil India Ltd. v. Neil Rose (AIR 2008 Gau. 35).”

11. Before going into the contentious issues, we will first try to understand the reasoning adopted by the two Division Benches in **Abdul Rahiman's case** (supra) and the latter decision in **Sridharan's case** (supra). We hereinbelow extract paragraph 2 of the judgment in **Abdul Rahiman's case** (supra):

“Here, insurance company was directed to deposit the amount and, only after satisfying the award, it was allowed to get reimbursement. The entire amount of compensation awarded is directed to be deposited by the insurance company. Therefore, if the insurance company wants to file an appeal, it is bound to comply with the condition in the proviso to S.173(1) as it is required to pay the amount awarded. Only after satisfying the award, question of reimbursement will arise. It is true that once it

pays the amount awarded, reimbursement from the insured can be compelled in execution of the award itself. If appellants are directed to pay the amount first finding that there is no insurance coverage for the vehicle at the time of accident, they are bound to make pre-deposit of the amount required before filing the appeal. But, here, insurance company was directed to deposit the amount. Hence, first proviso to S.173(1) of the Motor Vehicles Act regarding pre-deposit is not applicable.”

That was an appeal filed by the owner and driver of the vehicle. The facts of the case show that going by the award of the Tribunal, all the respondents were liable to pay compensation jointly and severally. It was directed by the Tribunal that the Insurance Company is entitled for reimbursement of the award amount from the second respondent after satisfying the award and the Insurance Company was directed to produce cheque or DD for the award amount with interest and cost drawn in the name of petitioner for payment. In paragraph 2 of the judgment, the Division Bench held that “since the Insurance Company was directed to deposit the amount, the first proviso to Section 173(1) of the Act regarding pre deposit is not applicable. It was also held that if the Insurance Company wants to file appeal, it will

have to deposit the amount.

12. In **Sridharan's case** (2011 (2) KHC 777), the appeal was filed by the driver of the lorry involved in the accident. It was contended that since the amount awarded by the Tribunal in favour of the claimant has already been deposited by the Insurance Company, he is entitled to file appeal without making any pre deposit. This contention was repelled in paragraph 6 of the judgment in the following words:

“6. But, it has to be remembered that the appellant does not have a case that no liability has been fastened on him by the award that is impugned in this appeal. The appellant is obviously aggrieved by the award passed by the Tribunal, as otherwise, he would not have come up in appeal. It is true that the Tribunal has directed the Insurance Company to deposit the award amount before the Tribunal so as to ensure that the claimant gets the fruits of the decree passed in his favour without any delay or hassle. Undoubtedly, it cannot be said that the appellant has been exonerated from the liability to pay the compensation. So long as the ultimate liability hangs over the head of the appellant, he is bound to satisfy the award, though there is no imminent threat of execution against him. Any how, by no stretch of imagination, it can be said that the appellant

“is not required to pay any amount in terms of the award” unless and until he succeeds in the appeal. But, if his appeal is to be entertained, he has to necessarily comply with the statutory mandate.”

The Division Bench was thus of the view that even if there is a direction to deposit the amount by the Insurance Company, the appellant has not been exonerated from the liability to pay the compensation and by no stretch of imagination it can be said that the appellant is not required to pay any amount in terms of the award unless and until he succeeds in the appeal. Reference was also made to the judgment of the Apex Court in **Trilochan Singh's case** {(2000) 9 SCC 223}.

13. Since learned counsel for the appellants submitted that the said judgment of the Apex Court does not declare any law, we will refer to the facts of the said case also. Therein, the appeal filed by the appellant/owner was dismissed by the High Court for not making the pre deposit of Rs.25,000/-. The only question raised was with regard to the right of the insurer to realise the amount from the appellant since the insurer had paid the full amount to the claimants. The Apex Court directed deposit of an

amount of Rs.50,000/- in addition to the amount of Rs.10,000/- which he had deposited before the High Court, as a condition for restoration of the appeal before the High Court. The Division Bench in paragraph 8 of the judgment in **Sridharan's case** (supra) observed as follows:

“A perusal of the above judgment will show that the Apex Court did not show any indulgence to the appellant in that case in the matter of statutory pre-deposit. Therefore, the above decision will settle the issue against the appellant in this case.”

