
(1988) 10 MP CK 0015
In the Madhya Pradesh High Court

Mansukhlal and Another

APPELLANT

Vs

Bhagwantibai and Others

RESPONDENT

Date of Decision : 29-10-1988

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (1989) 1 ACC 191

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Judgement

S.K. Dubey, J.—The National Insurance Company Limited, the insurer of the Vehicle, after joining the insured, i.e. the owner of the vehicle, has preferred this appeal against the award dated 12-8-80 passed in Claim Case No. 33 of 1978 by Shri L.J. Mandlik, Member, Motor Accident Claims Tribunal, Ujjain.

2. Short facts leading to this appeal are that one Nandkishore died in a motor accident on 22-8-78 in the night between 11 and 12 midnight, near Bhatawal Talkies, Ujjain, by the use of motor vehicle No. RRR 3963, which was being driven at the relevant time by the driver Ibrahim. The Tribunal held that the accident occurred due to rash and negligent driving of the vehicle and as such, the insurer, the owner and the driver are jointly responsible to pay compensation to respondents No. 1 to 4, the legal representatives of the deceased, who filed an application u/s 110-A of the Motor Vehicles Act, 1939, (for short "the Act"). While considering the award of compensation, the Tribunal assessed the monthly dependency at the rate of Rs. 300/- per month. The Tribunal also found the age of the deceased at the time of accident as 50 years. Multiplier of the compensation was calculated for 15 years and after deducting the lumpsum deductions for uncertainties of life and for payment in lumpsum, the respondent-claimants were held to be entitled to the compensation of Rs. 27,000/- with interest at the rate of 6% per annum on the said amount from the date of application till payment. Aggrieved of this award, the owner and the driver have filed this appeal, which was admitted on 6-3-81. After notice, claimant-

respondents preferred cross-objections under Order 41 Rule 22 CPC. for enhancement of the award of compensation of Rs. 49,000/- instead of Rs. 27,000/- and interest thereon.

3. When the appeal came up for hearing, Shri K.S. Sharma, learned Counsel for the claimants, raised a preliminary objection about the main maintainability of the appeal u/s 110-D of the Act, in view of the decisions of this Court in *National Insurance Co. Ltd. v. Reeta Nigam* M.A. No. 3 of 77(G) decided on 23-9-85, reported in 1985 M.P.W.N. Note No. 572; *New India Assurance Company Limited v. Shakuntalabai* 1987 J.L.J. 462; *Roopsingh v. Leela and Ors.* M.A. No. 40 of 1980 (I) decided on 29-6-88 and *New India Assurance Co Ltd. v. Shiv Kumar and Ors.* 1978 ACJ 137. This Court has held that a joint appeal by the owner of the vehicle and the insurer is not maintainable as, the award is within the statutory limit and u/s 110-A of the Act, neither the Insurance Company nor the owner of the vehicle can be termed as person aggrieved unless the defences u/s 96(2) of the Act are available for the Insurance Company : and for the owner if the owner has to pay anything out of his pocket.

4. Facing with this situation, Shri S.D. Sanghi, Senior Advocate with Shri VS. Dandwate and Shri Iqbal Hussain, learned Counsel for the respondents, submitted before this Court that in this situation, the appeal will be deemed as not maintainable and when the appeal is dismissed as not maintainable, the cross-objections Under Order 41 Rule 22 C.P.C. filed by the claimants for enhancement of compensation and interest will also automatically go. It will be deemed in law that no appeal or valid appeal was filed at any time and the claimants cannot get any benefit of Order 41 Rule 22(4) C.P.C. as the appeal is neither withdrawn nor dismissed for default Learned Counsel also contended that this Court can also not exercise the powers Under Order 41 Rule 33 C.P.C. for enhancing of compensation or for award of interest nor the cross-objections can be treated as an independent appeal, as the appeal has become barred by time and the question of court-fee etc. will arise. In support of his contentions, a plethora of case laws was cited by the learned Counsel on the question that when an appeal is held to be not maintainable, the cross-objections are also to be rejected He placed reliance on Division Bench and Single Bench cases of this Court and also various cases of other High Courts in *Radhey Shyam v. Chimanlal* 1966 MPLJ N. 34, *Municipal Committee Khandwa v. Ratanlal* 1969 J.L.J. N 76, *Purushottam v. Devkaran* AIR 1939 Nag 39, *Ramkishandas v. Vinodiram Balchand* 1961 J.L.J. 1218, *National Insurance Co. Ltd. v. Rita Nigam* 1985 MPWN N. 572; *Balwantsingh and Anr. v. State of M.P. and Anr.* 1986 MPLJ 571 ; *Chanchalgauri Ramanlal and Others Vs. Narendrakumar Chandulal and Others,* ; *Ram Chand Vs. Smt. Ramku and Others,* ; *Malhati Tea Syndicate Limited Vs. Revenue Officer, Jalpaiguri and Others,* ; *Lt. Col. P.H. Choudhary Vs. Altaf Ahmed and Another,* ; *C.P. Mehra Vs. Sm. K.K. Mehra,* ; *Charity Commissioner Vs. Padmavati and Others,* ; AIR 1944 57 (Oudh); *Abdullamiya Hamdumiya Vs. Mahomedmiya Gulamhusein,* ; *Kashiram v. Ranglal* AIR 1941 Bom 242; *U. Shin v. Maung Tha Gywe* AIR 1931 Ran 38; *Ajmarsingh v. Ramsingh* AIR 1932 Nag 41.

