

(1997) 09 MAD CK 0037
In the Madras High Court

Cheran Transport Corporation Limited	APPELLANT
Vs	
Marudhammal and Others	RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1939 — Section 110D

Citation : (1998) 3 LW 112 : (1998) 1 MLJ 118

Hon'ble Judges : S.M. Abdul Wajab, J

Bench : Division Bench

Judgement

S.M. Abdul Wajab, J.—This appeal is against the judgment and decree of the Motor Accident Claims Tribunal (Subordinate Judge),

Coimbatore, in M.C.O.P. No. 221 of 1986, dated 24.8.1987.

2. On 6.4.1986 when Karuppusami, a passenger in the bus T.M.L. 4606 belonging to the appellant died when the vehicle suddenly started moving

fastly when. he attempted to get down from the bus. For the said motor accident, the respondents 1 to 5, the legal heirs of the deceased

Karuppusami, filed a claim petition for Rs. 1,62,000. The Tribunal has awarded a sum of Rs. 60,750 with interest at 12% per annum. Aggrieved

by the award, the appellantCheran Transport Corporation has filed this appeal.

3. After hearing the counsel for the appellant when the court was about to pass orders dismissing the appeal on merits, the learned Counsel for the

respondents/claimants raised a point that he should be allowed to contend that the award of compensation is very much less and an excess

compensation should be awarded even though his clients have not filed a cross-objection.

4. As the matter involved a question of law as to whether the respondent who has not filed the cross-objection can be allowed to argue against the judgment, the learned Counsel for the respondents was asked to argue the aforesaid question as a preliminary issue. Thereupon, the learned Counsel for the respondents cited a number of authorities in support of his contention that even though no cross-objection is filed, the court can permit him to argue against the judgment challenged in appeal. The court considered the arguments of the learned Counsel for the first respondents as well as the appellant and found that there is no substance in the contention of the counsel for the respondents.

5. Section 110-D of the Motor Vehicles Act, 1939, confers on this Court the jurisdiction to entertain an appeal. From the wording of the provisions of the Act, which is given below, the High Court has to deal with an appeal as any other appeal presented to it under the Civil

Procedure Code.

110-D--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 award, prefer an appeal to the High Court:

Provided 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.

Since the Motor Vehicles Act, 1939, Act 4 of 1939 empowers the High Court to hear the appeals, by virtue of Section 17 of the Act, the CPC is

applicable, to the High Court. Therefore, Order 41 of CPC is attracted when the High Court hears the appeal preferred to it from the award of the

Motor Accident Claims Tribunal. This is the view taken by a Bench of this Court in *R. Govindarajulu Naidu v. S. Dharman*, 1986 A.C.J. 178.

6. Order 41, Rule 22 of CPC is also consequently attracted, which is as follows:

22(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the

finding against him in the court below in respect of any issue ought to have been in his favour; and may also take any cross-objection) to the decree

which he could have taken by way of appeal, provided he has filed such objection in the appellate court within one month from the date of service

on him or his pleader of notice of the day fixed for hearing the appeal, or within

such further time as the appellate court may see fit to allow.

Explanation: A respondent aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under this rule,

file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the court on

any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

7. A reading of the abovesaid provisions clearly indicates that if a respondent is aggrieved by the decree, he has to file cross-objection. Since, in

this case, the respondents counsel seeks to reverse the decree with reference to the amount and claims higher than what is decreed, he has to file

an appeal as provided for in the aforesaid rule. But the learned Counsel contends that there is no necessity for such cross-objection and he should

be permitted to contend against the decree as a whole.

8. The learned Counsel for the respondents cited the following decisions in support of his contentions:

(1) Pannalal Vs. State Bombay and Others, ; (2) Giasi Ram and Others Vs. Ramjilal and Others, (3) Koksingh Vs. Smt. Deokabai, ; (4) Mahant

Dhangir and Another Vs. Madan Mohan and Others, .

9. In Pannalal Vs. State Bombay and Others, , the Apex Court has dealt with the scope of the power granted to the appellate court under Order

41, Rule 33 of Civil Procedure Code. Under the said Rule, a relief can be granted to a respondent in an appeal against a co-respondent, but if the

relief claimed by a respondent is against the appellant, the procedure to be adopted is to file a cross appeal. At page 991, the learned Judges

observed as follows:

In our opinion, the view that has now been accepted by all the High Courts that Order 41, Rule 22 permits as a general rule, a respondent to

prefer an objection directed only against the appellant and it is only in exceptional cases, such, as where the relief sought against the appellant in

such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the

question being re-opened between the objecting respondent and other respondents, that an objection under Order 41, Rule 22 can be directed

against the other respondents, is correct.

Here, the relief claimed by the respondents is against the appellant. Hence, the said decision is not applicable.

