

(1971) 10 DEL CK 0005

In the Delhi High Court

Case No : F.A.O. No. 171-D of 1964

Delhi Transport Undertaking and Another

APPELLANT

Vs

Raj Kumari and Others

RESPONDENT

Date of Decision : 12-10-1971

Acts Referred:

Citation : (1972) ACJ 403

Hon'ble Judges : M.R.A Ansari, J

Bench : Single Bench

Advocate : R.L. Tandon and M.L. Bhargava, for the Appellant; D.R. Mahajan, for No. 1, for the Respondent

Final Decision : Dismissed

Judgement

M.R.A. Ansari, J.—The appeal and the cross objections arise out of the order of the Motor Accidents Claims Tribunal, Delhi, (hereinafter referred to as the Tribunal) dated 20.3.1964 in suit No. 6 of 1962 by which the learned Tribunal passed a decree for Rs. 20,000/- in favour of the Respondents in this appeal. Respondents Nos. 1 and 3 before the Tribunal, namely, Delhi Transport and Mr. Inder Raj, a DTU driver respectively, have filed the appeal against the order and decree of the learned Tribunal and the Petitioners before the Tribunal have filed the cross objections for enhancement of the decretal amount to Rs. 89,600/-. Both the appeal and the cross objections, can, therefore, be disposed of by a common judgment. The Appellants and the Respondents in this appeal will hereinafter be referred to by their designation in the lower court.

2. The Petitioners filed an application before the Tribunal u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) claiming a sum of Rs. 89,600/- by way of compensation for the death of one Jagatri Lal, who is alleged to have been killed in a motor accident on 12.11.1961. According to the averments in this application, deceased Jagatri Lal, who was employed as a Manager in the Moti Mahal Hotel and Moti Mahal Restaurant, situated in Darya Ganj, Delhi, was coming to the Hotel at about 6 P.M. and was crossing the road in front of the

Hotel when he was caught between a D.T.U. Bus No. DLP 564 which had stopped in front of the Moti Mahal Restaurant and had just started from that place and another DTU bus No. DLP 345 which was coming at a high speed from the Delhi Gate side. The deceased sustained serious injuries and was removed to the Irwin Hospital where he succumbed to the injuries later the same night. According to the Petitioners, the accident occurred due to the rashness and negligence of the drivers of the two DTU buses. The Deceased was earning Rs. 290/- per month by way of salary and was also getting free meals and other amenities at the Hotel. He was aged about 30 years and was of sound health. The Petitioners were the wife and the minor children of the deceased. They estimated the pecuniary loss suffered by them as a result of the untimely death of the deceased at Rs. 89,600/- and claimed this amount by way of compensation from the Respondents.

3. The application was resisted by the Respondents mainly on the ground that the accident occurred only due to the negligence of the deceased himself and not due to any rashness or negligence on the part of either of the drivers of the two buses. The following issues were framed by the Tribunal:

1. Whether the vehicles of the Delhi Transport Undertaking are exempt from provisions of Chapter VIII of the Motor Vehicles Act ? If so, what is its effect ?

2. Whether the death of the Jagatri Lal, husband of Raj Kumari father of other Petitioners, was due to accident caused by the rash and negligent driving of buses No. DLP 564 and DLP 345 on 12.11.1961 at 6.15 P.M opposite Moti Mahal, Darya Ganj, Delhi ?.

3. To what amount of compensation the Petitioners are entitled to and from whom ?.

4. Whether the deceased was guilty of contributory negligence If so, what is its effect ?

5. Whether the applicants are legal heirs of the deceased ?.

6. Relief.

4. The Learned Tribunal held all the issues in favour of the Petitioners and against the Respondents and passed a decree for Rs. 20,000/- in favour of the Petitioners and against the Respondents.

