

HIGH COURT OF ANDHRA PRADESH

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I.A.No.2 of 2023
in
M.A.C.M.A.No. 221 of 2023

Between:

M/s. United India Insurance Company Limited.

.....PETITIONER/APPELLANT

AND

Undamatla Varalakshmi and 6 others.

.....RESPONDENTS/RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **05.07.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
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! Counsel for the Petitioner/Appellant : Sri Naresh Byrapaneni

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> Head Note:

? Cases Referred:

1. (1997) 5 ALD 668 (FB)
2. 2009 (3) ALD 723
3. (2013) 11 SCC 517
4. (1997) 4 ALD 269
5. (1998) 6 ALT 821
6. 1971 (3) SCC 124
7. (2022) 1 SCC 712
8. (1998) 1 SCC 732
9. (2021) 6 SCC 512
10. (2010) 8 SCC 685
11. (2012) 5 SCC 157

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO**

**I.A.No.2 of 2023
in
M.A.C.M.A.No. 221 of 2023**

ORDER: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Naresh Byrapaneni, learned counsel for the petitioner/appellant.

2. M/s.United India Insurance Company Limited has filed the appeal under Section 173 of the Motor Vehicles Act, 1988 (in short 'MV Act'), challenging the award of the Motor Accidents Claims Tribunal-cum-V Additional District and Sessions Court, East Godavari at Rajamahendravaram (in short 'the Tribunal'), dated 14.09.2022, passed in M.V.O.P.No.324 of 2018, partly allowing the claim of the claimants/respondents 1 to 5.

3. The appeal is barred by limitation.

4. I.A.No.1 of 2023 is for condonation of delay in filing the appeal.

5. This I.A.No.2 of 2023 is an application for grant of stay of operation of the decree and judgment dated 14.09.2022 in M.V.O.P.No.324 of 2018 till disposal of the appeal.

6. Sri Naresh Byrapaneni, learned counsel for the petitioner/appellant submitted that though the appeal is barred by limitation and I.A.No.1 of 2023 is yet to be decided finally, the appellant may be granted stay of execution of the award/decreed of the Tribunal. He submitted that there is no bar in grant of

stay of execution of the decree/award during pendency of the application for condonation of delay in filing appeal. He placed reliance on the judgments in ***Badanaboyina Veera Nageswara Rao v. Badanaboyina Rama Devi***¹ and in ***New India Assurance Co. Ltd., Visakhapatnam v. Srikakulapu Ayyababu***² as also in the interim order dated 11.07.2017 passed in MACMA MP No.2802 of 2017 in MACMA No.1510 of 2017. He further placed reliance on Rule 473 of the Andhra Pradesh Motor Vehicles Rules, 1989 (in short 'APMV Rules 1989') regarding the application of the provisions of the Code of Civil Procedure (in short 'CPC') to contend that Order 41 CPC has no application to the appeals under the Motor Vehicles Act, as the said provision has not been made applicable by Rule 473 of the APMV Rules 1989.

7. We have considered the submissions advanced, the legal provisions and the judgments/order placed before us.

8. The short point which arises for our consideration is regarding the applicability of Order 41 Rule 3-A CPC, in particular, to the appeals under Section 173 of the MV Act. In other words, whether pending consideration of the application for condonation of delay in filing appeal, the operation/execution of the award of the Tribunal can be stayed.

9. Section 173 of the Motor Vehicles Act 1988 provides as under:

“Section 173 in The Motor Vehicles Act, 1988

173. Appeals.—

¹ (1997) 5 ALD 668 (FB)

² 2009 (3) ALD 723

(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 one lakh rupees.”

10. Section 173 (1) of the MV Act thus provides for filing of an appeal by any person aggrieved by an award of a Claims Tribunal, to the High Court, subject to the provisions of sub-section (2), within 90 days from the date of the award. Sub-sec.(2) provides that no appeal shall lie against any award of the Claims Tribunal if the amount in dispute in the appeal is less than Rs.1 lakh.

