
(1978) 09 CAL CK 0025

In the Calcutta High Court

Case No : First Misc. Appeal No. 12 of 1969

Kantilal and Bros. and Another

APPELLANT

Vs

Ramarani Debi and Others

RESPONDENT

Date of Decision : 07-09-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 22(1)
Motor Vehicles Act, 1939 — Section 110D, 96, 96(2)

Citation : (1980) ACJ 501 : AIR 1979 Cal 152

Hon'ble Judges : R. Bhattacharya, J;Manoj Kumar Mukherjee, J

Bench : Division Bench

Advocate : Nirmal Kumar Ghosal, for the Appellant; Dilip Kumar Seth and Provash Chandra Nag, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhattacharya, J.—This is an appeal by Messrs Kantilal and Brothers and the Vulcan Insurance Co. Ltd. against the award made by the Motor Accidents Claims Compensation Tribunal for Calcutta and 24-Parganas in favour of the respondents before us who were the petitioners before the Tribunal below.

2. The facts giving rise to the claim of the petitioners before the Tribunal are required to be briefly stated. One Anurup Chandra Banerjee, a retired District and Sessions Judge of the State of Bihar aged about 72 years was knocked down by a private Ambassador car which was running at a great speed without giving any signal or sounding any horn. After the victim had been run over by the car, the driver did not slow down the speed but ran away without making any attempt for rendering medical aid to the injured. As a result thereof the victim died. The driver of the offending car was convicted and sentenced u/s 304-A of the I.P.C. The heirs and successors of the deceased were Ramarani Debi, the widow, Amiya Mukherjee, the daughter and Ashim Kumar Banerjee and Arun Banerjee, the sons. They filed an application for compensation in prescribed form on the death of Anurup Chandra Banerjee before the Motor Accidents Claims

Compensation Tribunal. The claim was for a sum of Rs. 90,000/-. The appellants were the opposite parties before the Tribunal. They filed separate objections to the claim made by the petitioners. Messrs Kantilal and Brothers are the owners of the offending car duly insured. The Vulcan Insurance Co, Ltd. were the insurers.

3. The learned Judge presiding over the Tribunal on consideration of the evidence on record and in the facts and circumstances of this case held that the petitioners were entitled to a sum of Rupees 28,536/- towards compensation along with the costs of the application including the lawyer's fees assessed at Rs. 100/- payable by the Vulcan Insurance Co. Ltd. and an award was accordingly made. Against that the present joint appeal has been preferred by the two opposite party-appellants. A cross-objection under Order 41, Rule 22 of the Civil P. C. has also been filed by the respondents.

4. Mr. Ghosal appears on behalf of "the appellants while Mr. Seth represents the petitioner-respondents who filed the cross-objection against the award passed for a sum less than the one claimed.

5. A preliminary objection has been taken by Mr. Seth as to the maintainability of the appeal. Three points require consideration in this connexion. It has been urged, first, that the Vulcan Insurance Co. Ltd. (hereinafter referred to as the Insurance Co.) have no right to prefer an appeal challenging the quantum of compensation arrived at by the Tribunal. Secondly it is to be seen whether Kantilal & Bros. owning the offending car have any locus standi to prefer the present appeal. Lastly, it is to be considered whether a joint appeal against the quantum of compensation can be filed by both the owners of the offending car as well as the insurer and whether it is maintainable.

6. In order to appreciate the points raised, we are to take note of certain facts in this case. It appears from the judgment of the Tribunal that at the time of hearing both the opposite party appellants did not dispute the death of the victim being run over by the offending car due to the negligence and rashness on the part of the driver. The only bone of contention between the petitioners and the opposite parties related to the quantum of compensation to be assessed on the death of the victim. We have gone through the grounds set out in the memorandum of appeal and we find that all the grounds relate to the question of assessment of compensation and the basis thereof. Mr. Ghosal, the learned Advocate on behalf of the appellants also wanted to urge his submissions challenging the amount of compensation fixed by the Tribunal as excessive, unreasonable and unfair. Admittedly, therefore, in this appeal, the appellants want to challenge the amount of compensation and nothing else. Now, in view of the provision of Sub-section (2) of Section 96 of the Motor Vehicles Act, 1939, the appeal challenging the claim of the petitioners is limited within the grounds mentioned therein. Clearly the insurer, here the Insurance Co., as appellant had no available ground to challenge the award in the appeal. The insurer-appellants cannot challenge the quantum of compensation fixed by the Tribunal and have,

therefore, no ground to urge in this appeal challenging the award. In this view of the matter, the Insurance Co. had no legal ground to prefer this appeal to challenge the award.

