
(2006) 12 AP CK 0093

In the Andhra Pradesh High Court

Case No : CMA No. 2583 of 2001 and Cross-Objections SR No. 86445 of 2001

Branch Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Are Ramulu @ S. Ramulu and Another

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170

Citation : (2007) 3 ALD 531

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Addepalli Suryanarayana, in CMA No. 2583 of 2001, for the Appellant; K.M. Mahender Reddy, for Respondent No. 1, S. Niranjana Reddy, in CMA No. 2583 of 2001 and for Respondent No. 1 in Cross-Objections SR No. 86445 of 2001, Addepalli Suryanarayana, in Cross-Objections SR No. 86445 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—The first respondent filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (the Act, for brevity), seeking compensation of Rs. 2,00,000/- for the injuries suffered by him in a motor vehicle accident, said to have been occurred due to the rash and negligent driving of the driver of the lorry belonging to the second respondent and insured with the appellant.

2. After contest by the second respondent and the appellant, the Tribunal having held that the accident occurred due to the rash and negligent driving of the driver of the lorry belonging to the second respondent, awarded Rs. 1,50,000/- as compensation to the first respondent. Questioning the compensation awarded to the first respondent, the insured preferred this appeal and dissatisfied with the compensation awarded to him, the first respondent preferred cross-objections.

3. At the time of hearing of the appeal, the learned Counsel conceded that in view of the ratio in Dama Kothilingam @ Kotilingaiah Vs. Joint Collector and Another, , the appeal preferred by the appellant without obtaining permission u/s

170 of the Act is not maintainable and contended that since the appeal itself is not maintainable, the cross-objections also are not maintainable and so, they need not be heard on merits.

4. The contention of the learned Counsel for the first respondent is that since the appeal filed by the appellant was admitted, cross-objections cannot be dismissed as not maintainable. At the time the appeal was admitted, there were conflicting judgments about the maintainability of the appeal by the insurer questioning the quantum of compensation. In *Nicolleta Rohtagi's* case (*supra*), the apex Court, by overruling some earlier judgments, held that an insurer cannot, without obtaining permission u/s 170 of the Act from the Tribunal, maintain an appeal questioning the quantum of compensation or on the pleas that are available only to the owner of the vehicle, but not to it. In this case, since the appellant did not, admittedly, obtain permission u/s 170 of the Act, the appeal preferred by it is liable to be dismissed as not maintainable.

5. Now the point for consideration is whether the cross-objections are maintainable?

6. The contention of the learned Counsel for the appellant is that the question raised by the learned Counsel for respondent is not *res integra*, because in *Ashok Kohli Vs. Prakash Chand and Others*, , it is held that the cross-objections cannot be maintained when the appeal itself is not maintainable. In that case, it was held that the right to prefer cross-objections is a contingent right and that contingency would arise only if an appeal is filed by the other side after fulfilling all the statutory conditions, and for cross-objections to survive, there must be an appeal which is maintainable and which survives for decision, and that cross-objections would survive the appeal either when it is withdrawn or is dismissed for default, but if the appeal itself is not maintainable, the "default" will have no role to play and the "withdrawal" would also not be of any avail, as the appeal would be dismissed for not being maintainable, and when a party who has a right to appeal, does not prefer the same and waits for the adversary to file appeal and then to take a cross-objection, runs the risk of availing the qualified alternative remedy on the maintainability of the appeal preferred by the adversary, and so, mere filing of cross-objections does not *ipso facto* invest in the respondent an independent right of being heard on cross-objections.

7. In this case, the appeal is being dismissed as not maintainable. So, as per the ratio in the above decision question of cross-objections surviving does not arise. Unfortunately, the Tribunal without mentioning as to what amount it is awarding under what head, just awarded the consolidated amount of Rs. 1,50,000/- to the first respondent. From the evidence on record I am of the opinion that the compensation awarded by the Tribunal is more than just and reasonable compensation payable to the respondent. If a correct appraisal is made, respondent would have been entitled to lesser compensation than that was awarded by the Tribunal. So it, cannot be said that the compensation awarded by the Tribunal also is not adequate. For that reason also, I find no merits in the

cross-objections.

8. Hence, the appeal and cross-objections are dismissed. The parties are directed to bear their own costs.