5. The first question for determination in this appeal as well as in the cross objections is whether the deceased met with his death as a result of the negligence or rashness of either of the drivers of the two buses. It is denied by the Respondents that the deceased received injuries on being hit by one of the buses or by both of them and that he succumbed to these injuries on the same night. The controversy is with regard to the manner in which the accident occurred. According to the Petitioners, the deceased was coming to the Moti Mahal Restaurant and for that purpose, had got down from the Central Patri of

the road and had crossed the road towards the Restaurant when he found that the bus No. DLP 564 which had stopped near the Moti Mahal Restaurant suddenly started from that place. The deceased wanted to avoid this bus, and, therefore, re-crossed the road towards the central patri. Just then, the other bus No DLP 345 came at a high speed from the Delhi Gate side and struck against the deceased. The deceased was caught between the two buses and was crushed. According to the Respondents, the deceased was coming out of the Moti Mahal Restaurant and was crossing the road towards the central patri in front of the stationary bus and at that time, he saw the bus DLP 345 coming from the Delhi Gate side and wanted to re cross the road in order to come back to the Hotel. Just, then, the bus No. DLP 564 had started and in order to avoid this bus, the deceased again went towards the central patri. He was obviously puzzled and started running to and fro recklessly. The driver of the bus DLP 564 stopped it immediately but the driver of the other bus DLP 345 who had found a clear road ahead of him and who suddenly found the deceased crossing the road in front of him, could not stop the bus immediately inspite of his best efforts. The accident could not, therefore, be avoided and it occurred only due to the negligence of the deceased himself.

6. Both sides have adduced evidence in support of their respective cases. The evidence adduced on behalf of the Petitioners consists of the evidence of 4 alleged eye witnesses, two of whom, namely. P.Ws. 4 and 5, are employees of the Moti Mahal Restaurant, and the other two namely P. Ws. 8 and 10, are residents of the locality. The evidence of P. Ws. 4 and 5 is assailed on the ground that they are interested witnesses being employees of the Moti Mahal Restaurant where the deceased also was employed. This is, however, not a valid reason for rejecting their evidence inasmuch as the presence of P. Ws. 4 and 5 is natural and probable. The evidence of these two witnesses is corroborated by the evidence of P. Ws. 8 and 10 against whom the same charge of being interested witnesses cannot be levelled. The fact that these witnesses are residents of the locality makes their presence at the time of the accident both natural and probable. One of these witnesses, namely, P.W. 8 actually gave the report to the police which was treated as the first information report in this case. The evidence of these witnesses is consistent. On the other hand, the evidence adduced on behalf of the Respondents is of doubtful nature. R.Ws. 1 and 3 are the Conductors of the two buses which were involved in the accident and R. Ws. 6 and 7 are the drivers of the two buses. They are interested witnesses and they would naturally be anxious to absolve themselves from any responsibility in respect of this accident. These witnesses, it is doubtful whether R.Ws. 1 and 3 were at all in a position to witness the accident. Conductors usually stay at the back of the bus and they would not know of what would be happening in front of the bus. As a matter of fact, both these witnesses admit that it was only when the passengers raised an alarm that they became aware of the accident having occurred. R. Ws. 2, 4 and 5 are said to be passengers travelling in one or the other of the two buses involved in the accident. R.W. 2 has admitted that he did

not witness the accident before the other passengers raised an alarm. R.W. 4 has stated that he was on the 5th seat from the front of the bus. It is doubtful whether he was in a position to witness the accident. He did not sign the complaint books in the bus nor was he examined by the police during the investigation of this case. Similarly, R.W. 5 was also sitting on the 5th seat from the front of the bus and he was also not examined by the police during the investigation of this case. As a matter of fact, he was not present when the police arrived at the scene of the accident. The evidence adduced on behalf of the Respondents is not sufficient to rebut the evidence adduced on behalf of the Petitioners.

