

CM-580-CII-2020 IN/& FAO-577-2020(O&M)

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2025:PHHC:036959



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

1. CM-580-CII-2020 IN/& FAO-577-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

2. CM-594-CII-2020 IN/& FAO-592-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

3. CM-2133-CII-2020 IN/& FAO-897-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

CM-580-CII-2020 IN/& FAO-577-2020(O&M)

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4. CM-2170-CII-2020 IN/& FAO-924-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

5. CM-2186-CII-2020 IN/& FAO-933-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

6. CM-2834-CII-2020 IN/& FAO-1105-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

7. CM-5325-CII-2020 IN/& FAO-1792-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

CM-580-CII-2020 IN/& FAO-577-2020(O&M)

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National Insurance Company Limited and others

... Respondents

8. CM-5961-CII-2020 IN/& FAO-2006-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

9. CM-5975-CII-2020 IN/& FAO-2022-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

10. CM-6007-CII-2020 IN/& FAO-2030-2020(O&M)

Jatinder Kumar and others

... Appellants

Versus

National Insurance Company Limited and others

... Respondents

Date of decision : 18.03.2025



CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Devesh Nehra, Advocate
for the appellants.

Mr.Paul S. Saini, Advocate
for respondent no.1-insurance company.

VIKAS BAHL, J.(ORAL)

1. The present order would dispose of ten FAOs i.e., FAO-577-2020, FAO-592-2020, FAO-897-2020, FAO-924-2020, FAO-933-2020, FAO-1105-2020, FAO-1792-2020, FAO-2006-2020, FAO-2022-2020 and FAO-2030-2020. All the said FAOs have been filed by the driver and the owners of the offending vehicle involved in the accident which took place on 09.12.2016 in which several persons were stated to have died and one was injured. It is not in dispute that in all the appeals, an application under Section 173 of the Motor Vehicles Act 1988 read with Section 151 CPC has been filed in which exemption from depositing the amount of Rs.25,000/- at the time of filing of present appeals has been sought. Since a common issue arises in all the cases, thus, all the said cases are being decided by the present common order. With the consent of all the parties, FAO-577-2020 is taken up as the lead case.

2. CM-580-CII-2020 has been filed in FAO-577-2020 and the same is the application under Section 173 of the Motor Vehicles Act read with Section 151 CPC seeking exemption from depositing the amount of Rs.25,000/-. It is not in dispute that similar applications have been filed in each of the abovesaid FAOs by the common appellants, who are the driver



and co-owners.

3. Learned counsel for the applicants-appellants has submitted that the applicants-appellants are poor persons and thus, are not able to deposit Rs.25,000/- and it is prayed that the applications be allowed and the applicants-appellants be granted exemption from depositing Rs.25,000/-.

4. Learned counsel appearing for respondent no.1-insurance company has raised an objection and has submitted that there is no provision of law which entitles the applicants-appellants from seeking exemption from depositing Rs.25,000/-, moreso, when 50% of the amount awarded is more than Rs.25,000/-. It is submitted that the provision of Section 173 of the Motor Vehicles Act 1988 is mandatory and no right has been given to the appellants who wish to file an appeal to seek exemption with respect to the said mandatory deposit of Rs.25,000/- or 50% of the amount so awarded, whichever is less. It is further submitted that in FAO-577-2020 the amount which has been awarded is Rs.25,32,900/- and the 50% of the same is much higher than Rs.25,000/- and thus, it is mandatory for the applicants-appellants to deposit the said amount of Rs.25,000/- before their appeals could be entertained. It is submitted that the said applications deserve to be dismissed on the said ground alone and the applicants-appellants are not entitled to be heard on merits. Learned counsel for respondent no.1 has further pointed out that a perusal of the memo of parties would show that there are three appellants, who have filed the appeals and appellants no.2 and 3 are stated to be the owners /co-owners of



truck trola in question and the appellant no.1 is stated to be the driver of the truck trola. It is submitted that it is impossible to believe that the appellants could not deposit the amount of Rs.25,000/- to meet the mandate of the proviso under Section 173 of the Motor Vehicles Act. It is submitted that the applications filed by the present applicants-appellants are cryptic and do not even state that the appellants do not own and possess any property movable or immovable. It is submitted that the said applications have been filed only to not comply with the mandatory provision of the Act.

