***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 12th March, 2015**

\+ **<u>MAC.APP. No.296/2014</u>**

RELIANCE GEN. INS. CO. LTD. ..... **Appellant**

Through: Proxy counsel for Ms. Shantha Devi Raman, Adv.

Versus

SMT SUNITA & ORS ..... **Respondents**

Through: Mr. Sudhanshu Tomar, Adv. for R-1 to 4.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The counsel for the appellant seeks adjournment on the ground of illness of Ms. Shantha Devi Raman, arguing counsel for the appellant. The counsel for the respondents no.1 to 4 who were the claimants before the Tribunal (respondents no.5 & 6 being the driver and owner respectively of the vehicle which had caused the accident) states that the respondents no.1 to 4 have received the amount awarded under the impugned award / judgment from the appellant even prior to the filing of this appeal by the appellant. He states that this appeal is thus not maintainable.

2. A perusal of the order sheet in the appeal shows that this Court, while issuing notice of this appeal on 31st March, 2014, vide *ex parte* order on the application of the appellant for interim relief stayed the execution of the said

award / judgment subject to the appellant depositing the entire awarded amount along with upto date interest accrued thereon with the Registrar General of this Court and of which 70% was ordered to be released in favour of the respondents No.1 to 4/ claimants and the rest of the amount was directed to be kept in an interest bearing deposit.

3. The file noting shows that in pursuance to the said order, no amount whatsoever has been deposited by the appellant.

4. A perusal of the Memorandum of Appeal does not show any averment therein, of the appellant prior to preferring the appeal having paid the awarded amount without prejudice to its rights and contentions and subject to its right of restitution in the event of succeeding in the appeal. In fact if that had been the case, the occasion for the appellant to have sought stay of execution of the impugned award would not have arisen.

5. I am of the opinion that the appellant having unconditionally paid the awarded amount and having complied with the award / judgment impugned in this appeal, the appeal is not maintainable.

6. I find that the respondents no.1 to 4 have preferred cross objections / cross appeal by way of CM No.11475/2014 for enhancement of the compensation amount.

7. The counsel for the respondents no.1 to 4 states that if the appeal is not maintainable, he, on behalf of the said respondents withdraws their cross objections.

8. Accordingly, the appeal is dismissed as not maintainable and CM No.11475/2014 by way of cross objections / cross appeal is dismissed as withdrawn.

No costs.

9. The statutory amount of Rs.25,000/-, if deposited in this Court, be refunded to the appellant together with interest if any accrued thereon.

10. Before the order aforesaid could be signed, Ms. Shantha Devi Raman, Advocate mentioned the matter. The Advocate for the respondents No.1 to 4 was also sent for.

11. The counsel for the appellant informed that the awarded amount had not been paid by the appellant voluntarily to the claimants. With the support of documents, it is shown that upon the appellant having not deposited the money in accordance with the impugned award / judgment, the Tribunal issued warrant dated 27th January, 2014 for attachment of the bank account of the appellant and that it was in pursuance to the said attachment that the banker of the appellant drew cheques dated 28th January, 2014 for the

awarded amount in favour of the respondent No.1. The counsel thus contends that this appeal is entitled to be considered.

12. The counsel for the respondents no.1 to 4 , on the basis of the Trial Court record, demonstrates that the respondents no.1 to 4 had not applied for execution and the Tribunal, on its own, upon report being put up by the officer of the Court that the amount had not been deposited, issued the warrant of attachment aforesaid.

13. I have still enquired from the counsel for the appellant, as to why the appellant in the memorandum of appeal dated 27th March, 2014 i.e. after exactly two months from the date when the payment was so made, did not disclose the said fact and / or state that the appellant is entitled to restitution.

14. The counsel for the appellant blames the same on the official of the appellant then dealing with the matter and who is stated to have since left. It is stated that it was owing to a communication gap that while filing the appeal, the factum of the impugned award / judgment having already been executed, was not mentioned.

15. I am unable to still hold the appellant entitled to pursue this appeal. Allowing the appellant to pursue this appeal now would tantamount to disturbing the state of affairs which has come into existence and which state

of affairs is of the own making of the appellant. The appellant very well knew of the date by which it was by the impugned award / judgment required to make the payment. The appellant Insurance Company can also be safely presumed to have known the consequences of such non-payment i.e. upon it not depositing the amount in the Tribunal as directed, coercive steps shall be taken. The appellant, if desirous of preferring the appeal, ought to have preferred the same within the said time or informed the Tribunal that it was desirous of preferring an appeal and sought a stay from the Tribunal. Even when the attachment of the bank account of the appellant was effected, the appellant did not go to the Tribunal to say it was preferring the appeal or that monies pursuant to attachment be released subject to its right of restitution. Not only was the same not done but this appeal itself was preferred with an application for condonation of 66 days delay in filing thereof. Considering the nature and intendment of the said provisions of the Motor Vehicles Act, 1988 to allow an Insurance Company to at its sweet will prefer an appeal, would be contrary to the legislative spirit. The appellant allowed the awarded amount to be received by the claimants / respondents no.1 to 4 in settlement of the award / judgment and the appeal preferred more than two months thereafter was still born or infructuous on the date of institution thereof.

