

(2007) 07 MP CK 0032

In the Madhya Pradesh High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Chetna and Others

RESPONDENT

Date of Decision : 17-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 173

Citation : (2008) ACJ 2326

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—This order shall also govern the disposal of M.A. Nos. 1019, 1021, 1022 and 1153 of 2003 as all the appeals are arising out of one accident and parties to the appeal are the same except the claimants. Short facts of the case are that a motor accident took place in the intervening night of 8/9.9.2001 while the claimants were travelling in a Tempo Trax bearing registration No. UP 95-0588 which was driven by one Santosh who is respondent No. 2 and owned by respondent No. 3 at the relevant time. Tempo Trax dashed a truck bearing registration No. RJ 20-V 3773 which was driven by respondent No. 4, owned by respondent No. 5 and insured with respondent No. 6. In the said accident, 5 persons died and 2 persons were injured. The claim petition was contested by the appellant and respondent No. 6.

2. After framing of issues and recording of evidence, learned Tribunal allowed the claim petitions and awarded the following amount:

----- S.No. M.A. No.			
Name	of	appellant	Amount awarded
----- (1) 1174 of			
2003 Chetna	Rs. 34,647	(2) 1021 of 2003 Vidya Suryavanshi	Rs. 1,16,301
(3) 1019 of 2003 Asha Thakur	Rs. 12,501	(4) 1022 of 2003 Urmila	Rs. 3,49,200
(5) 1153 of 2003	Ajab Bai	Rs.	3,91,000

3. In all the cases, learned Tribunal held that accident occurred because of rash and negligent driving of respondent No. 2 and also negligence on the part of respondent No. 4, who parked the vehicle in the middle of the road. In the circumstances, the learned Tribunal apportioned the liability in the ratio of 50:50 between respondent Nos. 2 and 3 and the appellant and respondent Nos. 4 to 6. In all the appeals filed by appellant Oriental Insurance Co. Ltd., the ground taken is that since the offending jeep was insured as private vehicle and was used by the deceased and insured as transport vehicle, therefore, appellant insurance company is not liable for payment of 50 per cent of the awarded amount. Mr. Pradeep Gupta, learned Counsel for appellant further submits that since the driver of the offending jeep was possessing a driving licence of light motor vehicle and not for transport vehicle, therefore, the driver was not having valid driving licence as there was no endorsement from the concerned R.T.O. It is submitted that in the facts and circumstances of the case, learned Tribunal committed error in holding the appellant responsible for payment of compensation.

4. In M.A. No. 1174 of 2003, cross-objections have been filed by Mr. G.K. Neema, Advocate, who submits that learned Tribunal awarded a sum of Rs. 34,647 on account of injuries sustained by Chetna, respondent No. 1, break-up of which is as under:

On account of grievous injuries Rs. 15,000 Pain and suffering Rs. 15,000 Medical expenses Rs. 4,647

5. Learned Counsel for respondent No. 1 submits that Chetna sustained fracture of clavicle bone in both sides and there was malunion of both clavicle bones. It is also submitted that permanent disability was assessed as 21 per cent which has wrongly been disbelieved by the learned Tribunal. It is submitted that no amount has been awarded towards special diet, transport charges, expenses incurred on attendants and permanent disability.

6. In M.A. No. 1021 of 2003, respondent No. 1, the claimant is Vidya to whom a sum of Rs. 1,16,301 has been awarded, break-up of which is as under:

On account of grievous injuries Rs. 15,000 Pain and suffering Rs. 20,000 Medical expenses Rs. 76,301 Loss of income for 4 months Rs. 5,000

7. In this case also, the cross-objections have been filed. Learned Counsel for the respondent No. 1 submits that respondent No. 1 was hospitalised on two occasions at Suyash Hospital, Indore. Respondent No. 1 sustained fracture of maxilla bone. Permanent disability was assessed as 25 per cent. It is submitted that the respondent No. 1 was doing the tailoring work. It is submitted that no amount has been awarded on account of permanent disability, special diet and expenses incurred on attendants. Since the cross-objections are filed with a delay of 215 days, therefore, application for condonation of delay is filed.

