

(2007) 03 RAJ CK 0048
In the Rajasthan High Court

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Alka Dave and Others

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 39, 41

Citation : (2008) ACJ 2547 : (2007) 5 RCR(Civil) 729 : (2007) 2 RCR(Rent) 154 : (2007) 3 RLW 1987

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—Since all the appeals and the cross-objections arise out of the same award, namely, award dated 23.2.1994 passed by the Motor Accident Claims Tribunal, Kotputli, they are being decided by this common judgment.

2. In a nutshell, the facts of the case are that in the midnight of 30/31.7.1989 while the family of Uchutshankar Dave was travelling in a Maruti Car, bearing Registration No. DNA 6920, from Delhi to Jaipur, as soon as the car reached village Kanwarpura at about 4:00 A.M., the car tried to overtake a truck which was in front of it. However, while overtaking the said truck, the car struck against another truck which was standing on the extreme right side of the road. Consequently, while the driver, Vivek Anand expired on the spot, other passengers sustained injuries. Therefore, the dependents of the driver and the injured persons filed separate claim petitions before the learned Tribunal. In order to substantiate their cases, nine witnesses were examined by the claimants and a large number of documents were submitted. After hearing both the sides, vide award dated 23.2.1994, the learned Tribunal awarded different compensation amounts to the various claimants.

3. On the one hand, the National Insurance Company Limited is aggrieved by the quantum of compensation amount. Hence, it has filed the present appeals. On the other hand, since the claimants are aggrieved by the meagerness of the compensation amount, they have filed cross-objections praying for enhancement

of the compensation amount.

4. Mr. Vizzy Agarwal, the learned Counsel for the appellant- Insurance Company, has frankly submitted, and according to us fairly so, that the Insurance Company did not seek any permission u/s 170 of the Motor Vehicles Act, 1988. Therefore, in the absence of the said permission, the present appeals are not maintainable. However, he has challenged the maintainability of the cross-objections. According to him, in case the appeals are declared to be non-maintainable, then ipso facto the cross objections are also not maintainable. In order to buttress his contention, he has relied upon the case of Municipal Corporation of Delhi and Ors. v. International Security & Intelligence Agency Limited 2003 (3) SCC 250.

5. On the other hand, Mr. Ram Singh Rathore, the learned Counsel for the claimants-respondents has argued that the case relief upon by the learned Counsel for the appellant relates to an arbitration matter. Therefore, the said judgment is inapplicable to the present case. Moreover, the compensation awarded by the Tribunal is too less. Therefore, the compensation amount should be enhanced.

6. We have heard the learned Counsels for the parties and have perused the impugned award.

7. Order 41 Rule 22 of the CPC deals with the right of the respondent to file the cross-objection against the decree, although he may not have filed an appeal from the said decree. Order 41 Rule 22 runs as under:

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.-(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection 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.

(2) Form of objection and provisions applicable thereto- Such cross objection shall be in the form of memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) 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 determined after such notice to the other parties as the Court thinks fit.

(4) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

8. While dealing with Order 41 Rule 22 of the CPC in the case of Municipal Corporation of Delhi and Ors. (supra), the Hon''ble Supreme Court dealt with the issue as to what happens to the cross-objection if the appeal itself is found to be incompetent and not maintainable? The Apex Court answered the issue as under:

21...Sub-rule (4) of Order 41 Rule 22 of the CPC provides for only two situations in which the cross-objection may be heard in spite of the original appeal having not been heard on merits. These situations are two: (i) the original appeal being dismissed a withdrawn, and (ii) the original appeal being dismissed for default (default in appearance or any other default). Just as the enabling provisions of cross-objection contained in Sub-rule (1) of Order 21 Rule 22 CPC are applicable to appeals u/s 39 of the Act the disabling provision contained in Sub-rule (4) too would apply to appeals u/s 39 of the Act in view of the generality of the provisions contained in Section 41 of the Act. To put it briefly, if the appellate court forms an opinion that the original appeal itself was incompetent or not maintainable as it was filed against an order not falling within one of Clauses (i) to (vi) of Sub-section (1) of Section 39 then the cross-objection shall also fall to the ground and cannot be adjudicated upon on merits. It has to be remembered that law of limitation operates with all its rigour and equitable considerations are out of place in applying the law of limitation. The cross-objector ought to have filed appeal within the prescribed period of limitation calculated from the date of the order if he wished to do so. Having allowed that opportunity to lapse he gets another extended period of limitation commencing from the date of service of the notice of the appeal enabling him putting in issue for consideration of the appellate court the same grounds which he could have otherwise done by way of filing an appeal. This extended period of limitation commences from the date of service of the notice of appeal and such notice ought to be in a valid or competent appeal.

22. If the appeal cannot be heard on merits for the reason that it was no appeal in the eye of the law, service of notice in such appeal would not furnish cause for commencement of a new period of limitation for filing appeal in the form of cross- objection. The only exception in which the cross-objection can still be heard is one where the memo of cross-objection can be said to have been filed within the period prescribed for filing an original appeal against the impugned order and the memo also independently satisfies all the requirements of a memo of appeal. Just a belated or time-barred memo of cross-appeal can be tread- and taken up for consideration -as cross-objection subject to its satisfying the requirements of cross-objection memo so also a cross-objection can be treated as cross-appeal and heard as such subject to its satisfying the requirements as to maintainability of an appeal with regard to limitation and otherwise.

9. Thus, in case the appeal is held to be non-maintainable, cross-objection would also have to be held as non-maintainable subject to the two exceptions contained in Order 41, Rule 22 of the Code. In the present case, since the appeal is held to be non-maintainable, the cross-objections would also fail.

10. Even otherwise, we have gone through each cross-objection to consider the reasonableness of the compensation amount. In the case of Satish Shankar, he had suffered permanent disability to a great extent. Because of his severe disability, the learned Tribunal had awarded him a compensation amount of Rs. 7,10,000/-. Considering the fact that the award is of the year 1994, an amount of Rs. 7,10,000/- is more than just and reasonable. In the case of Smt. Vimal Anand for a fractured leg and for her inability to run, to walk properly and to climb the staircases, she was granted compensation of Rs. 4,95,000/-. Again, the compensation is most just and reasonable. Similar in the case of Achut Shankar, he has been granted compensation of Rs. 1,62,500/- for a fracture suffered by him in his left hip. The said amount is certainly reasonable and just. In the case of Smt. Alka, although there was no evidence to show the extent of the disability suffered by her, still a compensation of Rs. 25,000/- has been awarded to her. Considering the date of the award, the said amount is certainly fair, just and reasonable. In the case of Smt. Vimal Anand, on account of the death of her husband, Mr. Vivek Anand, she has been awarded a compensation of Rs. 2,85,000/-. Again, the said award is certainly reasonable. Therefore, we do not find any reason for interfering with the impugned award.

11. In the result, the appeals and the cross-objections are dismissed and the award dated 23.2.1994 is confirmed. There shall be no order as to costs.