5. On a pointed query raised by this Court as to whether the applicants-appellants are ready to deposit the said mandatory amount of Rs.25,000/-, learned counsel for the applicants-appellants has submitted that they are not ready to deposit the said amount and has prayed that the applications be considered on merits.

6. This Court has heard the learned counsel for the parties and has perused the paper book and is of the opinion that CM-580-CII-2020 filed in FAO-577-2020 and also similar applications filed in all the other FAOs deserve to be dismissed for the reasons stated hereinafter.

7. Section 173 of the Motor Vehicles Act 1988 under which the applications for exemption from depositing Rs.25,000/- have been filed reads as under:-

“173. Appeals. - (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an



appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than [one lakh] rupees.”

A perusal of the above provision would show that any person who is aggrieved by the award of a Claims Tribunal, provided that the amount so awarded is more than Rs.1 lacs can within 90 days from the date of the award prefer an appeal in the High Court. The first proviso of Section 173 categorically lays down 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 Rs.25,000/- or 50% of the amount so awarded, whichever is less. An enabling provision has been provided in the form of second proviso as per which the High Court has power to entertain the appeal even after the expiry of the period of 90 days but no such enabling provision to exempt the payment of the amount which is required to be paid before the appeal is entertained, has been provided. Thus, the



said provision with respect to deposit does not provide for any exception. The reason behind the said provision is apparent, inasmuch as, in cases where the compensation has been awarded and the party has been directed to pay the amount, the party is necessarily required to deposit a part of the said amount so that appeals are not filed in routine and also in order to ensure that in case the appeal is dismissed at least the amount of Rs.25,000/- or 50% of the amount so awarded, whichever is less, is paid to the claimants. The claimants cannot be made to suffer another round of litigation without the appellants, who are seeking to challenge the award, even being made to deposit the mandatory amount as provided in the proviso of Section 173. No provision of law or judgment has been cited before this Court on behalf of the applicants-appellants to show that such an application for seeking exemption can be entertained or allowed and the appellants have a right to be heard on merits without the appellants depositing the mandatory amount as provided in proviso to Section 173. It is thus, apparent that the applications filed for exemption are misconceived and deserve to be rejected.

8. On a pointed query raised by this Court as to whether in case time is granted the applicants-appellants would be ready to deposit the mandatory amount as provided under Section 173, the answer of the learned counsel for the applicants-appellants is in the negative. Since the appeals cannot be entertained till the time the said amount is not deposited, thus, left



with no other option, the applications as well as the appeals are liable to be dismissed in view of the proviso to Section 173.

9. In the case of *Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and Ors.* reported as *(2021) 18 SCC 1*, the Hon'ble Supreme Court of India while considering the challenge to the various provisions of The Real Estate (Regulation and Development) Act, 2016 as well as The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016, including Section 43(5) of the 2016 Act which was with respect to making of a pre-deposit for entertaining the appeal before the Tribunal, had observed that the legislature in its wisdom intended to ensure the money which has been computed by the authority at least be safeguarded if the promoter intends to prefer an appeal before the Tribunal and in case the appeal fails at a later stage, the amount be paid to the consumer to save harassment to the consumer. It was further observed that the said provision would avoid unscrupulous and uncalled for litigation at the appellate stage and would restrict the promoter to file appeal only if there is something substantial in the appeal and that the intention of the legislature was to make the promoter show their bonafides by depositing the amount so contemplated. The Hon'ble Supreme Court had thus, decided question no.4 as framed in paragraph 31 against the promoter and had upheld the validity of Section 43(5) of the 2016 Act. Question no.4 as framed in paragraph 31 and Section 43(5) of the 2016 Act are reproduced hereinbelow:-