In paragraph 10 it was also observed by the Division Bench that the said decision of the Apex Court was not brought to the notice of the Division Bench which decided **Abdul Rahiman's case** (supra). We are of the considered opinion that the Division Bench in **Sridharan's case** (supra) had independently considered the legal issue as evident from the discussion in paragraphs 6 and 11. In the judgment it was also held that the Apex Court in **Trilochan Singh's case** (supra) did not exonerate the appellant therein from making the pre deposit.

14. We will now proceed to consider the legal issue, viz. the true interpretation of Section 173 of the Act and the proviso. It is clear from

Section 168 of the Act that while passing the award, the Tribunal will have to specify the amount of compensation which appears it to be just. It has to specify the person or persons to whom compensation shall be paid; it shall also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Sub-section (3) of Section 168 of the Act reads as follows:

“168 (3). When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

What is discernible from the words “the person who is required to pay any amount in terms of such award” is that it will denote the persons who are fastened with liability to meet the award. Going by sub-section (1) of Section 168, the award will have to specify the amount to be paid by the insurer, owner or driver or by all or any of them, which is quite important.

15. It is highlighted by the learned counsel for the appellants that the direction in these cases is to deposit the amount in tune with sub-section (3) whereas the learned counsel for the respondents explained that

the said section only provides a safeguard for the claimants and it only shows the anxiety of the Parliament that the victim should not suffer and hence a period of 30 days is provided for making the payment.

16. Shri P.V. Kunhikrishnan submitted that in sub-section (1) of Section 173 of the Act, “any person aggrieved by an award” is provided a remedy to file an appeal. In the proviso, in the matter of direction to make pre deposit, what is insisted is 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 percent of the amount so awarded, whichever is less, in the manner directed by the High Court.” It is therefore submitted that the words “any person” in sub-section (1) and the words “the person” in the proviso should be marked for distinction and hence it is submitted that the argument of the appellants will have to be accepted.

17. When we come to the scheme of Chapter XI providing for insurance to third parties and Chapter XII dealing with filing of claim petitions under Section 166, passing of award under Section 168 and the provision for appeal under Section 173, it is clear that the victim's right is to

get just compensation and an easy remedy to get the amount of compensation awarded are also emphasised. On a proper reference to Section 168 of the Act, what we find is that while drawing the award, the Tribunal will have to first determine the just compensation, secondly the person or persons, viz. the claimants to whom the compensation shall be paid and thirdly by whom it shall be paid, viz. The insurer or owner or driver. Simply because in sub-section (3) it is provided that the person who is required to pay any amount in terms of the award shall, within thirty days of the date of announcing the award by the Tribunal, deposit the entire amount awarded, it cannot be said that, that has application only to the insurer. What is comprehended under the said sub-section is that whether it is the driver, owner or insurer who have been held jointly and severally liable to satisfy the award amount they are required to pay the amount of compensation. In the scheme of things what we find is that the person primarily liable will be the driver, the owner will be vicariously liable and the insurer will be liable as per the terms of the insurance policy. The proviso to Section 173(1) shows that appeal should be by the person who is required to pay any amount in terms of the award. The same phraseology is

used in Section 168 (3) also.