7. The next question is whether the insured-appellants, namely, Kantilal and Brothers have any status or occasion to prefer any appeal to challenge the propriety or validity of the award passed by the Tribunal in the present case. In this connexion the nature of award passed by the Tribunal is to be noted. There is no dispute that the Insurance Co. as the insurers are liable to pay the amount as assessed by the Tribunal to the petitioners as per award. In clear language the learned Judge of the Tribunal declared that the opposite party No. 2 Messrs Vulcan Insurance Co. Ltd. were to pay the sum under the award. The direction was upon the Insurance Co. to pay and not upon Kantilal and Brothers, the opposite party No. 1. No liability to pay any part of the award money has been fixed upon the opposite party No. 1. the owners of the offending car. No direction has been passed against them. The award is clearly against the Insurance Co. alone.

8. Sub-section (1) of Section 110-D of the Motor Vehicles Act is the provision for appeal against the award of a Claims Tribunal. According to this sub-section, if an award of the Claims Tribunal be Rs. 2,000/- or more, any person aggrieved by such an award may prefer an appeal to the High Court against it. So only a person aggrieved by an award may challenge the said award in appeal. Therefore, a person not aggrieved by any award cannot prefer any appeal against the award of the Tribunal. The relevant question before us is whether the appellant Kantilal and Brothers were aggrieved in any way by the award of the Tribunal. Mr. Ghosal has argued before us that when award was passed in favour of the petitioners, the liability under the award was primarily of the owner of the offending car but due to the insurance such liability rests upon the insurer and, therefore, Kantilal and Brothers, the owners of the offending car were aggrieved at the passing of the award. According to law, there is no doubt, the insurer will be liable for the amount under the award unless there is ground to avoid the same as indicated in Sub-section (2) of Section 96 of the Motor Vehicles Act. In the case before us, the Insurance Co. do not rely upon any of the grounds mentioned in the said sub-section and the Insurance Co. have accepted the liability to pay compensation. In the objection filed before the Tribunal the Insurance Co., of course, took up certain grounds mentioned in Section 96 (2) of the Motor Vehicles Act, but it appears that at the time of hearing, the Insurance Co. gave up those grounds. There was only the challenge relating to the quantum of compensation from the opposite parties. The learned Judge, however, in the order found no liability in the owners of the car, but made the Insurance Co. liable for the payment of the award money. There can be no doubt, therefore, that there was no occasion for Kantilal and Brothers to be aggrieved at the award passed against the Insurance Co. alone and not against the owners. There can be no grievance from the side of the owners against the award passed. Mr. Ghosal has brought to our notice two Supreme Court decisions

to show that even if no award is passed against the owners, they were entitled to prefer an appeal and may have reason to be aggrieved.

9. The first case referred to by Mr, Ghosal is *Adi Pheroazshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, . In that case the question arose whether the Advocate General of a State appearing before the Disciplinary Committee of a State Bar Council in pursuance of a notice given to him u/s 35(2) was a person aggrieved. The majority decision in that case is that the Advocate General is not a person aggrieved within the meaning of the words "person aggrieved" u/s 37 of the Advocates Act, 1961. When the Advocate General is asked to assist the Bar Council in proceedings against an Advocate, it cannot be stated that he has any grievance because the decision of the Bar Council is against his submission or not to his liking. Going through the decision we do not find that the proposition laid down there on a different background cannot be applicable here in the present case. The other case relied upon by Mr. Ghosal is the one appearing in *Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*, . That is the case of *Bar Council of Maharashtra v. M. V. Dabholkar*. There also the question arose whether the State Bar Council was a person aggrieved as mentioned u/s 38 of the Advocates Act, 1971. In this case the case of *Adi Pheroazshah Gandhi* already mentioned was considered and it has been noted that in view of the background of the decision in the case of *Adi Pheroazshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, amendments had been introduced in two Sections 37, and 38, of the Act conferring right to appeal on the Advocate General of the State and the Attorney General of India under Sections 37, and 38 respectively. As we find *Bar Council, Maharashtra* was the appellant before the Supreme Court against the decision of the Bar Council of India and the question arose whether Bar Council of the State had any grievance. With regard to the meaning of the words "a person aggrieved" the Supreme Court in this case has held as follows (at p. 2098 of AIR 1975 SC):--

"The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37, and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include a person who had a genuine

grievance because an order has been made which prejudicially affects his interests."