“31. After we have heard learned Counsel for the parties at length, the following questions emerges for our consideration in the present batch of appeals are as under:

xxx xxx xxx

4. Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

xxx xxx xxx

121. Before we examine the challenge to the proviso to Section 43(5) of the Act of making pre-deposit for entertaining an appeal before the Tribunal, it may be apposite to take note of Section 43(5) of the Act, 2016. Section 43(5) reads as follows:

“43. Establishment of Real Estate Appellate Tribunal-

.....

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.



Explanation – For the purpose of this Sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.”

First proviso to Section 173(1) of the Motor Vehicles Act 1988 is similar to the proviso to Section 43(5) of the 2016 Act and thus, the observations made by the Hon’ble Supreme Court in the abovesaid judgment would also apply in the present case.

10. Additionally, it would be relevant to note that even the applications filed under Section 173 of the Motor Vehicles Act seeking exemption are cryptic. The relevant portion of the said applications are reproduced hereinbelow:-

“RESPECTFULLY SHOWETH: -

1. That the accompanying appeal has been filed by the appellant/ applicant in this Hon'ble High Court which is likely to succeed on the grounds mentioned therein.

2. That the appellant/ applicant is a poor person and not able to deposit the amount Rs.25,000/- which have to be deposited at the time of filing the present appeal.

It is, therefore, respectfully prayed that the appellant may kindly be exempted from depositing the amount of Rs.25,000/- for filing the present appeal in the interest of justice and fair play.

Note: Affidavit is attached herewith.”

A perusal of the said application would show that although there are three appellants but it has only been averred that “appellant-



applicant is a poor person”. The affidavit of only appellant no.1 have been attached along with the applications and no affidavit of appellants no.2 and 3 have been attached.

11. Learned counsel for respondent no.1 has rightly pointed that the appellants no.2 and 3 are the co-owners of truck trolly involved in the accident and it is highly improbable that they along with appellant no.1 would not even have the amount of Rs.25,000/-, to be deposited to meet the mandatory requirement. With respect to the appellants no.2 and 3, there is no affidavit stating that they are poor persons. Even no details with respect to the fact as to whether the appellants have any movable or immovable property or not has not been given. Apparently, the applications have been filed only to not comply with the mandate of the second proviso of Section 173. In FAO-577-2020, the amount awarded was Rs.25,32,900/- and 50% of the same would be much higher than Rs.25,000/-, which is mandatorily required to be deposited. It is not in dispute before this Court that in all the cases, 50% of the amount awarded is more than Rs.25,000/-. Thus, it was mandatory for the appellants to have deposited the said amount of Rs.25,000/- and the same not having been done nor any time having been sought to deposit the said amount even before this Court, the applications under Section 173 of the Motor Vehicles Act read with Section 151 CPC seeking exemption from depositing Rs.25,000/- are liable to be dismissed and the accompanying appeals are also liable to be dismissed.



12. Keeping in view the abovesaid facts and circumstances, the applications i.e., CM-580-CII-2020, CM-594-CII-2020, CM-2133-CII-2020, CM-2170-CII-2020, CM-2186-CII-2020, CM-2834-CII-2020, CM-5325-CII-2020, CM-5961-CII-2020, CM-5975-CII-2020 and CM-6007-CII-2020 filed in all the appeals are dismissed and the accompanying appeals i.e., FAO-577-2020, FAO-592-2020, FAO-897-2020, FAO-924-2020, FAO-933-2020, FAO-1105-2020, FAO-1792-2020, FAO-2006-2020, FAO-2022-2020 and FAO-2030-2020 are also dismissed.

(VIKAS BAHL)
JUDGE

March 18, 2025.
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No