11. The second proviso to Sec.173(1) bars entertaining the appeal after expiry of the period of 90 days, but if the High Court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time, it may entertain the appeal.

12. The MV Act does not provide for the procedure for the appeals filed under Section 173 of the MV Act, though it provides for the Forum of the appeal i.e., the High Court.

13. The APMV Rules 1989 also do not provide for the procedure to be followed by the High Courts in appeals under Section 173 of the MV Act.

14. Rule 473 of the APMV Rules 1989 upon which reliance was placed, by the learned counsel for the appellant, provides as under:

“**473. Code of Civil Procedure to apply in certain cases:** The following provisions of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908), shall so far as may be, apply to proceedings before the Claims Tribunal namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXVIII, Rules 1 to 3.”

15. A bare perusal of Rule 473 of APMV Rules 1989 makes it evident that it provides for the applicability of certain provisions of the CPC, to the proceedings before the Claims Tribunal. The appeal under Section 173 of MV Act is not a proceeding before the Claims Tribunal, but before the High Court.

16. Consequently, the submission of the learned counsel for the appellant, based on Rule 473 of the APMV Rules 1989 that since Order 41 CPC does not find mention in Rule 473, therefore it would not apply to appeals under Section 173 of MV Act, is misconceived.

17. Any other provision either under the MV Act or the APMV Rules 1989 has not been brought to our notice, which excludes the applicability of the Order 41 CPC to the appeals filed under Section 173 of the MV Act before the High Court.

18. In ***Sharanamma v. North East Karnataka RTC***³ the Hon'ble Apex Court held that when an appeal is filed under Section 173 of the MV Act

³ (2013) 11 SCC 517

before the High Court, the normal rules which apply to appeals before the High Court are applicable to such an appeal also.

19. Paragraph-10 in ***Sharanamma*** (supra) is reproduced as under:

“10. When an appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter shall be referred to as “the Act”), before the High Court, the normal rules which apply to appeals before the High Court are applicable to such an appeal also. Even otherwise, it is well-settled position of law that when an appeal is provided for, the whole case is open before the appellate court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law.”

20. In view of the aforesaid, we are of the considered view that to the appeal under Section 173 of the MV Act to the High Court, in the absence of a different procedure having been provided, either under the MV Act or the APMV Rules 1989, and the applicability of Order 41 CPC also not having been excluded, in view of the judgment of the Hon'ble the Apex Court, the normal rules which apply to appeals before High Court, are applicable.

21. Order 41 CPC is that normal rule, which applies to appeals before the High Court.

22. Rule 474 of the APMV Rules 1989 also deserves mention, which is reproduced herein under:-

“474. **Form and number of appeals against the decision of Claims Tribunal :-** (1) An Appeal against the award of a Claims Tribunal shall be a preferred in the form of a memorandum stating concisely, the grounds on which the appeal is preferred;

(2) It shall be accompanied by a copy of the judgment and the award appealed against.”

23. Rule 474 of the APMV Rules 1989 thus provides for the form and number of appeals against the decision of the Claims Tribunal, but it is not with respect to the procedure for consideration of appeals by the High Court. It also does not exclude the applicability of Order 41 CPC. Only it can be said, based on Rule 474 that with respect to the form of appeal and what it should accompany the same shall be governed only by Rule 474 and to that extent on the said point, this rule shall have precedence.

24. Now, Order 41 Rule 3-A CPC provides as under:

“3A. APPLICATION FOR CONDONATION OF DELAY.

(1) When a appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under [rule 11 or rule 13](#), as the case may be.

(3) Where an application has been made under sub-rule (1) the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under [rule 11](#), decide to hear the appeal.”