10. Bearing in mind the above decision and considering the facts of the present case before us, we hold that the two decisions in connexion with the Bar Council Act will not be helpful to the appellant. In our case the opposite parties admitted that the victim died as a result of the negligence and rash driving of the car and that the petitioners were entitled to get compensation, but the amount of compensation as claimed by the petitioners was challenged as excessive. Admittedly again, by the award of the Tribunal the liability of paying the compensation is not placed upon Kantilal and Brothers, but the Insurance Co. have been directed to pay the amount. Therefore, in this case the owners of the Ambassador car were not to pay anything. They have not been deprived of anything to which they are legally entitled for being a person aggrieved. No legal burden has been imposed on them. By the award the owners of the vehicle have not been deprived or denied of any legal right in view of the admission of the right of the petitioners to get compensation and in view of the fact that the liabilities of payment of compensation are upon the insurer. The grievance for which a person may appeal must be genuine and real grievance affecting prejudicially to his interests. In the present case there has been no legal grievance, denial or deprivation of legal right or financial interests nor any order affecting prejudicially to the interest of the owners of the offending car. There has been no legal or practical injury to Kantilal and Brothers. We cannot, therefore, hold that the said owners were aggrieved at the award passed by the Tribunal. On the other hand, the meaning of the words "aggrieved at" with reference to Sections 37, and 38 of the Advocates Act will be quite different as has been indicated in the decisions of the Supreme Court referred to by Mr. Ghosal. In view of our discussions above, we are constrained to hold that there was no occasion or right to prefer any appeal on the part of Kantilal and Brothers against the quantum of compensation fixed by the Tribunal. No appeal by Kantilal and Brothers was, therefore, maintainable against the award passed by the Tribunal.

11. The next question that arises is whether the joint appeal as presented was maintainable. We have found earlier that the appeal of the Insurance Co. is not maintainable as it contains no ground available to them u/s 96 (2) of the Motor Accidents Act. We have also held that Kantilal and Brothers, the other appellant, cannot be said to be "a person aggrieved" so as to have a right to prefer an appeal against the award passed in this case against the other appellant, and as such the joint appeal is incompetent. In view of the Division Bench decision of this Court in the case of The Motor Owners' Insurance Co. Ltd. and Another Vs. Hrishikesh Das and Others, , had the appeal of one of the appellant before us been maintainable in law, then certainly the same would have been heard, although the appeal by the other appellant in a joint appeal was not maintainable in law or (was) incompetent. In the present case when the appeal by each one of the appellants before us in the joint appeal has been found incompetent and not

maintainable in law, the joint appeal filed by the appellants must be liable to be dismissed in its entirety.

12. With regard to the cross-objection filed by the respondents under Order 41, Rule 22 of the Civil P. C. against the award passed by the Tribunal for a lesser sum than the one claimed by them, Mr. Ghosal has, first, contended that the said cross-objection should be found not maintainable if this Court finds that the appeal of the appellants is not maintainable in law. According to Mr. Ghosal, if the present appeal is found incompetent or not according to law, it should be taken as non est and has no existence in law and consequently the respondents can have no right to file any cross-objection. For this purpose we are to consider Rule 22 of Order 41 of the Civil P.C. Sub-rules (1) and (4) of Rule 22 are relevant for our purpose and are quoted below:

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objections 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.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determine after such notice to the other parties as the Court thinks fit.

13. According to Sub-rule (1) any respondent has the right to prefer the cross-objection within one month from the date of service notice about the appeal on him or his Pleader fixing the date for hearing of the appeal or within such further time as the Appellate Court may see fit to allow. According to Sub-rule (4), if after the filing of the cross-objection by the respondent, the original appeal is withdrawn by the appellant or the same is dismissed for default of the appellant, the cross-objection may be heard and determined. Sub-rule (4) was enacted in order to prevent fraud or foul play from the side of the appellant after the cross-objection by the respondent. In the present case Sub-rule (4) is not applicable because the present appeal has not been withdrawn; neither is it dismissed for the default of the appellants. This default clearly refers to an action of the appellant causing dismissal of the appeal by the Court after it has been admitted. The service of notice of the appeal for its hearing referred to in Sub-rule (1) of Rule 22 of Order 41 clearly refers to the notice of the appeal meant to be served upon the respondent after the admission of the said appeal and naturally the question of filing cross-objection arises after the said admission of the appeal. There may be cases when the memorandum of the appeal is rejected before admission and there also may be cases when some notice is issued connected with the appeal to be served upon the respondent before admission of the same. Sub-rule (1) of Rule 22 does not refer to these notices before admission, if there