18. An award passed by the Tribunal is clearly after adjudication of various aspects including negligence, the amount liable to be awarded to the claimant and the persons from whom he can recover the amount. In that view of the matter, when an appeal is filed from the award of the Tribunal, it will be by the person who is aggrieved by the award, which is against him. When an award is challenged in an appeal, every one of the aspects are open for consideration including the quantum of compensation and the liability of the owner, driver or insurer, as the case may be to meet the award. The provision for a pre deposit and the intention behind it is evidently to avoid unnecessary appeals. The provision for a pre deposit to maintain an appeal is there in various types of enactments viz. Under the taxing statutes, Consumer Protection Act, 1986 (Section 15), etc. From Section 173 of the Act read along with the proviso, what we find is that an appeal by the person concerned cannot be “entertained” unless there is a pre deposit. Therefore, it is a matter concerning the maintainability of the appeal itself. One cannot go simply by the direction given by the Tribunal to the Insurance Company to make the payment. Even if such a direction is

given, in cases where the Insurance Company, according to it, is not wholly liable and can avoid the liability under the award, there will be a further direction allowing the Insurance Company to recover it from the owner under Section 149(4) of the Act. Therefore, the liability to pay is still there as far as the owner is concerned (or driver) when he files an appeal. It cannot be contended by the owner that he is not liable to pay the amount covered by the award at that stage. The Insurance Company can follow through the matter even if no appeal is filed, by depositing the amount and by pursuing their remedy before the Tribunal to get back the amount from the owner. In that view of the matter, it can be seen that the owner, in such circumstances, will come within the meaning of the term “person who is required to pay any amount in terms of the award” contained in the proviso to Section 173 of the Act and he cannot bank upon the deposit made by the Insurance Company for payment to the insured, to escape from the rigour of the proviso to Section 173(1). The direction by the Tribunal to the insurer to pay the amount to the victim is only to advance the objects and purposes of the Act, viz. To benefit the victim and the owner and driver cannot take advantage of the same.

19. It is also clear from Section 173 that the right of appeal is the creature of a statute. “Any person aggrieved” can file an appeal within a period of 90 days and the second proviso gives power to condone delay in filing the appeal also. Therefore, the scheme for filing appeal is contained in Section 173 (1) of the Act and its two provisos as well as sub-section (2) wherein no appeal is provided if the amount in dispute is less than Rs.10,000/-. When the appellate remedy is thus provided as a creature of the statute, the condition provided under the statute will become mandatory.

20. We are fortified in this view by various judgments of this Court and other High Courts.

21. In **Baby's case** (2000 (1) KLT 718) a Division Bench of this Court held that the deposit as required under the first proviso is mandatory. Therein, the Insurance Company was absolved from liability and it was fastened on the owner and driver of the vehicle. They did not comply with the direction to deposit the amount. The question considered was whether it is mandatory or not and the Division Bench has held as follows:

“The phraseology of the statutory provision admits of no ambiguity.

It is clear and categorical 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 25 thousand rupees or 50% 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 entertainability of the appeal.”

The Division Bench relied upon various decisions including two decisions of the Apex Court, viz. **Laxmiratan Engineering Works Ltd. v. Assistant Commissioner, Sales Tax, Kanpur** (AIR 1968 SC 488) and **Ramesh Singh & another v. Cinta Devi & others** (1996 ACJ 730). In **Laxmiratan Engineering Works Ltd.'s case** (supra), the import of the word “entertain” was examined. In paragraph 10, after referring to various judgments, their

Lordships of the Apex Court have held as follows:

“In our opinion these cases have taken a correct view of the word 'entertain' which according to dictionary also means 'admit to consideration'.....In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decision by a higher Court of the decision of an inferior court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed. When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax.”

22. In **Ramesh Singh's case** (1996 ACJ 730), the Apex Court considered the issue whether the right of appeal accrued to a claimant under the Act of 1939 survives even after its repeal by Act of 1988. In this context, the provision under Section 173 of the Act has been examined. Therein, the application for claim was filed before the new Act came into force. In paragraph 5 the legal position was explained thus:

“5. In our view the point at issue stands squarely covered by three

decisions of this court reported in *Hussain Kasim Dada v. State of Madhya Pradesh and Ors.* MANU/SC/0075/1953 : 1983 (13) ELT1277(SC), *State of Bombay v. Supreme General Films Exchange Limited* MANU/SC/0007/1960 and *Vithal Bhai Narang Bhai Patel v. Commissioner of Sales Tax, M.P. & Nagpur* MANU/SC/0335/1960 : AIR 1967SC344. In all these decisions the view taken is that unless the New Act expressly or by necessary implication makes the provision applicable retrospectively, the right to appeal will crystallize 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. In other words, the appellant, would be entitled to file the appeal without being required to make the deposit under the proviso to Section 173 of the New Act. The law, therefore, seems to be fairly well settled by the said three decisions of this Court.