25. Rule-3A (1) of Order 41 CPC provides for filing of an application supported by an affidavit in a time barred appeal setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within the period of limitation. As per sub-rule (2) of

Rule 3A, if the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court, before it proceeds to deal with the appeal under Rule 11 or Rule 13, as the case may be. Sub-Rule (2) of Rule 3A thus makes it clear that the Court before proceeding to deal with the appeal under Rule 11 or Rule 13, shall finally decide the matter of condonation of delay. Rule 13, has however been omitted by Act 46 of 1999 with effect from 1.07.2002.

26. Sub-rule (3) of Rule 3A, then clearly mandates that where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal. Thus, this provision clearly prohibits grant of stay of execution of the decree so long as the Court does not after hearing under Rule 11, decide to hear the appeal. In other words, as per the mandate under Order 41 Rule 3A CPC, in a time barred appeal unless the application for condonation of delay is allowed and the Court after hearing under Rule 11 does not dismiss the appeal but decides to hear the appeal, stay of execution of decree cannot be granted. This is the mandate of law in a time barred appeal on the point of stay of execution of decree.

27. In ***State of Andhra Pradesh v. Tube Tools and Hardward Mart, Visakhapatnam***⁴ this Court held that Rule-3A of Order 41 CPC is a

⁴ (1997) 4 ALD 269

mandatory provision. It is a clear bar for passing an order of stay of execution of decree before the Court decides to hear the appeal.

28. It is apt to refer paragraph 6 in ***Tube Tools and Hardward Mart, Visakhapatnam*** (supra) as under:

“6. A bare reading of the above provision indicates that the Appellate Court shall not make an order for stay of execution of the decree till the Court does not decide to hear the appeal. It is needless to state that every appeal has to be heard in the first instance under Rule 11 of Order 41 and if it decides not to dismiss the appeal it follow that the same has to be disposed of in accordance with the other rules of Order 41. **Rule 3-A is undoubtedly a mandatory provision. Hence it is clear bar for passing an order of stay of execution of the decree before the Court decides to hear the appeal.** I am fortified in my above view by a judgment of this Court in *Kariapudi Lakshmayya v. Makineni Tulasamma*, 1981 (1) ALT 422. It is held.

“Order 41, Rule 3-A(3) expressly prohibits the Court from making an order for the stay of the execution of the decree unless the Court decides to hear the appeal after hearing the appeal under Order 41, Rule 11 of the Code of Civil Procedure. **In the face of the mandatory provision under Order 41, Rule 3-A(3) the interim stay granted by the Appellate Court is illegal and the same has to be vacated.**”

29. In ***Tanuku Veera Venkata Satyanarayana Sarma v. Akula Raja Rao***⁵ the question that arose for consideration was whether Order 41 Rule 3A CPC is mandatory or directory. The learned single Judge of this Court held that a plain reading of the provision shows that the word ‘shall’ has been applied and hence it has to be deemed to be mandatory *ex facie*. It was further held that it is another thing if the word ‘shall’ is construed as ‘may’ but

⁵ (1998) 6 ALT 821

there must be strong reasons for doing so. A statute has to be interpreted and given its plain meaning, but not otherwise. It was further held that the matter relating to grant or refusal of stay cannot be said to be procedural by any sense of the term. The view taken in ***Tube Tools and Hardward Mart, Visakhapatnam*** (supra) was followed.

30. Learned counsel for the appellant could not place before us any rule from "the Andhra Pradesh, Appellate Side" (in short 'Appellate Side Rules'), providing for a different rules or procedures for the appeals under the Motor Vehicles Act or that the applicability of the Order 41 Rule 3A and Rules 11 and 12 in particular is excluded in the matters of appeals under Section 173. Further, any provision from the Appellate Side Rules, could also not be placed before us that till disposal of the matter of the condonation of delay the operation or execution of the award of the Claims Tribunal can be stayed with or without conditions in Appeals under Section 173 of MV Act.