be any, but it refers to notices of the appeal fixing the date of hearing of the same to be served upon the respondent or his lawyer. There is no dispute before us that the present appeal was admitted and thereafter the cross-objection was filed by the respondents. Now, at the time of hearing of the appeal, it is found that the appellant Insurance Co. did not take any ground available to them in this appeal as mentioned in Section 96 (2) of the Motor Accidents Act and that the other appellant Kantilal and Brothers had no occasion to be aggrieved at the award and, therefore, they have no right to prefer this appeal. Practically speaking in the joint appeal an endeavour was made from the side of the appellants to challenge the quantum of compensation making the owners of the car as appellants along with the Insurance Co. This is an attempt to challenge the quantum of compensation in a way not allowable by law. In these circumstances when there was an order for issue of notice upon the respondent fixing a date of hearing of the appeal, certainly according to law the respondents had the right to file cross-objection and this right accrued after the admission of the appeal. The finding of the Court that the appeal is not maintainable in law will not render the appeal nonexistent. The objection in this respect raised by Mr. Ghosal is unacceptable.

14. In this connexion another objection has been raised by Mr. Ghosal regarding the maintainability of the cross-objection. It has been submitted that the respondents are 4 in number, the widow and the children of the deceased. They were the petitioners. There is no dispute about it. But when the appeal was filed, only the widow was made a party-respondent and the appellant did not implead the three other respondents in this appeal. All the respondents, however, appeared in the appeal before the notice of the appeal could be served upon them and with their appearance they filed a cross-objection. Subsequently, however, an application was filed by the appellants for adding the children of the deceased as respondents in this appeal praying for condonation of delay on the ground that there was a bona fide mistake for not making them parties to the appeal. The Court allowed that application and thereafter the three children of the deceased were added as respondents. In this case it was the duty of the appellant to implead all the petitioners as respondents, and they were responsible for not impleading them within time, but on their prayer their default was condoned and all the petitioner-claimants were made respondents. Now before the three respondents were made parties in this appeal, we find that getting news of the admission of the appeal, all of them appeared before receipt of the notice of appeal and filed at the same time the cross-objection. All the respondents admittedly were proper parties and ought to have been made party-respondents in the appeal. Otherwise there would have been defect in the appeal. In these circumstances although the daughter and the sons of the deceased were not made respondents at the time when they filed cross-objection after appearance in the appeal, such cross-objection filed by all the respondents must be taken as a valid cross-objection because both the parties knew that the respondents omitted originally should have been made parties in this appeal.

This objection from the side of the appellants regarding the maintainability of the cross-objection on the ground of the absence of the names of three respondents at the time when it was filed was frivolous and untenable. The appellants cannot take advantage of their own illegal action and default.

15. Next it has been urged from the side of the appellants that the cross-objection being filed before the service of notice of the appeal on the respondents, is not legal. In this respect we must say as we have already held that the respondents got the right to file cross-objection when the appeal of the appellant had been admitted and the limitation for filing the cross-objection on the basis of that right is within one month from the date of service on the respondent or his pleader or within such further time as the Appellate Court may allow. It is, therefore, clear that though the right of the respondent for filing cross-objection accrues after the admission of the appeal, the limitation within which such objection is to be filed starts from the service of the notice of the appeal as indicated in Sub-rule (1) of Rule 22 of Order 41 of the C. P. C. The respondent in this case, therefore, had the right to file cross-objection before the service of notice. There are several decisions in support of this contention, but we may refer to the decision of the Lahore High Court in the case of Labhu Ram v. Ram Partap reported in AIR 1944 Lab IC 76 This is a Full Bench decision.

16. Lastly, it has been contended from the side of the appellants that as no copy of the cross-objection has been served upon the appellants or their Advocate, the cross-objection is liable to be rejected. Sub-rule (3) of Rule 22 of Order 41 of the C. P. C. runs as follows :--

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

Mr. Seth, the learned Advocate for the respondents has submitted that he does not remember whether any such copy has been served on the learned Advocate of the appellants and there is no indication in his brief that any such copy was served. From the clear language of Sub-rule (3), we get that in case the respondent does not file any written acknowledgment regarding the service of the copy of the objection from the party who may be affected by such objection, the Appellate Court is to cause a copy to be served on the party likely to be affected by the objection or his lawyer at the expense of the respondent. The records of the Court do not show that any order was passed or that any copy was served. The fact, however, remains that according to Court's order the cross-objection was directed to be heard along with the appeal. There is no dispute also that the appellants and their Advocate knew about the filing of the cross-objection and that in the daily cause list also it has been published day after day that the cross-objection would be heard along with the appeal. Now the question would be whether the non-service of copy of the cross-objection on the