7. There is, however, very little difference between the evidence adduced on behalf of both sides with regard to the manner in which the accident occurred. Whichever evidence is accepted it will prove that the accident occurred due to the culpable negligence of the driver of the bus No. DLP 345. It matters little whether the deceased was crossing the road towards the Moti Mahal Restaurant or to some other place. The admitted facts are that he was crossing the road in front of the Moti Mahal Restaurant. The road which runs in front of the Moti Mahal Restaurant is a very busy thoroughfare and a duty is cast upon the drivers of motor vehicles to drive their vehicles carefully and in such a manner that they would be able to stop the vehicles immediately in any emergency. Admittedly, the bus DLP 345 did not stop immediately after knocking down the deceased but stopped after travelling a distance of 25 to 30 yards. This would indicate that the bus DLP 345 was travelling at a fairly high speed. High speed and low speed are relative terms depending upon the circumstances of each case. A speed of say 20 or 30 miles an hour on a National Highway cannot be called excessive, but the same speed on a busy thoroughfare would be called excessive. Apart from the duty cast on the driver of the bus DLP 345 to drive it in such a way as to avoid any accident in case of people suddenly crossing the road, there was an additional duty cast upon the driver of this bus to drive it more carefully in view of the fact that he was approaching a stationary bus and was overtaking it while it had just started. He ought to have anticipated that some person might cross the road just in front of the stationary bus after it had started to move and might suddenly come in front of his own bus. But if the evidence of P. Ws. 4, 5, 8 and 9 is to be accepted and there is no reason why it should not be accepted it is clear that the driver of the bus DLP 345 was able to see the deceased when he was crossing the road from the central part towards the Hotel when the stationary bus started to move and he ought to have anticipated that the deceased might re-cross the road in order to reach the central part. The driver of the bus DLP 345 did not act as a prudent driver under the circumstances and in not taking any precautions to avoid the accident, he was guilty of culpable negligence. I have, therefore, no difficulty in agreeing with the finding of the learned Tribunal that the accident occurred because of the rashness or the negligence of the driver of the bus DLP 345. Even if it is assumed for a moment that the deceased was guilty of contributory negligence, it would not absolve the driver of the bus

DLP 345 from the consequences of his own culpable negligence.

8. The next question for consideration is whether the Petitioners are entitled to claim any compensation from the Respondents and if so, what is the amount of compensation which they are entitled to claim. Before considering this question, I have to decide whether the cross-objections filed by the Petitioners are maintainable, because an objection has been raised on behalf of the Respondents against the maintainability of the cross objections. It is contended by Mr. R. L. Tondon, learned Counsel for the Respondents that the Act, while providing for the filing of an appeal by an aggrieved person against the order of the Tribunal, does not provide for the filing of any cross objections by the Respondents in the appeal. On the other hand, it is contended by the learned Counsel for the Petitioners that although the Act does not specifically provide for the filing of cross objections in appeal, the provisions of Order 41, Rule 22 CPC will enable the Respondents in the appeal to file the cross objections. The learned Counsel for the Respondents has not been able to cite any decision under the Act in support of his contention. He has, however, relied upon a decision of the Patna High Court reported in *Bokaro and Ramgur Ltd. and Others Vs. Kathara Coal Co. Ltd. and Others*, . That was a case under the Coal Bearing Areas (Acquisition and Development) Act, 1957. Section 20 of that Act provided for the filing of an appeal against the order of the Tribunal constituted under the said Act determining the compensation payable in respect of the land acquired by the Government. There was no specific provision in the said Act for the filing of cross objections. Cross objections were, however, filed within one month of the service of the notice of the hearing of the appeal. An objection was taken against the maintainability of the cross objections on the ground that the said Act did not provide for the filing of the cross objections. The objection was upheld with the following observations:

There is no provision in the Act analogous to that of Order 41, Rule 22 of the Code of Civil Procedure;. Right of cross objection, like a right of appeal is a creature of statute. The determination (of compensation) has been expressly made appealable, but short of an appeal under and in accordance with Section 20 of the Act it cannot be canvassed in the Civil Court. The only manner in which that determination by the Tribunal, viz. its award can be subjected to a review is by appealing against the whole or part of it u/s 20. Cross Objection is thus ruled out.