Shri Sanghi, for his submission that the cross-objections cannot be treated as an appeal, relies on the cases reported in Chanchalgauri Ramanlal and Others Vs. Narendrakumar Chandulal and Others, and a Division Bench case of the Bombay High Court in Paama Devi v. Kabal singh 1985 ACJ 382 and a Division Bench case of the Karnatka High Court in National Insurance Co. Ltd. v. H.N. Rana 1985 ACJ 864; and also that when an appeal is dismissed and the decree is not reversed or modified, the power Under Order 41 Rule 33 C.P.C. to adjudicate the rights of the parties according to justice, equity and good conscience cannot be exercised as powers Under Order 41 Rule 33 C.P.C. are to be exercised in view of the other provisions of the C.P.C. and the provisions of other laws. Learned Counsel placed reliance on the case of the Apex Court reported in Choudhary Sahu (Dead) by Lrs Vs. State of Bihar, ; a Division Bench case of this Court reported in The British India General Insurance Co. Ltd. Vs. Seth Ramnath and Others, , a Division Bench case of the Bombay High Court reported in 1985 ACJ 382 (supra), Durga Prasad v. Manaklal 1981 MPW. N 2 N. 88, and a recent judgment delivered by me in Abdul Karim v. Hafiz Mohammad Civil Second Appeal No. 482 of 1983 decided at Indore on 28-10-88.

5. Shri K.S. Sharma, learned Counsel for the claimant-respondents, for supporting his claim under cross-objections, contended that even if the appeal of the appellants is dismissed as not maintainable, the cross-objections survive and this Court has ample power to grant relief Under Order 44 Rule 33 CP.C. and Rule 298(3) of the M.P. Motor Vehicle Rules, 1974, where all the provisions of Order 41, as contained in the C.P.C, have been made applicable mutatis mutandis to the appeals u/s 110-D of the Act before the High Court. Learned Counsel, in the alternative, contended that at least the interest deserves to be enhanced from the rate of 6% per annum to 12% par annum according to the highest judicial mandate, which is a law Under Article 141 of the Constitution of India and in such circumstances, the court shall mould the relief according to law. Learned Counsel placed reliance on the case of the Apex Court in Pannalal Vs. State Bombay and Others, and a decision of this Court in New India Assurance Co. Ltd. v. Gyasobai and Ors. 1986 CCLJ N. 1. For award of interest @ 12% per annum, learned Counsel placed reliance on the cases of the Apex Court in Narcinva V. Kamat v. Alfredo 1985 ACJ 397 and Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others, and the cases of this Court in New India Assurance Co. Ltd. v. Shakuntalabai and Ors. 1987 JIJ 462, Shamsher Khan v. M.P. Electricity Board 1987 JIJ 721, State of M.P. v. Shantibai and Ors. 1986 . I MPWN N 54, and also placed reliance on various cases recently decided by this Court.

6. Shri S.D, Sanghi, learned Counsel for the appellants, rightly and fairly conceded that in view of the provisions of Sections 96(2) and 110-D of the Act, an appeal by the Insurance Company, even after joining the insured owner, is not maintainable as the award was passed within the statutory limit and the Insurance Company is bound to satisfy the same, in view of the consistent view of this Court in the case of National Insurance Co. Ltd. v. Nekram Singh M.P.W.

