

(1981) 04 GUJ CK 0001
In the Gujarat High Court

Case No : First Appeal No's. 1008 and 1009 of 1976

National Insurance Co.

APPELLANT

Vs

Diwaliben

RESPONDENT

Date of Decision : 15-04-1981

Acts Referred:

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

Citation : AIR 1982 Guj 145 : (1982) GLH 20 : (1982) 1 GLR 474

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Advocate : M.D. Pandya, for the Appellant; N.C. Laheri, for S.B. Vakil and J.B. Patel, for the Respondent

Judgement

1. These two first appeals are filed by the insurance company which has insured the offending motor truck which caused fatal injuries to two labourers on account of a vehicular accident. The claimants in the respective claim petitions before the Tribunal had claimed different amounts. The Insurance Company was made liable to satisfy the concerned awarded claims to the respective claimants in both the claim petitions. That has prompted the insurance company to prefer these appeals under S. 110-D of the Motor Vehicles Act, 1939.

2. I Factual background. In order to appreciate the questions in controversy the have been posed for decision of this Court in the present appeals, it is necessary to have a look at the factual background resulting in the present proceedings. On 9-4-1974, the motor truck in question was driven by its driver, opponent No. 1, in both the claim petitions. The said truck belonged to original opponent No. 2 Bhavani Transport Company as it was insured by the appellant insurance company in both these appeals which was joined as opponent Nos. 3 in both the claim petitions. The case of the claimants is that by about 12-30 noon on 9-4-1974. the truck in question being No. GTD 2110 was coming from Sevalia side being loaded with stones. Certain labourers including two deceased were

travelling by the said truck. The truck was proceeding towards Dakor side on the State highway between Sevalia and Nadiad in Kaira district. When the truck reached Pansora bus stand, because of the excessive speed with which the truck was being driven by its driver, one tyre of the truck burst. The driver lost control over the steering, with the result that the truck left the road, broke down the parapet wall of a culvert and fell by the side of the road in a ditch having turned turtle. The conductor as well as other labourers who were travelling in the truck were crushed under the stones and died on the spot. The aforesaid accident resulted into two claim petitions u/s 110A of the Act before the M. A. C. Tribunal at Nadiad, In claim petition No. 45 of 1975, the widow of the deceased labourer Vanabhai Lallubhai put forward a claim of Rs. 15,000 by wa-f of damages against the driver of the truck, the owner of the truck as well as the insurance company being opponents Nos. 1, 2 and 3 respectively. The widow and minor children of another labourer who also lost his life in the accident viz. Maganbhai, filed company petition number 46 of 1975 against the same set of opponents claiming damages to the tune of Rs. 30,000/-.

3 to 7. xx xx xx xx

8. The Tribunal as per purshis of parties at Ex. 28 in claim petition No. 45 of 1975 consolidated both the claim petitions and recorded common evidence in claim petition No. 45 of 1975. The Tribunal, on the evidence recorded, came to the conclusion that both the deceased died as a result of rash and negligent driving of the truck in question by its driver, Opponent No. 1 Opponent No. 2, Bhavani Transport Company, the owner of the truck was held vicariously liable for the tortious act committed by its driver. On the question regarding assessment of proper damages. The Tribunal held that the widow of deceased Vanabhai, the sole claimant in claim petition No. 41 of 1975, was entitled to get compensation to the tune of Rs. 12,000/- while the widow and minor children of deceased Maganbhai in companion petition No. 46 of 1975, were entitled to a total amount of Rupees 17,000/- which was apportioned amongst different claimants in fixed proportions. So far as liability of the concerned opponents to satisfy the awarded claims was concerned, the Tribunal took the view that all the original opponents viz., the driver of the truck, the owner of the truck and the insurance company, were liable to satisfy the full award of claims of both the petitions. Repelling the contention raised on behalf of the insurance company, which ought to confine its liability to the act liability under the Workmen's Compensation Act. the Tribunal held that both the deceased were travelling in the truck in question not under employment of the owner of the truck viz., opponent No. 2, but they were being paid their wages by persons who used to consign goods by truck belonging to opponent No. 2 and hence, they cannot be considered to be employees of opponent No. 2 and consequently the insurance companys liability was not restricted to act liability under the Workmen's Compensation Act. As noted above, the aforesaid common awards of the Tribunal in both the claim petitions have resulted in the present two appeals at the instance of opponent No. 3 insurance company, In each of these appeals, original claimants have filed cross-

objections seeking enhanced compensation against the insurance company viz., the present appellant in both these appeals. as well as other concerned co-respondents.

