

(2008) 04 GUJ CK 0016
In the Gujarat High Court

Case No : First Appeal No. 6503 of 1998 with Cross Objection No. 312 of 2001
in First Appeal No. 6503 of 1998

Oriental Insurance Co. Ltd. and Others APPELLANT

Vs

Alpaben and Others RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22(1), Order 41 Rule 22(4)
Motor Vehicles Act, 1988 — Section 149, 170, 39, 39(1), 41

Citation : AIR 2008 Guj 122 : (2008) 3 GLR 2307

Hon'ble Judges : Sharad D. Dave, J;A.L. Dave, J

Bench : Division Bench

Advocate : K.K. Nair,s 1-3, for the Appellant; Sandip C. Shah, for Defendants
1-3, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—This appeal is preferred by the appellant to challenge the judgment and award rendered by Motor Accident Claims Tribunal (Main), Ahmedabad (Rural) in Motor Accident Claim Petition No. 412 of 1992 rendered on 12.8.1998.

2. The claim application was preferred by the heirs and legal representatives of deceased Jigishbhai N. Dalal who died in vehicular accident that occurred on 27.1.1992 at about 16.30 hours on National Highway No. 8, near Shastri Bridge when the deceased was going in his Maruti Car No. GJ 1 4630 and collision took place between his car and truck No. MBN 8835.

3. The claimants claimed compensation of Rs. 25 lakhs and the Tribunal awarded compensation of Rs. 10,06,000/- in favour of the claimants from Driver, Owner and Insurer of the truck who are the appellants.

4. The First Appeal is preferred by the Insurer, Driver and Owner of the truck jointly against the original claimants. The cross objections are filed by the

original claimants.

4.1 It is clear from the memo of appeal that no plea of defence u/s 149 of the Motor Vehicles Act, 1988 ("the Act" for short) is taken or is available to the Insurer appellant No. 1 of the truck and, therefore, in light of the decision in the case of Chinnama George and Others Vs. N.K. Raju and Another, , such joint appeal would not be competent and, therefore, not maintainable. It also appears from the record that before the Tribunal, the Driver and Owner of the truck did not contest the application. They did not file any written statement challenging the claim petition. The claim was opposed only by opponent No. 1 (appellant No. 1) Insurer of the truck.

4.2. It also appears that the Insurer did not prefer any application u/s 170 of the Act claiming wider defence. In this set of circumstances and in light of the decision in the case of United India Insurance Co. Ltd. Vs. Hetalbhair C. Bagadia and Others, , the appeal by the Insurer would not be competent either.

5. The appeal, therefore, has to fail for the foregoing reasons.

6. The original claimants have preferred cross-objections bearing No. 312 of 2001. The question that arises before us is whether in a situation where the appeal is held to be not competent, the cross-objections filed in that appeal would be competent or maintainable.

7. Learned advocate Mr. Shah for the original claimants submitted that the cross-objections are like cross appeals and have all trappings of appeal and, therefore, have to be disposed of on merits. He relied on the decision of the Apex Court in the case of Superintending Engineer and Others Vs. B. Subba Reddy,

8. Against this, reliance is placed by learned advocate for the appellant Mr. Nair on the decision of the Apex Court in the case of Municipal Corporation of Delhi and Others Vs. Intl. Security and Intelligence Agency Ltd., where the question of fact of cross-objection if the appeal itself is held not competent or not maintainable came to be examined by a Larger Bench and after considering the decision in the case of Superintending Engineer and Ors. v. B. Subba Reddy (supra), it has been held that such cross-objection would not be competent if the appeal in main is not competent because of period of limitation.

9. In Municipal Corporation of Delhi and others (supra), it is observed thus:

Effect on cross-objection if the appeal itself is held not competent or not maintainable ?

21. What happens to cross-objections if the appeal itself is found to be incompetent or not maintainable ? 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 as 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 41 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 as a belated or time-barred memo of cross-appeal can be treated " 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.

10. It is clear that the cross-objections have been filed after service of notice and in the year 2001 much beyond the period of limitation provided for for preferring an appeal. This is with a view to examine the contention that the cross-objections are to be treated as cross appeal.

11. For the foregoing reasons, both, the First Appeal as well as Cross-Objections must fail and stand dismissed with no order as to costs.