

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1285 OF 2022

The Reliance General Insurance Co. Ltd.

Registered office; Reliance Centre,

19 Walchand Hirachand Marg,

Ballard Estate, Mumbai-400 001.

... Appellant

Vs.

1. Shri Intaj Mainuddin Shaikh

Aged 28 Years, Occ.: Service,

Shrikantha, Moina, Purbo Medinipur,

721629, Kolkatta.

2. M/s Md. Anis Ahmed Rais Shaikh

R. No. 2/10/A, St. Antony Chawl,

Jarimari Pipeline, Kurla (W),

Sakinaka, Mumbai

3. Iqbal Mohd. Ismail Shaikh

R No. 08, New Tata Colony, Bharat Nagar,

Bandra (E), Mumbai

... Respondents

Ms. Kalpana Trivedi for Applicant Niketan Nakhawa with Mr. Pramod Purav for Appellant.

Mr. Nitin V. Gangal with Ms. Namita M. Mestry, Mr. Prerna Shukla and Mr. Ashok D. Kadam for Respondent No.1.

CORAM: ABHAY AHUJA J.

DATE : 12 JUNE 2023

ORAL JUDGMENT :

1. This is an appeal challenging the order dated 26 September 2019 below Exhibit 2 passed by the Motor Accident Claims Tribunal, Mumbai (“MACT, Mumbai”) in an application under Section 140 of the Motor

Vehicle Act, 1988 (the “MV Act”) in Claim Petition No. 849 of 2016 (the “said claim petition”).

2. Earlier the Respondents in the appeal had filed the said claim petition under Section 166 of the MV Act claiming compensation on account of an injury in an accident. The Respondents had also filed an application under Section 140 of the MV Act seeking compensation of Rs. 25,000/- under the “Principle of No Fault Liability”. By the impugned order (below Exhibit No.2), the MACT, Mumbai had allowed the application and passed the following order:-

“1. Perused the application and say filed by the insurer at Exh.11. The opposite party No. 1 and 2 despite of service of notice remained absent and failed to contest the present application. Heard both the sides.

2. I have gone through the copy of FIR bearing Crime No. 169/2015 for the offence punishable U/s 279, 338 of the Indian Penal Code registered against the driver of offending vehicle, copy of insurance policy, disability certificate and medical papers.

3. The copy of FIR admittedly shows that for the rash and negligent driving of the offending vehicle, offence U/s 279, 338 of the Indian Penal Code is registered against the driver. Further the copy of insurance policy is itself evident for showing that the offending vehicle is owned by the opposite party and was insured with the insurer on the day of incident. Moreover the disability certificate discloses that the claimant had sustained severe accidental injuries.

4. The insurer has raised various grounds while opposing the application, but I think it is not required to be considered at this stage and can be looked into at the final hearing of the claim. The present application filed by the claimant U/s 140 of Motor Vehicles Act 1988 is for the interim compensation which is totally based on the principle of No Fault Liability. Therefore, taking into consideration the above said peculiar facts and circumstances as well as documents on record the present application deserves to be allowed, so in the result I passed the following order.

ORDER

Application Exh. 2 is allowed.

Opposite party and insurer are directed to pay jointly and severally interim compensation of Rs. 25,000/- (Rupees Twenty Five Thousand Only) to the claimant, within a period of 30 days from today, failing which they shall pay simple interest @ 7.5% p.a. to the claimant on the said amount from the date of this order till its realisation.

The amount of interim compensation if deposited by the opponents as above, it be paid to the claimant by Account payee cheque, as per rules, on due verification”

(emphasis supplied)

3. Being aggrieved by the said order the insurance company has filed this appeal on the grounds mentioned therein.

4. Mr. Gangal, learned Counsel for the Respondents submits that pursuant to Section 173(2) of the MV Act, there is a minimum amount of Rs. 1,00,000/- in respect of which an appeal can be filed against the award of the Claims Tribunal. He would submit that the amount involved in this appeal is only Rs. 25,000/- and as such this appeal is not

maintainable. Learned Counsel draws the attention of this Court to a decision of the Nagpur Bench of this Court in the case of *Madhav Vs. Mohd. Ali and Ors.*¹ in support of his contentions. He would submit that in a similar situation in that case, the Court had observed that in view of Section 173 (2) of the MV Act the amount involved in the appeal being less than the threshold of Rs. 1,00,000/- and the appeal was held to be not maintainable and dismissed. He would urge this Court to follow the same course of action in this case as well.