9. These observations undoubtedly support the contention of the learned Counsel for the Appellant. But there is a decision of Madhya Pradesh High Court in *Manjula Devi Bhutta and Anr. v. Manjusri Raha and Ors.* 1968 A.C.J. 1 Which is a direct decision on this point in which it was held that cross objections could be filed in an appeal u/s 110-D of the Act. The reasoning on which it was so held was that as soon as the Court becomes seized of an appeal, even where an appellate jurisdiction is conferred under a special statute, the rules of practice and procedure of this Court applicable to a civil appeal will, in the absence of any

specific rule to the contrary, govern such appeal. In laying down the above rule, the Madhya Pradesh High Court followed the decision of the Privy Council in *Secretary of State for India v. Chelikani Rama Rao* AIR 1916 P.C. 21, and the decision of the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, . I have myself followed the decision of the Madhya Pradesh High Court in *W.S. Bhagsinh and Sons and Anr. v. Om Prakash Kaith and Anr.* 1971 A.C.J. 314.

10. The learned Counsel for the Respondents, however, challenges the correctness of the rule laid down by the Madhya Pradesh High Court on the ground that that judgment has not fully appreciated the significance of the word "decree" appearing in Order 41 Rule 22 CPC Code. According to the learned Counsel, the judgment or order of the Tribunal does not amount to a "decree" and that it is only where an appeal is filed against a decree that Rule 22 of Order 41, CPC provides for the filing of cross-objections. I am unable to accept this contention. I am doubtful whether the order of the Tribunal does not amount to a decree. The order of the Tribunal is an executable order. But even assuming for a moment that order of the Tribunal does not strictly amount to a decree within the meaning of Section 2(2) Code of Civil Procedure, the applicability of the provisions of Rule 22, Order 41, CPC does not depend upon the question whether the judgment or order appealed against is a decree. When once an appeal reaches the High Court, it has to be determined according to the rules of practice and procedure of that court, no special procedure having been prescribed under the Act for the disposal of the appeal. Order 41 CPC prescribes the procedure for the disposal of an appeal by an appellate Court. When no special procedure is prescribed under the Act under which the judgment or order appealed against is passed, then, the appellate court has to follow the procedure prescribed under Order 41 CPC for the disposal of the appeal. Rule 22 of Order 41 CPC forms part of the procedure prescribed under Order 41 CPC for the disposal of the appeal. In the case of *National Sewing Thread Co. Ltd.* referred to above, the Supreme Court was dealing with a case of an appeal in the High Court against the order of the Registrar of Trade Marks under the Trade Marks Act, 1940. The order of the Registrar certainly cannot be called a decree within the meaning of Section 2(2) CPC. But even in such a case, the Supreme Court held that when once an appeal was filed in the High Court against the order of the Registrar of Trade Marks, that appeal was to be determined according to the rules of practice and procedure of that court. Therefore, applying the same principles to the present case, I see no legal impediment in entertaining the cross objections filed by the Petitioners.

11. Another objection regarding the maintainability of the cross objections has been advanced by the learned Counsel for the Respondents on the ground that the cross objections are barred by time even under Rule 22 of Order 41 CPC. Under the said Rule, the cross objections have to be filed within one month from the date of the service of the notice of the date fixed for the hearing of the appeal. In the present case, the notice of appeal was served on the Petitioners on 1-12-1964, but the cross objections were filed on 2-2-1965. There is thus a