31. Learned counsel for the appellant placed reliance in ***Badanaboyina Veera Nageswara Rao*** (supra) to contend that if there is any inconsistency between the Appellate Side Rules and the provisions of the Code, the Appellate Side Rules shall prevail.

32. In ***Badanaboyina Veera Nageswara Rao*** (supra) the Full Bench of this Court held that the Appellate Side Rules supplement the provisions of the Code of Civil Procedure particularly Order 41. It was further held that even if there is any inconsistency between the Appellate Side Rules and the provisions of the Code, the Appellate Side Rules having been formulated

pursuant to the Letters Patent power of the Court as well as under Section 122 of the Code, the rules framed by this Court shall prevail. It was held that the power conferred upon the Registrar of the High Court is not inconsistent with the procedure as prescribed under the various rules under Order 41 of the First Schedule of the Code of Civil Procedure. In ***Badanaboyina Veera Nageswara Rao*** (supra), the point as involved in the present case, was not involved. Here, the question is not with respect to the powers of the Registrar of Andhra Pradesh High Court conferred by the Appellate Side Rules, but is with respect to the powers of the High Court and the procedure to be followed in Appeal under Section 173 of MV Act, on which the Appellate Side Rules are also silent.

33. In ***Badanaboyina Veera Nageswara Rao*** (supra), the law as laid down is that the Appellate Side Rules supplement the provisions of CPC and it is only in case of inconsistency between the Appellate Side Rules and the provisions of the Code, the Appellate Side Rules shall prevail. Applying the said law, as learned counsel for the petitioner/appellant could not point out any inconsistency on the point involved, between Appellate Side Rules and the Provisions of Order 41 Rule 3A CPC, the provisions of Order 41 Rule 3A CPC shall also govern the appeal filed under Section 173 MV Act.

34. In ***New India Assurance Co. Ltd., Visakhapatnam*** (supra) the question as framed for decision was that in MACMA at the unnumbered stage whether discretion can be exercised by this Court to grant stay conditional or otherwise, in the light of Order 41 Rule 3A of the CPC. It was held that even at

unnumbered stage, depending upon the facts and circumstances of a particular given case, the Court may exercise the discretion of granting conditional or unconditional stay as the case may be.

35. From a careful reading of the aforesaid judgment, what we find is that such conclusion has been arrived only by observing in paragraph 29 of the report, that *"in the light of the facts and circumstances and also taking into consideration the object and the scheme of the Act aforesaid and also the specific Rules, which had been already referred to supra, this Court is satisfied that in M.A.C.M.As even at unnumbered stage, depending upon the facts and circumstances of a particular given case, the Court may exercise the discretion of granting conditional or unconditional stay as the case may be"*. We further find that the learned Single Judge referred to the judgments upon which reliance was placed therein, and also referred Rule 473 of the APMV Rules 1989, but with respect, we do not find laying down of any law or legal proposition. Rule 473 of the A.P.Motor Vehicles Rules, we have already held, applies certain provision of CPC to the proceedings before the Claims Tribunal. Rule 473 is not with respect to the powers or the procedures in appeal under Section 173 before the High Court. Further, Order 41 Rule 3A of the CPC though was referred in para-5 of ***New India Assurance Co. Ltd., Visakhapatnam*** (supra), but there is no consideration of sub-rule (3). Further, the learned single Judge has observed that the court may exercise the discretion of granting conditional or unconditional stay, as the case may be. Thus, grant of stay in time barred appeal was considered as a matter of

discretion. Whereas, on this aspect, the previous judgments of the Coordinate Benches in ***Tube Tools and Hardward Mart, Visakhapatnam*** (supra) and ***Tanuku Veera Venkata Satyanarayana Sarma*** (supra) clearly held that Order 41 Rule 3A (3) is a mandatory provision, but those judgments escaped consideration in ***New India Assurance Co.Ltd., Visakhapatnam*** (supra). Once it was held by a Coordinate Bench that Order 41 Rule 3A (3) is a mandatory provision and is a clear bar for passing an order of stay of execution of a decree before the Court decides to hear the appeal, there does not lay any discretion in the Court, in a time barred appeal, to grant stay of the execution of the award or decree, conditionally or unconditionally. A contrary view that it was discretionary, could not be taken by a later Coordinate Bench and even without making reference to the earlier pronouncements.