8. Mr. V.P. Khare and Mr. Anil Goyal, learned Counsel for United India Insurance

Co. Ltd., respondent No. 6, submits that after the award, no appeal has been filed by claimant-respondent No. 1 in M.A. Nos. 1021 and 1174 of 2003. It is submitted that after filing of the appeal, cross-objections have been filed. So far as M.A. No. 1021 of 2003 is concerned, cross-objections are filed with a delay of 215 days and the cause of delay is not sufficient. Apart from this, no copies have been supplied neither to counsel for appellant nor counsel for respondent No. 6. It is also submitted that since cross-objections have been filed in the appeal filed by the appellant insurance company, therefore, no enhancement can be made against respondent No. 6 who is co-respondent.

9. After taking into consideration all the evidence on record and the arguments advanced by the counsel for appellant, this Court is of the view that appellant failed to prove that the offending jeep was being used as commercial vehicle. Since it is held that offending jeep was not being used for commercial purposes, therefore, it cannot be said that respondent No. 2 who was possessing the licence for light motor vehicle was not having valid driving licence. In the facts and circumstances of the case, no error has been committed by the learned Tribunal in holding the appellant insurance company liable for payment of compensation.

10. So far as enhancement of award in M.A. No. 1021 of 2003 is concerned, the delay in filing the cross-objection is 215 days. The award is dated 27.2.2003 while the cross-objections are filed on 26.6.2006. Respondent No. 1 was having the right to file appeal which accrued on 27.2.2003 itself. No doubt it is the right of respondent No. 1 to file cross-objections within 30 days from the date of admission of the appeal.

11. From perusal of record, it appears that the appeal M.A. No. 1021 of 2003 was admitted on 31.8.2005 and it was directed to issue notice to the respondents. There is nothing on record that in compliance with the order dated 31.8.2005 when the respondent No. 1 was actually served. However, appearance was made by respondent No. 1 along with cross-objections which were filed on 26.6.2006. In the facts and circumstances of the case, it cannot be said that there is a delay of 215 days in filing the cross-objections.

12. Mr. Anil Goyal, learned Counsel for the respondent No. 6 placed reliance on a decision in the matter of National Insurance Co. Ltd. Vs. Javitri Devi and Others, , wherein a Division Bench of this Court has held that "cross-objection by a respondent against co-respondents is not maintainable".

13. It is submitted that since the claimants who are respondent No. 1 and the insurance company of the offending truck were also the co-respondents, therefore, the cross-objections are not maintainable against co-respondents who are respondent Nos. 4 to 6 in view of law laid down by this Court.

14. Mr. Pradeep Gupta, learned Counsel for appellant submits that cross-objections are not maintainable in appeal because there is no provision under the Motor Vehicles Act relating to it. It is submitted that u/s 173, Motor Vehicles Act,

it is only the appeal which can be filed. It is further submitted that since Motor Vehicles Act is a self-contained code, therefore, limited provisions of CPC are applicable which are duly notified by the State Government. For this contention, reliance is placed on a decision in the matter of Branch Manager, New India Assurance Co. Ltd. Vs. Salat Mary, Vinayagamoorthy, Manivannan and Branch Manager, The Oriental Insurance Co. Ltd., wherein the Division Bench of Madras High Court held that "in a case where cross-objections are filed by the claimant for enhancement of compensation in an appeal filed by the insurance company challenging its liability, the same is not maintainable".

15. Reliance was also placed on a decision of Himachal Pradesh High Court in the matter of United India Insurance Co. Ltd. Vs. Krishan Chand and Others, wherein it was held that the "cross-objections filed by claimants for enhancement of compensation are not maintainable in an appeal by insurance company when defences to it are limited".