Notes 1985 Note No. 379, 1978 ACJ 137 (supra) 1987 J.L.J. 462 (supra) and a decision of this Court in Roopsingh v. Mrs. Leela and Ors. M.A. No. 40 of 1980 decided on 29-6-88. But the question arises that as this Court is holding that the appeal is not maintainable, whether the cross-objections will survive or not or whether the cross-objections can be treated as an appeal or powers Under Order 41 Rule 33 C.P.C. can be exercised if the cross-objections do not survive. It is settled that when the appeal is not found to be maintainable, it would be deemed that the appeal was incompetent. The provisions of Order 41 Rule 22 CP.C. does not give power in such a situation to decide the cross-objections independently. Sub-rule (4) of Rule 22 of Order 41 C.P.C. gives power to hear and decide the cross-objections only in cases if the appeal is withdrawn or dismissed. The preponderance of the authorities is in favour of this view. Hence, I hold that the appeal is not maintainable and the cross-objections also fail and cannot be decided. Now coming to the question whether the prayer of the learned Counsel for the claimants can be accepted for treating the cross-objections as an independent appeal. This prayer can also not be allowed in view of the fact that the appeal has become barred by time and cross-objections, after about a period of 8 years, cannot be adjudicated as an appeal as the precious right vested in the party cannot be defeated by allowing the cross-objections being treated as an appeal, after such a long delay See 1985 ACJ 864 (supra) and 1986 AIR Guj 55 (supra). Any cross-objections for enhancement of compensation in the facts of the case, cannot be considered.

7. Lastly, the question remains that even in the absence of an appeal or cross-objections whether powers Under Order 41 Rule 33 CP.C. can be exercised by this Court for awarding interest at the rate of 1-2% per annum on the amount of compensation so awarded in view of the highest judicial mandate in the case of Chameliwati v. Delhi Municipal Corporation 1985 ACJ 645 and the consistent view of this Court in The State of M.P. v. Asha Devi M.A. No. 255 of 1984 (I) decided on. 7-5-88, Devji v. Anwar Khan M A. No. 141 of 1979 (I) decided on 22-6-88, Roopsingh v. Mrs. Leela and Ors. M.A. No. 40 of 1980 decided on 29-6-88 following the decision of the Apex Court in Narcinva V. Kamat v. Alfredo Antonio Doe Martins 1985 ACJ 397 and Jagbirsingh v. General Manager, Punjab Roadways and Ors. 1987 ACJ 15 which is binding on this Court under Article 141 of the Constitution of India. In view of the pronouncement of the Apex Court, in my opinion, not awarding interest at the rate of 12% per annum in cases of fatal accidents, is a jurisdictional error and can still be corrected in an appeal even in the absence of any cross appeal or nonmaintainability of cross-objections. Interest has been awarded by the Tribunal at the rate of 6% per annum without giving any reasons. Section 110-CC of the Act in terms requires that "interest shall also be paid" in addition to the compensation already determined. A duty is thereby laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of each case, in as much as the Section does not specify or even limit the rate of interest, as the highest Judicial mandate, which is binding on all courts and Tribunals, is to award interest from

the date of application till the deposit" of payment is made of the compensation under the award. As the appeal was heard and is being dismissed as not maintainable and the cross-objections are also being dismissed, it cannot be said that the appellate court would be helpless to exercise the powers Under Order 41 Rule 33 C.P.C. to mould the relief in the circumstances of the case in accordance with the law of the land and according to the highest judicial mandate. This is the view which has been taken by this Court in appeals arising out of claim cases in *New India Assurance Co. Ltd. v. Mst. Gyasobai and Ors.* 1986 C.C.L.J. N 1, *State of M.P. v. Shantibai* 1986 M.P. WN. 54, *New India Assurance Co. Ltd. v. Shakuntalabai and Ors.* 1987 J.L.J. 462, *Sevaram v. Nanhekhani* 1988 MPLJ 179 and *Roopsingh v. Mrs. Leela and Ors.* M.A. No. 40 of 1980, decided on 29-6-88 by this Court at Indore. Order 41 Rule 33 C.P.C. enables the appellate court to pass such decree or award as ought to have been passed, as the nature of the case may require, even if such decree, which is in favour of the claimant, has not been appealed or cross-objections have not been found to be maintainable. Hence, I hold that as the matter has come up before this Court in an appeal, which was found to be incompetent, the interest at the rate of 12% per annum from the date of application till payment would form part of a just claim.

8. In the result, the appeal and the cross-objections, so far as they relate to the enhancement of the compensation, are dismissed but is directed that on the amount of compensation of Rs. 27,000/- the Insurance Company shall pay or deposit the amount of interest at the rate of 12% per annum from the date of application, i.e. 18-10-78 till the date of payment or deposit of the amount of compensation before the Tribunal, within six weeks from today. Due adjustment will, of course, be given to the Insurance Company for the amount already deposited. Thus, the appeal is dismissed with costs. Counsel's fees Rs. 500/- (Rs. Five Hundred), if certified. The cross-objections are also dismissed.