It was held that the appeal filed from a proceeding prior to the coming into force of the new enactment can be without making any required deposit. The Division Bench of this Court in **Baby's case** (supra) was of the view that the observation of the Apex Court that “the vested right of appeal would not be dislodged by the enactment of the new Act” 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 .The Division Bench also relied upon a decision of the Madhya Pradesh High Court in **Anil Saraf v. Namboodas and others** (1997 ACJ 1411) holding the view that the amount in question is required to be deposited before the appeal is entertained.

23. In **Kesavan Nambeesan's case** (2003 (2) KLT 785) a learned Single Judge of this Court held that Section 173 does not give any power to the Court to dispense with the deposit mentioned in Section 173(1) of the Act. That is a mandatory requirement to entertain the appeal.

24. In **Ravi's case** (2004 (3) KLT 22), the facts show that an appeal was filed without depositing the amount. The Division Bench, after considering the dictum laid down in **Baby's case** (2000 (1) KLT 718), **M/s. Lakshmiratan Engineering Works Ltd.'s case** (AIR 1968 SC 488), **Anil Saraf's case** (1997 ACJ 1411) and **Rajasthan State Road Transport Corporation v. Santhosh & others** (1995 ACJ 721), has held as follows:

“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..... 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, the appellant is expected to deposit minimum amount as required under the proviso to Section 173(1).”

In the opening paragraph first proviso to Section 173(1) was quoted and thereafter it was held that the above provision was incorporated to avoid hardship to the poor motor accident victims.

25. The next decision is by another Division Bench in **Unni's case** (2008 (1) KHC 987). Therein also, the dictum laid down in **Baby's case** (2000 (1) KLT 718) was followed. That was a case where it was found when the appeals came up for hearing, that the stipulated amount under Section 173 of the Act has not been deposited. The contention raised by the claimants was that the appeals are not maintainable. In paragraph 16, 17 and 18 the Division Bench held as follows:

“16.....Section 173 of the M.V. Act mandates that no appeal by a person who is required to pay any amount in terms of an award shall be entertained by the High Court unless he has deposited Rs.25,000/- or 50% of the amount so awarded, whichever is less, in

the manner directed by the High Court. Evidently, no amount as prescribed in the section has been deposited by the appellants till this date. The appeals are of the year 1997.....

17. Going by Section 173 of the M.V. Act, in order to maintain an appeal, the appellant who is directed to pay compensation has to make a deposit of Rs.25,000/- or 50% of the amount awarded, whichever is less.....

18. Section 173 of the M.V. Act does not give any power to the Court to dispense with the deposit mentioned in Section 173(1). That is a mandatory requirement to entertain an appeal. Merely because the appeals have been admitted, it cannot be taken that this Court had entertained the appeals and that the same shall be held maintainable. When an infirmity in the appeals is pointed out, necessarily this Court can reject the appeal. The Bench decision cited supra is followed by another Single Bench decision reported in *Kesavan Nambeesan v. Madhavan*, 2003 (2) KLT 785. In the light of the aforesaid decisions, MFA Nos.398 of 1997 and 774 of 1997 are not liable to be entertained and accordingly they are dismissed.”

