

(2024) 10 GUJ CK 0029
In the Gujarat High Court
Case No : First Appeal No. 3916 of 2018

Bhargavbhai Rajnikant Sheth & Anr. Versus
Vs

APPELLANT

Kantaben Ramaji Makwana & Ors.

RESPONDENT

Date of Decision : 08-10-2024

Acts Referred:

Citation : (2024) 10 GUJ CK 0029

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Hemant S Shah, Paresh M Darji

Final Decision : Dismissed

Judgement

J. C. Doshi, J

1. Heard learned advocates for the respective parties.
2. Present First Appeal stood abated qua appellant No.2 – owner of the offending vehicle.
3. Present First Appeal challenges the judgment and award passed by the learned MACT, Gandhinagar, whereby the learned Tribunal has partly allowed the claim petition observing that the claimants were entitled for the compensation of Rs.8,34,250/-jointly and severally from the appellants herein along with interest at the rate of 9% from the date of filing the claim petition till realization .
4. Learned advocate Mr. Hemant Shah for the appellant submits that the driver and owner of both the vehicles are different parties. He would further submit that the judgment and award passed by the learned Tribunal for them are different and distinct. Though they were joined together in a single litigation, their rights are independent. Therefore, he would submit that despite the death of the owner of the vehicle, the driver could maintain the appeal individually and severally and therefore, the appeal is maintainable. Upon such submission, he prays to decide the appeal on its own merit.

5. On the other hand, learned advocate Mr. Darji for the respondents raised contention of maintainability of this appeal on the ground that the appellants were sailing in the same boat. He would further submit that since the appellant No.2 has expired, appeal qua him stood abated. The decree passed against them were jointly and severally and therefore, now the decree i.e. judgment and award is inseparable. He would further submit that as far as appellant No.2, - owner of the offending vehicle is concerned, the impugned judgment and award became final as appeal against him is abated. It cannot be altered in a appeal filed by the appellant No.1, it is no separate and independent cause of action to prefer appeal. Under these circumstances, he would submit that the appeal would stand abated in toto.

6. In support of his submission, learned advocate Mr. Darji has referred to and relied upon the judgments of the Hon'ble Apex Court in case of Goli Vijayalakshmi and others Vs. Yendru Sathiraju (Dead) by LR, (2019) 11 SCC 352, Budh Ram and others Vs. Bansi and others, (2010) 11 SCC 476 and Badni by Lrs Vs. Siri Chanda by Lrs and others reported in AIR 1999 SC 1077.

7. The constitution bench in case of Sardar Amarjit Singh Kalra(Dead) by LRs and Others v. Pramod Gupta(Smt)(Dead) by LRs and Others reported in 2003(3) SCC 272 exposes the provisions of law in para 34 as under:-

""34. In the light of the above discussion, we hold:-

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseverable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable

or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other."

8. Again in case of Budh Ram (supra), the Hon'ble Apex Court applied the test whether the judgment/decree passed in the proceedings vis-a-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree inasmuch as two decrees are incapable of enforcement or would be mutually self-destructive. It is held by the Hon'ble Apex Court as under:-

"This depends upon the facts and circumstances of an individual case. Where each one of the parties has an independent and distinct right of his own, not interdependent upon one or the other, nor the parties have conflicting interests inter se, the appeal may abate only qua the deceased respondent. However, in case, there is a possibility that the court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto for the simple reason that the appeal is a continuity of suit and the law does not permit two contradictory decrees on the same subject-matter in the same suit. Thus, whether the judgment/decree passed in the proceedings vis-à-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree is the relevant test."

9. In Goli Vijayalakshmi (supra), the Hon'ble Apex Court after following the ratio laid down in case of Sardar Amarjit Singh Kalra (supra), in para 21 and 22 reads as under:-

"21. Applying the aforesaid principles, the facts of the instant cases on hand clearly manifest that the judgment and decree passed by the trial Court became final qua appellant no. 2 (defendant no. 2) upon abatement of the appeal qua him vide order dated 24th July, 2009. If this Court would permit the remaining appellants to prosecute the appeals and, in the event they were to succeed, indisputedly, there would be mutually inconsistent/contradictory decrees inasmuch as the suit has already been decreed qua appellant no. 2 (defendant no. 2) on the one hand and the suit would stand dismissed qua appellant nos. 1 & 3 (defendant nos. 1 & 3) or decreed against them in reference to schedule 'C' property and not against appellant no. 2 (defendant no. 2) due to dint of cross appeal filed by the plaintiff.

22. If the instant appeals were to be allowed, the same would result in a situation where the enforcement of the two decrees would be inexecutable and

the enforcement of one would negate or render impossible the enforcement of the other and to further simplify, the plaintiffs/respondents would be entitled to the share of the appellant no. 2(defendant no. 2) in the suit schedule `A' and `B' properties and there is no way he could enforce the same without negating the enforcement of the other decree viz. dismissal of the suit qua appellant nos. 1 & 3(defendant nos. 1 & 3) since the suit schedule properties each constitute a single unit and the same has not yet been demarcated and/or divided amongst the defendants and without such clear demarcation and delineation of the properties, indisputedly, which has not yet happened, it would be impossible for the plaintiffs/respondents to enforce decree qua the appellant no. 2(defendant no. 2) without impinging on the rights of the appellant nos. 1 & 3(defendant nos. 1 & 3)."

10. Factual aspects of the case on hand demonstrate that legal heirs of deceased Ramji have filed claim petition on the ground that the offending vehicle was playing the vehicle endangering the human life without following the traffic rules and came on wrong side and dashed with the deceased in resulted into grievous injuries and later on death of the deceased. After filing the petition, the learned Tribunal issued notice to the driver and owner of the offending vehicle. Though driver and owner are served and remained present before the learned Tribunal, they did not chose to contest the petition. After hearing the parties, the learned Tribunal passed the judgment and award as indicated above. Thus, the decree has been made enforceable against driver and owner of the offending vehicle jointly and severally. In a road accident case, driver has no self and separate identity, it appears through the owner of the vehicle. Under the Motor Vehicle Act, if claim is made out against the owner of the vehicle, it ipso facto made out against the driver. If the owner has expired, the driver of the offending vehicle has no separate or distinct right, but his right to appeal would die along with the death of the owner if heirs of owner of the offending vehicle are not joined. In the present case, the award, in such circumstances, became final against him as appeal stood abated qua the owner. In view of the aspect that the owner of the vehicle has expired, the appeal qua him stood abated. Since the judgment and award is inseparable, if any other judgment and award is passed, it would suffer from the vice of contradiction and inconsistent judgment. Thus, the appeal deserves to be abated in toto.

11. In the result, present appeal stands abated in toto.