16. Mr. G.K. Neema, learned Counsel for the claimant, respondent No. 1 submits that so far as the decision in the matter of United India Insurance Co. Ltd. Vs. Krishan Chand and Others, is concerned, in Himachal Pradesh there is no notification of the State Government for including the provisions of Order 41, Rule 22, Code of Civil Procedure, therefore, decision of Himachal Pradesh High Court is not applicable in the present case. It is submitted that so far as the State of Madhya Pradesh is concerned, by a separate notification wherein provisions of the CPC are made applicable in which Order 41, Rule 22, CPC is included. So far as maintainability of cross-objections against respondent Nos. 4, 5 and 6 are concerned, learned Counsel for respondent No. 1 submits that it was a case where the vehicle involved was one and the appeal was filed by the insurance company and respondent Nos. 2 and 3 were driver and owner. It is submitted that in that case since the appellant insurance company was exonerated, therefore, the Hon'ble Division Bench of this Court has held that cross-objections are not maintainable against co-respondents.

17. So far as maintainability of cross-objection against appellant insurance company is concerned, since Order 41, Rule 22, Code of Civil Procedure, is included in the rules, therefore, cross-objections filed by respondent No. 1 is maintainable against the appellant. So far as cross-objections filed by respondent No. 1 against respondent Nos. 4 and 6 are concerned, since Division Bench of this Court has held that cross-objections by the respondent against co-respondents are not maintainable, therefore, it cannot be said that law laid down is not applicable only because in that case there was only one vehicle which was involved.

18. Mr. G.K. Neema, learned Counsel for respondent No. 1 further submits that since the respondent No. 1 were passengers and third parties, therefore, it was a case of composite negligence and not a case of contributory negligence. It is submitted that in view of the law laid down in the matter of Smt. Sushila Bhadoriya and Others Vs. M.P. State Road Transport Corporation and Another, it

was not necessary for the learned Tribunal to decide the contribution of driver of each of the vehicles involved in the accident.

19. From perusal of record, it is evident that claimants who are respondent No. 1 themselves stated that offending vehicle was driven by respondent No. 2 rashly and negligently and at the same time it was also stated by them that the offending truck which was being driven by respondent No. 4 was also parked in the middle of the road. Thus, after appreciation of the evidence, learned Tribunal has come to the conclusion that drivers of both the vehicles were negligent and liable for payment of compensation in equal ratio. It is true that it was not necessary for respondent No. 1 to implead driver and owner of both the vehicles as party. If respondent No. 1 would have impleaded only respondent Nos. 2 and 3 and appellant as party, then it would have been a case of joint tortfeasors and respondent Nos. 2 and 3 and the appellant would have been liable for payment of compensation but when respondent No. 1 chooses to implead the driver, owner and insurance company of both the vehicles and adduced the evidence and after due appreciation of evidence, learned Tribunal comes to the conclusion that both the vehicles were equally liable for the accident, therefore, no illegality has been committed by the learned Tribunal in holding the appellant and respondent Nos. 2 and 3 and respondent Nos. 4 to 6 liable for payment of compensation in equal ratio.

20. Now coming to the question of enhancement, so far as Chetna who is respondent No. 1 in M.A. No. 1174 of 2003 is concerned, she was a girl aged 9 years at the time of the accident, who sustained fracture of clavicle bone in both sides and she was hospitalised for 3 days. Medical evidence was adduced to the effect that there was permanent disability. In the circumstances, the amount awarded by the learned Tribunal appears to be on lower side. Looking to her age and the nature of injuries, she is further entitled for a sum of Rs. 40,000.

21. So far as M.A. No. 1021 of 2003 is concerned, the respondent No. 1 is a lady who was aged 32 years at the time of the accident, sustained fracture of maxilla and nasal bone. There is disfiguration. Amount awarded by the learned Tribunal appears to be on lower side. Hence, the amount is further enhanced by Rs. 50,000.

22. Since it has been held that no cross-objections are maintainable against respondent Nos. 4 to 6, therefore, respondent No. 1 is entitled to recover half of the enhanced amount from the respondent Nos. 2 and 3 and appellant. This amount shall carry interest at the rate of 7.5 per cent from the date of application.

23. With the aforesaid modifications, the appeals stand disposed of. Let a copy of this order be placed in all the connected appeals.