

(1991) 12 DEL CK 0016

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 1676 of 1991 and First Appeal No. 10 of 1989

Munawari Begum and Others

APPELLANT

Vs

Kishan Kumar and Others

RESPONDENT

Date of Decision : 07-12-1991

Acts Referred:

Citation : (1992) ACJ 1122 : (1993) 49 DLT 236

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : O.P. Goyal and Kishore Rawat, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is an application under Order 41 Rule 33 read with Section 151 of the CPC wherein the appellants have prayed as under :

"That it is essential in the interest of justice and in order to arrive at the fair amount of compensation payable to the claimants, that the aforesaid submissions which are based on facts on the record and which are based on the law laid down by the various Courts, may be taken into consideration by this Hon'ble Court and the appeal may be heard on all the points raised by the appellants in their Grounds of Appeal and the appellants may be awarded the amount of Rs. 1.50,000.00 as compensation carrying interest @ 15% per annum w.e.f. the date of filing of the petition till payment. Any other relief which this Court deems fit and proper under the circumstances of the case may also be granted to the appellants."

(2) In this case, the age of the deceased at the time of his death in the accident in question was held to be 42 years and the Court had applied the multiplier of 16 in computing the compensation i.e. up to normal age of retirement in government service, in addition, the Motor Accidents Claims Tribunal also awarded interest on the said amount of compensation at the rate of 12% p.a.

The appellants challenged the award of the M.A.C.T. mainly on two counts, one that multiplier of 28 should have been applied instead of 16 taking the expected earning age of the deceased as 70 years and the other was against the award of 12% interest instead of 15% as was being Claimed. All these ground were considered at the time of admission and while admitting the Court confined the challenge to the award only to the question of interest. The admission order reads-"Admit only on the question of interest". In other words, all other pleas contained the Memorandum of Appeal are deemed to have been considered and rejected at the very outset, while admitting the appeal for hearing. This is not a case where review of the order of admission is sought.

(3) Counsel for the appellant has laid lot of stress on the provisions of Order 41 Rule 33 of CPC which read as under :

0.41 R. 33. Power of Court of Appeal- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favor of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees: Provided that the Appellate Court shall not make any order u/s 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

(4) A number of authorities in support of the contention that the appellate Court has the powers to grant relief even though not prayed for and even if by the party deserving the relief has not filed a separate appeal in case the compensation awarded is grossly inadequate.

(5) In my view, no hard and fast rule can be laid down as to the circumstances in which this power can be exercised and each case must depend on its own facts. Normally the appellate Court would not interfere with the decree in exercise of power under Order 41 Rule 33. Although rule is expressed in terms which are wide, but it has to be applied with discretion and to cases where such exercise in favor of a party necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties. The rule does not confer an unrestricted right to re-open the decrees which have become final merely because the appellate Court does not agree with the opinion of the Court appealed from and that the findings of fact on appreciation of the evidence could not be lightly brushed aside by the appellate Court.

(6) I may further add that the appellate Court could enhance or reduce the compensation amount, granted by trial Court, in case of an accident, which took

place due to negligence of opposite party by exercising powers under the provision of Order 41 Rule 33 and there will be no bar to follow the principle laid down in the said provision even in cases of appeals u/s 110-D of the Motor Vehicles Act. In order to shorten the litigation and best attain the ends of justice in certain exceptional cases it is not only competent to a Court of appeal but it may be its duty to take notice of events which have happened subsequently to the passing of the decree or order appealed against and adjust the rights of parties which is not the case here.

(7) The case covered by the application under consideration is not a case of nature envisaged by Order 41 Rule 33 CPC because the challenge to Award by the application of multiplier of 16 instead of [^]8 was specifically included in the Memorandum of Appeal and this Court, while admitting the appeal did not agree to entertain any challenge on that count and admitted the appeal only on the question of interest thereby implying that all other grounds of challenge have been considered and rejected. The said provision does not envisage review by the appellate Court of its own orders. The application in question is not one for review of the order for admission.

(8) It is in the light of these peculiar facts that I am of the considered view that the pleas which are raised and not entertained at the time of admission are no longer open to the appellants to be re-agitated and the findings in respect thereof cannot be interfered with by appellate Court under Order 41 Rule 33 CPC. In this view of the matter, the application is dismissed. There will be no order as to costs.