appellants or their Advocate will render the cross-objection illegal or whether for such non-service, the cross-objection should be dismissed. In Rule 22 of Order 41 nowhere has it been stated that if the copy of the cross-objection be not served upon the appellant, such cross-objection shall be dismissed. No doubt, Sub-rule (3) says that if no such copy is served, the Court shall cause a copy to be served. Of course we can take it in the circumstances that no such copy was served either upon the appellants or their Advocate. So the question would be whether in the circumstances the cross-objection shall be liable to be dismissed. As we have already stated, the appellants were aware through their Advocate that a cross-objection had already been filed and it was to be heard along with the appeal as published in the printed cause list for several days. In this case there was no prayer from the side of the appellants for a copy of the cross-objection; neither was there any objection raised before the hearing of the appeal regarding the non-service of the copy of the objection on the appellants. Only in reply to the arguments of Mr. Seth relating to the cross-objection, Mr. Ghosal for the appellants submitted that he did not get any copy of the cross-objection. There can be no doubt that when any cross-objection is filed, a copy thereof should be served upon the party who may be affected thereby. But in the facts of this case we find that the appellants knew for several days that the cross-objection of the respondents would be heard along with the appeal and no objection was raised in that behalf and there was no prayer for service of a copy upon them. The Court's records were certainly open for inspection by the parties. In these circumstances we find that the objection taken regarding the non-service of the copy of the cross-objection is rather technical one. Even at the time of hearing Mr. Ghosal did not want any time for arguing upon the cross-objection after getting a copy thereof. On the other hand it has been argued from the side of the appellants that the cross-objection is liable to be dismissed for want of proper data and evidence. In the facts and circumstances we hold that the objection of the appellant as taken is a technical one causing no prejudice to the appellants. This objection is, therefore, not sustainable in our view.

17. Lastly, on the merits of the cross-objection, we find that the grievance of the respondents is that the Tribunal awarded a compensation much less than the amount claimed. In their cross-objection they have claimed different amounts on different heads and, in particular, an objection has been raised as to the mode of calculation adopted by the Tribunal in arriving at the amount of compensation. In the application before the Tribunal we find that the amount of compensation claimed by the petitioners was Rs. 90,000/- in lump. There was no separate head of claim. It was stated that the monthly income of the person dead was Rs. 409.75. During evidence the petitioners wanted to prove that they suffered loss because they had been deprived of the income of the deceased by the latter's death. No evidence or claim was laid during hearing on other heads. In this view of the matter we find that the claims of the amounts on different heads as appear in the cross-objection cannot be sustained.

18. It has been argued from the side of the respondents that according to the

evidence adduced on the side of the respondents Anurup Chandra Banerjee had an expectation to live long for a period of 19/20 years more. It has been argued that Anurup died at the age of 72 and he was getting a sum of Rs. 409.75 per month by way of pension from the State of Bihar and according to the calculation at the rates given in the Bihar Pension Rules in case of commutation, the amount of compensation would have been more. In this case the evidence is that Anurup died at the age of 72. The evidence of the cousin of the deceased is that he is a Medical Practitioner and that he examined his cousin and from the state of his health he was of the view that he could live 19/20 years more. After all, this witness is very much interested in the affairs of the respondents. He has not given any basis or data in support of his opinion. This sort of evidence has got no worth. Moreover, out of the pension of about Rupees four hundred, certain appreciable amount was to be spent for the personal comfort and maintenance of the deceased. According to Bihar Pension Rules, before allowing any lump sum payable on commutation, the applicant-pensioner has got to appear for medical examination as would be arranged by the State Government and the proper Medical authority after examination of the subject should give opinion about the expected life of the subject and on the basis of such opinion the Government would consider whether commutation could be allowed and how much amount would be granted, if at all. In the absence of the opinion of the Medical authority as prescribed by the Pension Rules, the question of commutation value of the pension cannot arise and in the present case when the Tribunal awarded compensation on the basis of commutation value taking the span of life of the deceased as 75 years, such calculation was clearly erroneous and without proper foundation. After deducting the personal expenses for the deceased out of the pension, there would have been no much saving and in the circumstances the amount of Rs. 28,536/- as awarded for compensation appears to be exceedingly reasonable. We, therefore, find no reason to interfere with the amount of compensation awarded on the basis of the cross-objection filed and the same is liable to be dismissed.

19. In view of our findings above, both the appeal and the cross-objection are hereby dismissed, but without costs.

Manoj Kumar Mukherjee, J.

20. I agree.