9 to 15. xx xx xx xx

V. Maintainability of Cross Objections: --

16. But that is not the end of controversy between the parties. As I have noted above while indicating rival contentions of the learned advocates for the respective parties, the claimants have filed cross-objections seeking enhancement of damages from the concerned parties liable to make good their claims for damages.

17. Mr. Pandya for the insurance company had a preliminary objection to urge so far as maintainability of these cross objections is concerned. He invited my attention to a decision of the Supreme Court in Pannalal Vs. State Bombay and Others, . The facts of the case before the Supreme Court in the said decision were that the plaintiff contractor had filed a suit for recovering his contractual dues from the then Madhya Pradesh Government represented by Deputy Commissioner of Bhandara as well as Gondia Municipal Committee, Gondia as according to him, he had constructed Bai Gangabai Memorial Hospital situated within the limits of Gondia Municipality on the request of these concerned defendants. The trial Court decreed the suit of the contractor against State of Madhya Pradesh but dismissed it against the Gondia Municipal Committee. The State of Madhya Pradesh carried the matter in appeal to the High Court of Bombay. This appeal was allowed by the High Court by holding that the State of Madhya Pradesh which was then substituted by the State of Bombay could not be held to have ratified the action of the contract as entered into by the Deputy Commissioner Bhandara. Under these circumstances, no decree could be passed against the State of Madhya Pradesh or against the Successor State of Bombay. Thus the appeal by the State Government was allowed. As there were three companion suits, three appeals were filed by the State Government and all the appeals were allowed against the common plaintiff. At this stage, a request was made by the plaintiff to pass decrees against the Deputy Cornmr., who was also a party defendant-respondent in all the concerned three appeals. The High Court rejected the said request on the ground that the powers of the Court under O. 41, Rule 33 C. P. Code cannot be made available in favour of the plaintiff-respondent as he had not, filed cross-objections against the concerned defendant-respondent-Deputy Commissioner, Bhandara in each of the three appeals. Thus, in view of the Bombay High Court, cross-objections could have been filed under o, 41. R. 22, C. P. Code by the plaintiff against the concerned defendants, co-respondent and as he had not done so the discretionary powers of the appellate court under O. 41, R. 33 could not be exercised. The aforesaid decision of tile Bombay High Court resulted in further appeals to the Supreme Court. While deciding these appeals on behalf of the plaintiff, the Supreme Court observed that the High Court of Bombay was in error when it held that on the facts of that

case. the plaintiff could have filed cross-objections under o. 41 R. 22 of the C. P. Code. In that connection, it was observed by Das Gupta. J. as under (at p. 1520):--

"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 reopened between the objecting respondents and other respondents that an objection under Order 41, Rule 22 can be directed against the other respondents. The use of the word "Cross-objection" in Order 41, Rule 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant.....That the legislature also wanted to give effect to the views held by the different High Courts that in exceptional cases as mentioned above an objection can be preferred by a respondent against a co-respondent is indicated by the substitution of the word "appellant" in the third paragraph by the words "the party who may be affected by such objection."

Thereafter, the Supreme Court held that "the wide wording of O. 41, R. 33 was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent, It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondents as the case may require. If there was no impediment in law the High Court in appeal could, therefore, though allowing the appeal of the defendant-appellant by dismissing the plaintiff's suits against it, give the plaintiff respondent a decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the rule make this position abundantly clear, the illustrations put the position beyond argument". On the basis of the aforesaid decision, Mr. Pandya contended that in the present case, the claimant-respondents in substance seek main relief against the co-respondents who are driver and owner of the insured truck and only incidentally and as an after effect of relief which they may get against these concerned respondents, they seek enhanced damages also against the insurance company and consequently O. 41, R. 22 cannot be pressed in service by the respective claimants. Mr. Pandya further contended that O. 41, R. 33, C.P.C. also would not be available to the concerned claimants as the same can be pressed in service only when while allowing the appeals of the insurance company some modification in the inter se rights of co-respondents was required to be made so as to adjust the liabilities and rights of the concerned respondents. Mr. S. B, Vakil, learned advocate for the claimants at this stage contended that the claimants were entitled to file cross-objections under O. 41, Rule 22, itself, and that he was not invoking discretionary powers of this court under O. 41, R, 33 of the Civil P.C. In view of the above posture adopted by the respondents-claimants, I am not called upon to consider the question whether