26. We will now refer to certain judgments of different High Courts wherein also it was held that the person filing appeal will have to make pre deposit. One decision is by Punjab & Haryana High Court in **Sohan Singh v. Kushla Devi and others** (AIR 1996 P & H 256). Therein, the appeal was

filed by the driver of the bus involved in the accident. The contention raised was that the amount was deposited by the owner of the bus, viz. Himachal Pradesh Road Transport Corporation in another appeal filed against the same award, and therefore, it was not necessary for the appellant to deposit Rs.25,000/-. The Division Bench analysed the main provision under sub-section (1) of Section 173 and the proviso. The difference in the language therein has been adverted to and the following view has been taken:

“The significant difference between the language used in sub-sec.(1) of S.173 and the First proviso is that whereas the expression “any person aggrieved by the award” has been used in the main sub-section, the proviso uses the expression “by the person who is required to pay any amount in terms of such award.” This clearly means that the appeal can be filed by a person who may be aggrieved by the award but who may not be required to pay any amount in terms of the award. Ordinarily an appeal by the claimant will be covered by this category.”

It was further held that the proviso applies in cases where a person who is required to pay any amount as per the terms of the award files an appeal.

27. In paragraph 5 it was held that the requirement of the deposit of

the amount as a condition precedent to the entertainability of the appeal protects the interest of the claimant. After considering the literal rules of interpretation laid down by various decisions of the Apex Court, it has been further held in paragraph 13 as follows:

“Applying the above referred rule of interpretation, we are clearly of the opinion that on a plain reading of the proviso to S.173(1), any person who is required to pay any amount under an award passed by the Claims Tribunal, prefers an appeal, his appeal can be entertained by the High Court only if he makes deposit of a specific amount as required by the said proviso and he cannot claim exemption from making the deposit on the ground that a co-respondent before the Tribunal has filed an appeal and has made the requisite deposit. It is a different thing that the High Court will not order the disbursement of the entire amount deposited by different parties under the proviso to S.173(1).”

Thus, the Division Bench was of the view that the appellant cannot claim exemption from making the deposit on the ground that a co-respondent before the Tribunal has filed an appeal and has made the deposit. We fully agree with the above view.

28. In **Rajasthan State Road Transport Corporation v. Smt.**

Santosh and others (AIR 1995 Raj. 2), a learned Single Judge considered the meaning of the term “entertained” in the first proviso to Section 173(1) of the Act. It was held that the appeal cannot be judicially considered without the amount being deposited.

29. **Shanti Shukla v. Oriental Insurance Co. Ltd. And another** (2010 ACJ 1052) is by a Division Bench of Allahabad High Court wherein also the facts are similar to the one contained in the appeals filed herein. In the appeal filed by the owner it was contended that the entire amount of compensation has been deposited before the Tribunal by the Insurance Company and therefore the owner is not required to make the statutory pre deposit. We extract hereinbelow paragraphs 5, 6 and 7 of the judgment:

“5. On a plain reading of the proviso to sub-section (1) of section 173, it is apparent that any person who is required to pay any amount under an award passed by the Tribunal, his appeal can be entertained by the High Court only if he makes deposit of a specific amount as required by the said proviso and he cannot claim exemption from making the deposit on the ground that amount under award has already been deposited by another co-respondent.

6. The first and the preliminary rule of construction is that the intention of the legislature must be found in the words used by the

legislature itself. The question of interpretation arises only when the language is ambiguous and is capable of other interpretation also.

7. From the bare perusal of the language of the proviso of sub-section (1) of section 173 of the Motor Vehicles Act, 1988, it is apparent that the language is clear and unambiguous and no second meaning as contained in the section itself can be given.”

By relying upon the rules of construction, it was held that no second meaning can be given to the section and the appeal can be entertained only if the appellant makes deposit of a specific amount. Reliance was placed on various decisions of the Apex Court interpreting the rules of construction applicable, to understand the meaning of a statute. Their Lordships, in paragraph 11 as follows:

“The matter can be examined from another angle also. The proviso to sub-section (1) of section 173 of the Motor Vehicles Act contains the word 'shall' and where in the statute the word 'shall' is used, it is normally read as must and in other words mandatory.”