36. We hold that ***New India Assurance Co. Ltd., Visakhapatnam*** (supra) does not lay down any law and in any event, not the correct law.

37. In ***National Insurance Company Limited, Mumbai v. M Mothi Kiran*** (MACMAMP No.2802 of 2017 in MACMA No.1510 of 2017) only interim order is passed. Here, we are considering and deciding the issue finally.

38. Section 173 of MV Act, 2nd proviso, also provides that the High Court may entertain the appeal after 90 days, if it is satisfied that appellant was prevented by sufficient cause from preferring appeal within time. This provision uses the expression 'entertain'.

39. In ***Hindusthan Commercial Bank Ltd. V. Punnu Sahu***⁶ in which the expression 'entertain' occurring in Order XXI Rule 90 CPC was for consideration, the Hon'ble Apex Court held that the expression 'entertain' means "adjudicate upon" or "proceed to consider on merits".

40. Para-4 of ***Hindusthan Commercial Bank Ltd.*** (supra) reads as under:

"4. Before the High Court it was contended on behalf of the appellant and that contention was repeated in this Court, that clause (b) of the proviso did not govern the present proceedings as the application in question had been filed several months before that clause was added to the proviso. It is the contention of the appellant that the expression "entertain" found in the proviso refers to the initiation of the proceedings and not to the stage when the Court takes up the application for consideration. This contention was rejected by the High Court relying on the decision of that Court in *Kundan Lal v. Jagan Nath Sharma*, AIR 1962 All 547. The same view had been taken by the said High Court in *Dhoom Chand Jain v. Chamanlal Gupta*, AIR 1962 All 543 and *Haji Rahim Bux and Sons v. Firm Samiullah and Sons*, AIR 1963 All 320 and again in *Mahavir Singh v. Gauri Shankar*, AIR 1964 All 289. These decisions have interpreted the expression "entertain" as meaning "adjudicate upon" or "proceed to consider on merits". This view of the High Court has been accepted as correct by this Court in *Lakshmiratan Engineering Works Ltd. v. Asst. Comm., Sates Tax, Kanpur*, AIR 1968 SC 488. We are bound by that decision and as such we are unable to accept the contention of the appellant that clause (b) of the proviso did not apply to the present proceedings"

41. In ***Arcelormittal Nippon Steel (India) Ltd. V. Essar Bulk Terminal Ltd.***⁷ where the expression 'entertain' used in Section 9 of the

⁶ 1971 (3) SCC 124

⁷ (2022) 1 SCC 712

Arbitration Act, was for consideration, the Hon'ble Apex Court held that "it is now well settled that the expression 'entertain' means to consider by application of mind to the issues raised. The Court entertains a case when it takes a matter up for consideration. The process of consideration could continue till the pronouncement of judgment".

42. In ***Arcelormittal Nippon Steel (India) Ltd.*** (supra) the Hon'ble Apex Court referred to its previous judgment in ***Martin & Harris Ltd.***⁸ in which the expression 'entertain' as used in the proviso to Section 21 of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, was considered and it was held that the word 'entertain' mentioned in the first proviso to Section 21 (1) in connection with grounds mentioned in clause (a) would necessarily mean entertaining the ground for consideration for the purpose of adjudication on merits and not at any stage prior thereto.

43. In ***Brahampal v. National Insurance Co.***⁹ In which Section 173, second proviso of the Motor Vehicles Act 1988 was for consideration, the Hon'ble Apex Court held that the word 'may' is used which ordinarily is not a word of 'compulsion'. It is an enabling word and it only confers capacity, power or authority and implies discretion. In that context, it was held that sufficient discretionary power upon the Court to entertain appeal even beyond the period of 90 days was conferred.