the powers under O. 41, R. 33 could be invoked in the present case or not Mr. Vakil's only submission was that the very decision of the Supreme Court in Panna Lal's case (supra) clearly notes an exceptional class of cases where in cross-objections against the appellants and co-respondents can be jointly maintained. Mr. Vakil in particular placed great reliance on the observations of the Supreme Court to the effect that in exceptional cases, such as where the relief cannot be granted without the question being reopened between the objecting respondent and other respondents that an objection under O. 41, R. 22 can be directed against the other respondents. Mr. Vakil's contention in this connection was that the claimants in both the claim petitions had claimed Rs. 30,000/- and Rs. 15,000/- respectively by way of damages from all the concerned opponents including the insurance company in claim petitions Nos. 45 and 46 of 1975 respectively. Mr. Vakil submitted that the insurance company was joined as an opponent from the very beginning to answer the full claim of the claimants. Thus, it was being sued as a party defendant from the inception of the claim petitions. Instead of granting full claim of the claimants in both the petitions, the Tribunal assessed damages at lower figures in both the claim petitions and assessed the amounts payable by all the opponents. Mr. Vakil submitted that once the company has come to this court as an appellant praying for exonerating it from total liability from the claim of the claimants, even though reduced claim was granted to the claimants by the tribunal, the claimants by way of cross-objections directly leveled against the insurance company can justifiably claim that not only claims as granted by in both the petitions against the opponents were justified but they were entitled to larger claim against the company to the extent of full coverage of the original claim as prayed for. Thus, cross-objections were directly levelled against the insurance company. Mr. Vakil then submitted that the further relief to be granted to the reduced the Tribunal the claimant-respondents as against the appellant company was irretrievably intertwined and intermixed with the question regarding liability of the assured to meet the claim and unless this question is reopened between the correspondents, the main contention of the respective claimants against the insurance company cannot be effectively answered. Mr. Vakil submitted that this is exactly an exceptional case, which was in term contemplated by the Supreme Court in Parma Lal's case (supra) wherein cross-objections were held to be permissible. On the facts of Panna Lal's case (supra), the applicability of the exceptional provision of O. 41, R. 22, C.P.C. was not in issue for the simple reason that the appellant defendant's appeal was dismissed by the High Court and the plaintiff was not claiming any relief against the said defendant which would require the High Court to reopen the decree which it had become final between the plaintiff and other set of defendants his co-respondents viz. the Commissioner of Bhandara. It was, therefore, submitted by Mr. Vakil that the present case is fully covered by the decision of the Supreme Court which in terms provides that cross-objections would be maintainable against co-respondents as granting of relief to the concerned claimants against the appellant company would require reopening of the question between the claimants and the objecting other correspondents. Mr.