It was held that when the word 'shall' is used in the proviso, it is normally mandatory. Finally, the legal position was explained in paragraphs 15 and 16 thus:

“From the perusal of the above decisions of the Apex Court, it is clear that the word 'shall' used in the statute is normally mandatory and sometimes it is directory also if the circumstances so demand but here in the particular case since the Tribunal has found the liability of the appellant to pay the amount of compensation to the claimant and only given a breathing time to the appellant by directing the insurance company to pay the awarded amount to the claimant and then recover from the appellant, therefore, the initial liability is of the appellant and not of the insurance company. In view of this, it cannot be said that any prejudice will be caused to the appellant in case he is required to deposit Rs.25,000 as required under section 173 of the Motor Vehicles Act as ultimately the appellant has to return this amount awarded by the Tribunal and paid to the claimant by the insurance company. In case the right of recovery was not given to the insurance company then it was liability of the insurance company to deposit Rs.25,000 before filing the appeal against the award.

16. Since the insurance company has not come before this court and the owner of the vehicle has filed the present appeal and in view of the Tribunal's judgment awarded amount paid to the claimant has to be recovered from the appellant, therefore, prerequisite condition of deposit of Rs.25,000 or 50 per cent whichever is less in view of section 173 of Motor Vehicles Act for the purposes of filing the

appeal is applicable in full force in view of the language used in the section.”

Paragraph 15 gives a complete answer to the contention raised by the appellants herein also. Since there is a direction to recover the amount from the appellants herein, they will have to comply with the pre requisite condition for deposit. Their Lordships therefore held in paragraph 17 of the above judgment that the provision is mandatory. We are in full agreement with the above view.

30. **Oil India Ltd.'s case** (AIR 2008 Gauhati 35) is by a Full Bench of Gauhati High Court. Therein, the prime question considered was whether an appeal filed in time, but without the pre-deposit, can be entertained if such deposit is made after the expiry of the period of limitation as prescribed in sub-section (1) of Section 173 of the Act. The different views of two Division Benches have been considered therein. After relying upon the decision of the Apex Court in **M/s. Lakshmiratan Engineering Works Ltd.'s case** (AIR 1968 SC 488), it was held in paragraph 12 that “the appeal cannot be admitted to consideration unless other requirements are complied with.” The issue considered is different

from that arises in these cases.

31. The next decision is one relied upon by Smt. P.K. Santhamma, learned counsel appearing for one of the respondents, viz. Gujarat Agro Industries Co. Ltd.'s case ((1999) 4 SCC 468). It was held therein that “right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given.” Learned counsel for the appellants have no quarrel with the proposition that right of appeal is the creature of a statute itself.

32. Now we will come to two other decisions relied upon by Shri Jose Matheikel and Shri P.C. Chacko respectively. The first one is **Premanand's case** ((2011) 4 SCC 266) by the Apex Court wherein the relevant principles governing the rules of interpretation have been considered in the context of Rule 27(c) of Kerala State and Subordinate Service Rules. The Apex Court considered various decisions laying down the principle that “in construing a statutory provision the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision say.” (paragraph 15). In

paragraph 21 the decision of the Apex Court in **CIT v. Keshab Chandra Mandal** (AIR 1950 SC 265) laying down that “hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute”, was also relied upon. We are definite in our mind that the statute is very clear and unambiguous and the rules of literal interpretation alone need be adopted. But it cannot be done in a manner as canvassed by the learned counsel for the appellants. The objects and purposes of the statute are very clear in that when the remedy of appeal is resorted to by a person who is required to pay the amount as per the award, such a pre deposit has to be made. He cannot bank upon the deposit made by a co-respondent.

33. **S. Sundaram Pillai's case** (AIR 1985 SC 582) is relied upon by Shri P.C. Chacko, learned counsel appearing for one of the appellants, delineating the functions of a proviso in the following words:

“A proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be

used to nullify or set at naught the real object of the main enactment. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.”

According to us, the same cannot help the appellants. Section 173(1) provides for a remedy of appeal for any person aggrieved by the award which takes in appeals by claimants also. The proviso clearly carves out an exception to the said main provision. The idea is explicit and clear. The persons who are liable to pay under the award, will have to make a pre deposit.