5. On the other hand, Ms. Trivedi, learned Counsel for the Appellant-Insurance Company would submit that until and unless order under Section 140 is challenged by way of an appeal, she would not be in a position to raise an objection in the proceedings pending before the MACT, Mumbai under Section 166. Mr. Gangal, learned counsel for the Respondents points out that that concern has also been taken care of by the decision in the case of *Madhav Vs. Mohd. Ali and Ors.* (supra), where in paragraph 13, the Court had observed that these grounds can also be taken up before the Tribunal as the order under Section 140 has been passed on the basis of *prima facie* findings of the Tribunal.

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6. Heard Ms. Trivedi, learned Counsel for the Appellant as well as Mr. Gangal, learned Counsel for the Respondents.

7. Before proceeding further, it would be apposite to quote Section 173 of the M. V. Act as under :

“173. Appeals - (1) Subject to the provisions of subsection (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 one lakh rupees.”

(emphasis Supplied)

8. A perusal of the aforesaid provision clearly indicates that sub-section (1) which permits the filing of an appeal against an award of a claims tribunal is subject to the provisions contained in sub-section (2) of the said Section. Sub-section (2) of the said Section clearly provides that no appeal shall lie against any award of a claims Tribunal if the amount in

dispute in appeal is less than One lakh rupees. The amendment to sub-section (2) has come into effect from 1 st September 2019. Earlier the amount was Rs.10,000/- and with effect from 1 st September 2019, it has been enhanced to One lakh rupees.

9. The impugned order is dated 26 September 2019 and the amount involved is Rs. 25,000/-. The amendment under Section 173 (2) has come into effect from 1 September 2019, from when the earlier amount of Rs. 10,000/- has been enhanced to Rs. 1,00,000/-. Therefore, in my view, since the impugned order is dated 26 September 2019, the enhanced threshold of Rs. 1,00,000/- would be applicable in the case of present appeal. An award passed under Section 140 of the M. V. Act is also an award that is appealable under Section 173(1) of the M. V. Act. However, the sub-section (1) as observed above is subject to sub-section (2) which provides for a minimum amount involved in the dispute of One lakh rupees subject to which an appeal may be preferred. The provisions of Section 173 are quite clear. In my view, therefore, unless the amount involved in the dispute is atleast One lakh rupees, no appeal is maintainable under this provision of the M. V. Act.

10. The decision of the Nagpur Bench of this Court in the case of

Madhav Vs. Mohd. Ali and Ors. (supra), supports the above view. It is clear from the said decision that for an appeal preferred on and after the date of the amendment viz. 1 September 2019, unless the amount involved in the dispute is at least Rs. 1,00,000/- no appeal is maintainable under Section 173 of the MV Act. Paragraphs 9 and 10 of the said decision are usefully quoted as under:-

“9. A perusal of the aforesaid provision clearly indicates that sub-section (1) which permits the filing of an appeal against an award of a claims tribunal is subject to the provisions contained in sub-section (2) of the said Section. Sub-section (2) of the said Section clearly provides that no appeal shall lie against any award of a claims Tribunal if the amount in dispute in appeal is less than One lakh rupees. The amendment to sub-section (2) has come into effect from 1 st September 2019. Earlier the amount was Rs.10,000/- and with effect from 1 st September 2019, it has been enhanced to One lakh rupees. The impugned order is dated 23rd March 2022 and as such, the enhanced amount of One lakh rupees would be applicable to the appeal that has been filed against the order.

10. There is no doubt, as held in the decisions cited above that, an award passed under Section 140 of the M. V. Act is also an award that is appellable under Section 173(1) of the M. V. Act. However, the sub-section (1) as observed above is subject to sub-section (2) which provides for a minimum amount involved in the dispute of One lakh rupees subject to which an appeal may be preferred. The provisions of Section 173 are quite clear. In my view, unless the amount involved in the dispute is atleast One lakh rupees, no appeal is maintainable under this provision of the M. V. Act.”

(emphasis supplied)

11. As in the case cited above as well as in this case, the amount involved in the appeal is Rs. 25,000/-, which is below the threshold limit of Rs. 1,00,000/-. Therefore, in my view, this appeal is not maintainable and deserves to be dismissed.

12. Coming to Ms. Trivedi's concern that if an appeal would not have been filed against the order under Section 140 of the MV Act, the insurance company would not be able to raise this issue in the appeal under Section 166 before the Tribunal, I am of the view that the apprehension is completely misplaced in as much as the order impugned in the appeal is evidently on the basis of *prima facie* findings and this ground can also be raised before passing of the final order in the claim before the Tribunal, which admittedly is pending.

13. In this view of the matter, appeal is dismissed as not maintainable. Liberty is granted to the appellant to take up the grounds, taken in this appeal in the pending petition, before the Tribunal.

14. In view of the disposal of the appeal, interim application also stands disposed. Parties to bear their own costs.

(ABHAY AHUJA, J.)