16. The counsel for the appellant has contended that as per the impugned award / judgment, the bulk of the awarded amount is lying in a fixed deposit and it is not as if, has been paid to the claimants for being required to be recovered from the claimants.

17. The same also does not persuade me otherwise. Merely because the Tribunal, for the benefit of respondents no.1 to 4, has directed the awarded amount to be kept in fixed deposit would not mean that the amount remains in the domain of the Tribunal. I may also notice that this Court vide *ex-parte* order dated 31st March, 2014 on the application of the appellant for interim relief, while staying the execution of the award subject to deposit by the appellant of the entire awarded amount in this Court, ordered 70% of the said amount to be released to the claimants / respondents no.1 to 4 and only 30% of the said amount to be kept in a fixed deposit. The said order has attained finality. The claimants / respondents no.1 to 4 thus as per the said order also were required to receive 70% of the awarded amount and cannot now, even in the event of appellant succeeding in the appeal, be directed to refund the monies.

18. Section 173 of the Motor Vehicles Act under which this appeal has been filed also provides 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 same is also indicative of the appeal being maintainable only when the compensation awarded by the Tribunal is payable. Once the compensation awarded has been paid, the question of preferring the appeal does not arise unless the compensation has been paid without prejudice and reserving the right to appeal against the award / judgment directing payment of compensation and which has not been done in the present case.

19. This Court in ***Khem Chand Vs. Tika Ram*** MANU/DE/4602/2010, finding that the appeal had been filed after the execution of the decree for specific performance stood fully satisfied, held that nothing survived in the appeal. Similarly, a Division Bench of this Court in ***Punjab National Bank Vs. Prem De Vastra*** AIR 2001 Delhi 172 also, finding that the appellant had made full payment of the decretal amount and decree stood satisfied, dismissed the appeal as infructuous. A Division Bench of the Karnataka High Court also in ***Executive Engineer, I.D., NLBC Division Vs. A.***

Prabhakara Reddy MANU/KA/0948/2002, finding that the appellant Government had paid the whole of the amount due to the respondent when the appeal was still pending, held the appeal to have become infructuous the moment the decree was satisfied since no leave of the Court was obtained to keep the appeal alive. The same has been the view of the High Court of Patna in ***Gulab Ram Vs. Ganauri Ram*** MANU/BH/0221/1996 and of the High Court of Calcutta in ***Shiba Prasad Mukherjee Vs. Dhirendra Chandra Mukherjee*** MANU/WB/0379/1960 (DB). I see no reason not to apply the said principles to the present controversy.

20. I have even otherwise also perused the impugned award / judgment. The claimants are the widow, two minor children and mother of Sh. Sanjeev Kumar who died in an accident involving a vehicle insured with the appellant. The said Sanjeev Kumar at the time of his death was 38 years and 5 months of age. Considering the said fact also, I am of the opinion that no case for entertaining this appeal, after the issue raised therein is no longer alive and has been allowed to attain finality, is made out. The counsel for the appellant of course has contended that the increase of 50% in income taken into consideration by the Tribunal while computing compensation under the head future prospects, is improper. Reliance in this regard is

placed on ***New India Assurance Co. Ltd. Vs. Harpal Singh*** 2014 I ADD 294 and judgment dated 12th January, 2015 in Case No.189/2014 titled ***HDFC Ergo General Insurance Co. Ltd. Vs. Lalta Devi***. The challenge to the award / judgment thus appears to be on this account only and not otherwise. Such limited challenge also fortifies my opinion of the appeal being not entitled to be considered on merits. I may in this regard also notice that I have today in MAC. APP. No.1140/2011 titled ***ICICI Lombard General Insurance Vs. Smt. Renu*** held that increase of 50% in income for computing compensation under the head "future prospects" cannot be restricted to government servants / government employees only, who I may add, are also generally eligible for family pension.

I therefore see no reason to change the opinion formed by me hereinabove.

RAJIV SAHAI ENDLAW, J

MARCH 12, 2015
'pp/bs/gsr'
(corrected and released on 19th March, 2015).