34. The decision of the Madras High Court in **P. Anwer Batcha's case** (2002 ACJ 931) relied upon by Sri P.C. Chacko has not elaborately considered the effect of the proviso. In paragraph 26, after referring to the objection by the claimant that the owner has not deposited the amount in terms of the first proviso to sub-section (1) of Section 173, the Bench has

held as follows:

“Since the insurer had deposited the said amount at the time of filing of the appeal only on behalf of the owner, the said contention is liable to be rejected.”

There is no elaborate consideration of the various aspects in the said case.

35. The decision of a Full Bench of this Court in **Ittoop v. Mathunni** (1983 KHC 245 = 1983 KLT 1097 = 1983 KLJ 715 = ILR 1984 (1) Ker. 522 = AIR 1984 Ker. 73) was relied upon to invite our attention to the relevant principles concerning interpretation of a provision in a fiscal statute. In our view, the proviso to Section 173 (1) being clear, there is no scope for two different interpretations.

36. In fact, the legislature, while enacting the said proviso to Section 173(1) of the Act, did not classify or specify any particular type of appeal or appeals to which the proviso does not apply. If we accept the arguments of the learned counsel for the appellants, then, this Court will be attempting something new to be introduced in the proviso which undoubtedly is the power of the Parliament. When the statute does not provide for any exemption; does not give any power to the court to dispense with the

deposit; and also does not indicate any other guidelines or circumstances which should have relevance in considering the plea of non deposit, this Court will not be entitled to classify the appeals like the one filed herein and hold that in such appeals the pre deposit need not be made. The provision being mandatory, an interpretation which is in tune with the intent and purport of the Legislation alone can be adopted. Only when the provision is ambiguous any other mode of interpretation can be adopted. What is important as far as an aggrieved party is concerned, is as to whether he is liable to pay any amount as per the award. The words “required to pay” contained in the first proviso will have to be understood in that context. The appellant should be one who is found liable to compensate the victim as per the award and thus answerable for the amount of compensation awarded. When the insurance company makes payment, the owner is not totally absolved from liability, as evident from the awards in these cases wherein the insurance companies are allowed to recover the amount from the owner or driver, as the case may be. There can be cases where the entire liability will have to be met by the insurance company, without any direction to recover it from the owner or driver. Therefore, it is for the

insurance company, if aggrieved, to file appeal after complying with the proviso. As rightly pointed out by the learned counsel for the insurance company, when there is a direction given in the award to recover the amount from the owner, he is also required to pay the amount in tune with the liability already cast upon him by the award and there is no exoneration of the said appellant from the liability, which is the view taken by the Division Bench in **Sridharan's case** (2011 (2) KHC 777). We fully agree with the above view.

37. We also notice that when Bill No.60 of 1988 was placed before the Parliament on 13.5.1988 introducing Motor Vehicles Act, 1988, the statement of objects and reasons have been provided therein along with Notes on clauses to explain the provisions in the Bill. The same has been published as per the Gazette of India Extraordinary Part II Section 2 (No.30 New Delhi May 13, 1988). As against Clause 173, the following explanation has been given:

“Clause 173 makes provision for appeal to High Court by the persons aggrieved against the orders of Claims Tribunal and where the person aggrieved is the person who has to pay the compensation

such person shall deposit twenty five thousand rupees or 50 per cent of the amount awarded whichever is less.”

The same is also worthy to be noticed.

38. We answer the reference holding that **Abdul Rahiman's case** (2004 (2) KLT 1113) has not been correctly decided and accordingly it is overruled and we uphold the view taken as far as the legal issue raised herein, in the decision reported in **Sridharan's case** (2011 (2) KHC 777).

The appeals are sent back for consideration by the appropriate Bench.

(T.R.RAMACHANDRAN NAIR, JUDGE)

(A.V. RAMAKRISHNA PILLAI, JUDGE)

(P.V.ASHA, JUDGE)

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