10. In *Giasi Ram and Others Vs. Ramjilal and Others*, , the relief has been granted in favour of the female heirs, who were also plaintiffs in the suit,

but, who did not file appeal along with the plaintiffs against the decree when a decree was granted in part for half of the property only in favour of

the sons. But the appeal has been preferred by the other male plaintiffs. In the said case, the alinee was only a co-respondent. In the said case, it

was found that the alienee had no right at all to the property in question. The female heirs' right to the property was negated by the trial court.

The District Court on appeal granted decree in favour of the sons only in its entirety. The High Court on appeal by the alienee granted decree in

favour of the sons to half share only relating to the sons share and cancelled the decree relating to the female heirs, since they did not prefer the

cross-appeal in the High Court. The appeal to the Supreme Court was preferred by the sons. Therefore, the daughters claim was not against the

appellant, but against the co-respondents, the legal heirs of the alinees. Therefore, the said case is not applicable to the facts of the present case.

11. In *Koksingh Vs. Smt. Deokabai*, , the Supreme Court was concerned with the power of the appellate court under Order 41, Rule 33 of the

CPC in granting relief among the respondents, it has been held as follows:

The second point raised by the appellant was that the respondent did not appeal from the decree of the trial court negating her claim in the suit for

a charge on the property. It was contended that the High Court was wrong in granting a decree for enforcement of the charge as the decree of the

trial court became final so far as the respondent was concerned as she did not file any appeal therefrom. We are unable to accept this contention.

Under Order 41, Rule 33 of the Civil Procedure Code, the High Court was competent to pass a decree for the enforcement of the charge in

favour of the respondent notwithstanding the fact that the respondent did not file any appeal from the decree.

The relief granted is in favour of the appellant, who has actually preferred the appeal. In the said case, the suit was filed for recovery of purchase

money and for a charge against the property sold. The contention of the defendant was that the charge could not be enforced against the property

as it formed part of the occupancy holding. The trial court did not grant a decree relating to the charge, but granted a personal decree. The defendant appealed to the High Court. The High Court found that the plaintiff was entitled to enforce the charge, but there was no personal decree against the defendant for the money, since the claim was barred by limitation. As against the judgment of the High Court, the defendant preferred the appeal to the Supreme Court. The Supreme Court found that the plaintiff was entitled for the charge. At this stage, a contention was raised by the defendant that when the trial court negatived the claim for charge against the property by the plaintiff and the plaintiff did not file any cross-appeal to the High Court, it has become final and hence the High Court ought not to have granted a decree relating to the charge. This contention was negatived by the Supreme Court and it held that under Order 41, Rule 33 of the Civil Procedure Code, the appellate court shall have power to pass any decree and may make any order which ought to have been passed or made. The facts of the present case is entirely difference, hence the same is not applicable.

12. Mahant Dhangir and Another Vs. Madan Mohan and Others, . This case is not helpful to the respondent, because the cross-objection has been filed by the co-respondents against the other respondents. The question in this case was whether a co-respondent can maintain a cross-objection against another co-respondent. In paragraph 12, the Apex Court has held as follows:

Generally, the cross-objection could be urged against the appellant. It is only by way of exception to this general rule that one respondent may urge objection as against the other respondent. The type of such exceptional cases are also very much limited. We may just think of one or two such cases. For instance, when the appeal by some of the parties cannot effectively be disposed of without opening of the matter as between the respondents inter se. Or in a case where the objections are common as against the appellant and co-respondent. The court in such cases would entertain cross-objection against the co-respondent.

13. In view of the above decisions, it is clear that the respondents who are aggrieved by the decree cannot challenge the decree in an appeal preferred by the plaintiff or defendant, without filing a cross-appeal.

14. Now, we will take up the appeal preferred by the appellant for consideration. The income of the deceased Kuppusami has been proved by

Exs. P-1 and P-2. The tribunal accepting them, fixed the monthly income of the deceased at Rs. 600. Even though it was stated that he was

earning another sum of Rs. 300 per month by working in the garden during his leisure hours, the tribunal has found that he could have earned only

Rs. 100 on that account. This has been arrived at after considering the evidence of P.W. 2, the owner of the garden. Out of the income of Rs. 700,

the tribunal has found that he would have taken Rs. 250 for his personal expenses. This appears to be reasonable. The deceased was 43 years old

at the time of his death. The multiplier adopted by the tribunal is 15. This also seems to be reasonable. Hence, adopting the multiplier of 15 and

multiplying it with Rs. 5,400, the annual income, the tribunal has arrived at Rs. 81,000 as the total income that the deceased would have

contributed to the family, but has deducted 1/4th out of the said sum as the amount is paid in lump sum. Some justification is there for the same.

Hence, after deducting the 1/4th amount it has arrived at Rs. 60,750 as lump sum compensation to the family of the deceased. This appears to be

reasonable. In the circumstances, I do not want to inter-fere with the judgment and decree of the tribunal. Hence, the appeal is dismissed. There

will be no order as to costs. Consequently, C.M.P. No. 1221 of 1988 is also dismissed.