Pandya, on the other hand, submitted that so far as relief which the claimants can ask by way of cross-objections against the company which is the appellant is concerned, it would be a limited relief regarding liability of the insurance company to satisfy the claim of the claimants as decreed against the principal debtors or main responsible party that is. the insured. That the insurance company came in incidentally by way of contract of insurance or by virtue of statutory provision regarding compulsory coverage and it had limited defences under S. 96 (2) to answer the claim. Mr. Pandya, therefore, submitted that the cross objections which merely seek to get enhanced compensation are primarily directed not against the insurance company but against the assured and consequently, exceptional category as envisaged by the Supreme Court in Panna Lal's case (supra) wherein cross-objections are maintainable against respondent, will not be available to the present respondent claimants. In this connection, Mr. Pandya invited my attention to paras 16, 17 and 18 of the judgment of the Supreme Court in Parma Lal's case (supra) and submitted that the Supreme Court had approved of the reasoning of various High Courts including the Full Bench of the Madras High Court in the case reported in Vadlamudi Venkateswarlu and Another Vs. Ravipati Ramamma and Another, to the effect that O. 41. R. 22 conferred only a restricted right on the respondent to prefer objection to the decree without filing a separate appeal; that such objection should as a general rule be primarily against the appellant though in exceptional cases, it may incidentally be also directed against other respondents. Mr. Pandya submitted that in the present case, cross objections are primarily directed against the co-respondents and only incidentally directed against the appellant and hence they do not fall within the recognised exception to the main rule that cross-objections must be directed against the appellant. It is not possible to accept the said contention of Mr. Pandya. It is clear from the record of the case that the insurance company had been joined as opponent No. 3 in the petitions from their inception. The concerned claimants were demanding the amount of full damages of, Rs. 30,000/- and Rs. 15,000/- against all the concerned opponents including the insurance company. Instead of granting full claim, the Tribunal granted limited claims of both the, concerned claimants against all the three opponents. When, one of the opponents, being insurance company, files appeals to this court requesting this court to fully exonerate it from its liability to meet any part of the claims, the claimants can justifiably cross object and submit that not only the appellant should not be exonerated from the reduced liability of the award of damages as granted by the Tribunal but in fact. The appellant company is liable to answer the entire claims as prayed for by the claimants in their claim petitions. To that extent, it cannot be said that the cross objections are not primarily directed against the appellant company. I must make it clear that I am not considering the question as to whether the claimants would have been justified in maintaining their cross-objections against the co-respondents-driver and the owner of the vehicle in absence of a finding having been reached by this court that the insurance company was liable to make good the entire claim. In other words, if I had allowed the appeals of the insurance company and had fully

exonerated it from meeting the claims, a further question would have arisen as to whether the cross-objections by the claimants for enhanced compensation could have at all survived against other respondents in the absence of any relief being granted against the appellant insurance company. Under the aforesaid circumstances, it could have been argued with more emphasis by Mr. Pandya that in such an eventuality, the cross-objections would, have been purely directed against the co-respondents alone but this is not the situation which obtains in the present case. I have already held that the insurance com-

pany is liable to answer the entire reached, claimants become fully operative and start to apply with all vehemence demanding full coverage of their entire claims against the insurance company. Question whether the claimants can get their entire claims satisfied by the appellant insurance company would necessarily require the court to consider the further question of assessment of proper damages, Moment that arena of controversy is reached, the co-respondents which are the assured and the motor driver can certainly urge with emphasis that the question regarding assessment of damages qua them has become final subject of course to the operation of cross-objections under O. 41, R. 22, C. P. Code, Consequently, if it is held and it has got to be held that cross-objections. on general principle. under O. 41, R. 22 can be filed against the appellant and as the claimants-respondents have filed their cross-objections against the appellant-insurance company in search of wider coverage against the insurance company to the extent of their full claims, the efficacy of these cross-objections will be rendered illusory in the absence of reopening of the question regarding award of proper damages in favour of the claimants-respondents against co-respondents, the assured and the main tortfeasor-driver of the vehicle. It must, therefore, be held that no relief can be granted to the respondents claimants in their cross objections against the appellant without the question being reopened between the objecting co-respondents viz. the owner and the driver of the truck. Limited nature of defences available to the insurance company under S. 96 (2) (b) indicates that question in controversy between the appellant and the cross-objecting respondents necessarily poses an intertwined question regarding liability of the other concerned respondents and that question will have to be reopened so that cross-objections of the claimants against the insurance company can be effectively adjudicated upon. If that course is not adopted, an impossible situation would emerge. On the one hand, the claimants would be having a statutory right of cross-objection against the appellant-insurance company as provided by express provisions of O. 41, R. 22, C.P.C, and on the other hand, the court will feel helpless in giving any relief to the cross-objecting respondents against the appellant insurance company by holding that no relief could be given to them because granting of relief will require reopening of the question which is intermixed with the liability of the other respondents, That is precisely why exception to the rule that normally no cross-objections can be levelled by one respondent against other co-respondents has to be made in such exceptional cases. It must, therefore, be held that the present case squarely falls

within the exception to the general rule as envisaged by the Supreme Court in Panna Lal's case (supra), and it must be held that cross objections in the present case as levelled against the appellant and the co-respondents are maintainable so that the cross-objections against the appellant can be fully and effectively adjudicated upon. This disposes of the preliminary objection raised by Mr. Pandya as well as by the contesting respondents viz. the Owner and driver of the truck.

18 to 20. x x x x

21. Order accordingly.