44. Thus, there is no question of entertaining the appeal i.e., to proceed to consider the merits of the appeal with respect to the order under

⁸ (1998) 1 SCC 732

⁹ (2021) 6 SCC 512

appeal, in a time barred appeal, so long as the condonation of delay matter is not decided.

45. For deciding an application for interim relief, the Court has to see if it is a case for grant of interim relief or not. The Court has to satisfy, if, any *prima facie* case is made out; if the order under appeal is erroneous and if the operation is not stayed, some irreparable injury is going to be caused to the appellant. Any such view even *prima facie*, cannot be taken, unless the Court proceeds to consider the appeal on its merits and demerits. Interim relief as such cannot be considered till the appeal is entertained. And, it cannot be entertained, so long as the delay condonation matter is not decided. Interim relief cannot be granted just for asking in a time barred appeal.

46. Learned counsel for the petitioner/appellant submitted that the Court may impose condition of deposit of 50% of the awarded amount and also for release of the said amount or part thereof in favour of the claimants/respondents and subject to such condition, the execution of the award may be stayed. Learned counsel for the petitioner/appellant submitted that if such an order is passed the claimants/respondents may get some amount at this very stage to mitigate their hardship.

47. The above argument though *prima facie*, attractive, but we are not impressed.

48. Right to appeal is a statutory right, but, subject to the limitations or conditions imposed by the Statute, one of which is that the right to appeal is to be exercised within the period of limitation. If it becomes time barred,

condonation of delay, is not as of right, but depends upon satisfaction of the Court regarding existence of sufficient cause by which the appellant was prevented from approaching the Court in time.

49. In ***Brahampal*** (supra) the Hon'ble Apex Court further held, referring to its previous judgment in ***Balwant Singh v. Jagdish Singh***¹⁰ that the Law of Limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. It was further held that once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant.

50. In ***Brahampal*** (supra) the Hon'ble Apex Court further referred to the judgment in ***Maniben Devraj Shah v. Municipal Corpn. Of Brihan Mumbai***¹¹ in which it was held that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts cannot become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

51. In view of the aforesaid judgments and the law, we are of the considered view that in a time barred appeal, so long as the matter for condonation of delay is not considered and decided in favour of the applicant for condonation of delay, the valuable right of the successful litigant/respondent

¹⁰ (2010) 8 SCC 685

¹¹ (2012) 5 SCC 157

acquired on the basis of the judgment/award under challenge cannot be interfered with or restricted to the execution of the decree only to a limited extent.

52. By grant of any such interim order, at this stage, as submitted by the appellant's counsel, would be to put restriction on the right of the claimants to get execution of the award before the Tribunal. The claimants have acquired a right to treat the award as having attained finality, on expiry of the limitation period for appeal, which cannot be interfered with by confining the same to 50% of the awarded amount, pending consideration of the delay condonation matter.

53. Thus, considered, we hold as under:

- (i) In a time barred appeal under Section 173 of the Motor Vehicles Act before the High Court, stay of execution of the award cannot be granted, so long as the delay condonation matter is not decided finally, in view of 2nd proviso to Section 173 of the MV Act & Order 41 Rule 3A (3) CPC.
- (ii) ***New India Assurance Co. Ltd., Visakhapatnam v. Srikakulapu Ayyababu*** (supra) does not lay down any law and in any event, not the correct law. The same is over ruled.

54. In the result, the prayer of the petitioner/appellant to stay the award is rejected, at this stage.

55. I.A.No.2 of 2023 is rejected.

56. The appellant is at liberty to file fresh application after the delay condonation matter is decided finally, if the occasion so arises.

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

Date: 05.07.2023
Dsr

Note:
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