delay of 31 days in filing the cross objections The Petitioners have filed an application C. M. No. 1179/71 for condonation of the delay in filing the cross objections In this application, it is stated that the first Petitioner was an illiterate lady and was not conversant with the technicalities of law and procedure of the court and was under the bonafide belief that as for normal appeals the period of limitation for filing the cross objections was 90 days. This explanation obviously is unacceptable because ignorance of law is not an excuse and as the Petitioners were represented by a counsel in the lower court, they would have been properly advised by the counsel with regard to the period of limitation for filing the cross objections. But there is a special circumstance to be taken into consideration in this case and, that is, that two of the Petitioners are minors. The period of their minority has to be taken into account for the purpose of limitation. Further, the period of limitation for filing the cross objections is not one which "is prescribed under the Limitation Act and the period of limitation prescribed under Rule 22 of Order 41 CPC need not be as strictly applied as in cases coming under the Limitation Act. Rule 22 itself provides for condonation of the delay in filing the cross objections, because it provides for the filing of the cross objections within such further time as the appellate court may see fit to allow. This is a case where the rights of minor are involved, I deem it necessary in the interest of justice to condone the delay in filing the cross objections.

12. This leads me to a consideration of the quantum of compensation to which the Petitioners would be entitled. According to the Petitioners, the deceased was getting a salary of Rs. 290/- per month in addition to free meals in the Hotel and other amenities. One of the partners of the Moti Mahal Restaurant has been examined as A.W. 11 to prove this fact. According to A.W. II, the deceased was getting a salary of Rs. 270/- per month as Manager of the Moti Mahal Restaurant and Hotel. He also produced the Hotel register which showed that the deceased was getting a salary of Rs. 170/- per month. This part of the evidence of A.W. 11 has not been challenged by the Respondents and has also been accepted by the learned Tribunal. But A.W. 11 has proceeded to state that in addition to Rs. 170/- per month, the deceased was getting Rs. 120/ per month by way of remuneration for attending to the parties arranged by the Hotel outside. Although this portion of A.W. 11 "s evidence has also not been seriously challenged by the Respondents, the learned Tribunal has not accepted this evidence on the ground that this is not supported by any entries in the Hotel Registers. I am afraid that the learned Tribunal has made a mistake in his assumption that this portion of A.W. 11"s evidence is not supported by any entries in the Hotel Registers. A.W. 11 has stated in his evidence that he has produced the Rokar of the Hotel in which it is shown that the deceased was getting Rs. 120/- per month by way of remuneration for attending to the parties arranged outside the Hotel. It was open to the Respondents to have challenged A.W. 11"s evidence with reference to the entries in this Rokar. The Respondents did not choose to do so and, therefore, it must be assumed that the Rokar did contain entries which showed that in addition to the salary of Rs. 170/- per

month, the deceased was getting Rs 120/- per month by way of remuneration. The learned Tribunal, was therefore, not justified in rejecting this portion of A.W. 11's evidence.

13. It would, therefore, appear that the deceased was getting salary and remuneration amounting to Rs. 290/- per month. It is not disputed that the deceased was getting free meals in the Hotel. The learned Tribunal was, therefore, quite right in estimating the personal expenditure of the deceased at Rs. 50/- per month. That would leave balance of Rs. 240/- per month which the deceased was able to save and which was available *o the Petitioners for their maintenance. The deceased appears to have been anxious to give a proper education to his children, because it is in evidence that both the children are studying at Cambridge School, Darya Ganj Delhi. In the normal course, it would be reasonable to expect that the income of the deceased would increase as years passed by. But even without taking this factor into consideration, there can be no difficulty in concluding that the Petitioners were deprived of financial assistance from the deceased to the tune of Rs. 240/- per month. The deceased was aged about 30 years at the time of his death. The learned Tribunal has estimated the span of life which has been cut short by the accident at 15 years. In other words, the learned Tribunal has estimated the life expectancy of the deceased at 46 years. I think this is a very conservative estimate. It would be reasonable to expect that the deceased would have at least lived up to the age of 55 years. That would mean that the span of life that was cut short by the untimely death of the deceased ought to be estimated at 25 years. Taking all the relevant factors into consideration, I determine the compensation which the Petitioners would be entitled to receive at Rs. 50,000/-. The compensation awarded by the learned Tribunal would, therefore, be enhanced by Rs. 30,000/-

14. In the result, the appeal is dismissed and the cross objections are partly allowed to the extent indicated above. No order as to costs in the appeal and the cross-objections.