

(1990) 11 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 73 of 1982

Prakramchand

APPELLANT

Vs

Chuttan and Others

RESPONDENT

Date of Decision : 30-11-1990

Acts Referred:

Central Motor Vehicles Rules, 1989 — Order 41 Rule 22, Order 41 Rule 33, Order 41 Rule 34

Motor Vehicles Act, 1939 — Section 110CC, 110D

Citation : (1991) ACJ 1051 : AIR 1991 MP 280 : (1992) 75 CompCas 638 : (1991) 2 MPJR 265 : (1991) 36 MPLJ 739 : (1991) MPLJ 739

Hon'ble Judges : T.N. Singh, J; Sacheendra Dwivedi, J; S.K. Dubey, J

Bench : Full Bench

Advocate : N.M. Haswani, for the Appellant; N.D. Singhal, for the Respondent

Judgement

T.N. Singh, J.

When this appeal came, for hearing before one of us (S. K. Dubey, J.), sitting singly, and it was heard at some length by him, he took the view that the interpretation of Section 110-CC, Motor Vehicles Act, 1939, for short, the "Act", in the context of Order 41, Rule 33, CPC by another learned single Judge of this Court in the case of Oriental Fire and General Insurance Co. Ltd. Indore v. Kamla Bai 1990 MPJR 140, hereinafter referred to as Kamlabai's case was required to be examined by Larger Bench. Indeed, according to him, the view expressed in the decision cited, conflicted directly with this Court's decision in Manjula Devi Bhuta v. Manjushri Raha 1968 Jab LJ 189 and otherwise also, the question was a general importance to decide whether in appeal, the Court had power, jurisdiction or duty to award interest at a higher rate in the absence of cross-objection in that regard by the claimant.

Twin provisions, above-referred, are extracted in the extenso :

Section 110-CC, M.V. Act:

"110-CC. Award of interest where any claim is allowed.-- Where any Court or Claims Tribunal allows a claim for compensation made under this Act, such Court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

Order 41, Rule 33, CPC:

"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 favour 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 as, 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."

On facts, it is not disputed that in this matter, there is no cross-objection. Admittedly also, the award impugned in the appeal, passed by the M.A.C.T., Shivpuri, interest has been awarded at the rate of 6% per annum and that is made payable from the date of award. Therefore, it is necessary to examine first afore-cited Kamlabai's case (1990 MPJR 140) (supra). The question of enhancement of interest was raised by the claimant/respondent in the appeal preferred by Insurer, assailing his liability under the award. The appeal was dismissed and, at the same time, claim for enhanced interest too was negated. There is not discussion on the import, purport or scope of Section 110-CC of the Act and the decision is based squarely on Order 41, Rule 33, CPC, relying on a Bench decision of this Court in Sumanbai and Others Vs. State of M.P. and Others, as also in Rukmani Devi's case 1984 ACJ 548. We reproduce, however, the extract which the learned Judge made from Sumanbai's case:

"A reading of Order 41, Rule 33 clearly goes to show that the rule has been made to provide for certain contingency where it may become necessary to pass a decree although a party may not have preferred an appeal but it does not provide that where a decree has become final against the defendant and the defendant has not challenged that decree by way of appeal or cross-objection still it can be set aside because one of the parties has preferred the appeal whereof the question of the decree against the other defendant is not at all raised."

The observation afore-quoted, was made by the Bench in rejecting Insurer/respondent's contention challenging the quantum of compensation awarded,

relying on Order 41, Rule 33, CPC. That is not made in connection with a claim for interest. The appeal was by claimant and the Bench enhanced the interest awarded to 6% per annum and made that payable from the date of application till realisation, modifying Tribunal's award of interest at the rate of 4%, payable from the date of the order. On merit also otherwise, as regards quantum, modification in the award passed by the Tribunal was made. The basis of the view taken in rejecting respondent's contention is that the said respondent/Insurer had not raised any other "defence" in the proceedings before the Tribunal except that the deceased was a passenger in a private car and Insurer was not liable. On facts, the Tribunal had negated that defence.

Similarly, in *Rukmani Devi* (1984 ACJ 548) (supra), there was no controversy in the appeal by the claimant as regards jurisdiction for enhancing rate of interest without cross-objection. At para 14, while raising the quantum of compensation, order was also made for payment of interest to the claimant at the rate of 6% per annum from the date of application till payment "as directed by the Tribunal". A learned single Judge, deciding *Kamlabai's* case (1990 MPJR 140) (supra), referred also to the case of *Santosh* 1985 MPWN 145. That decision too deserves attention. That was a case u/s 12, M.P. Accommodation Control Act and the question was, if any adverse finding can be assailed without cross-objecting, invoking Order 41, Rule 22, CPC. Evidently, in our opinion, the scope of Rules 22 and 23 of Order 41 are entirely different. Intermixing of the two is liable, according to us, to blur judicial vision resulting in wrong interpretation of Rule 33. Suffice it to say, it is not possible for us to agree with the view expressed in *Kamlabai* that the jurisdiction of Appellate Court is cribbed and cabined in terms of Rule 22 so far as it concerns the respondents. True, that provides cross-objection to be filed by the respondent to the decree impugned in the appeal and he has been assured thereunder the right to support the decree even by assailing any finding made against him in the judgment by the Court allowing his claim to the extent decreed. Although both provisions are procedural and relate to hearing and disposal of the appeal, Rule 22 embodies the right of the respondent in relation to the matter enumerated therein. On the other hand, Rule 33 deals with power and jurisdiction of the appellate Court exercisable in the appeal in the manner contemplated therein; that power "may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection". That clear legislative mandate impinges in no way on the right of the respondent, contemplated in Rule 22.

For the view, we have taken, we find support in *Manjula Devi* (1968 Jab LJ 189) (supra). It has been held that the range and sweep of the discretionary power envisaged under Order 41, Rule 33 is very wide as it enables the appellate Court to use it in a proper case even in favour of a party who has neither appealed nor filed the cross-objection so as to prevent justice being defeated. Two decisions of the Apex Court, *Pannalal Vs. State Bombay and Others*, and *Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others*, were considered in that case. The Court, in allowing cross-objection of the claimant, modified the award and

held, liable the party exonerated by the Tribunal. That was done exercising jurisdiction under Order 41, Rule 33, while rejecting the contention, at the same time, that in an appeal u/s 110-1), cross-objection could not be filed as appeal was not under CPC. Not only provisions of Order 41, Rule 22, CPC were held inexhaustive, those of Rule 14 of the Rules framed under the Act were similarly held inadequate and not impinging on Court's power under Order 41, Rule 33.

In *Panna Lala* (supra), provisions of Rules 22 and 33 of Order 41 were juxtaposed and considered. Direct support for our view, we receive from the holding therein that "if a party who could have filed cross-objection under Order 41 Rule 22, has not done so, it cannot be said that the appeal Court can under no circumstances give him relief under provisions of Order 41, Rule 33, CPC". Further, it was held, "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". In *Nirmala Bala* (supra), the Court held that "where in appeal, the Court reaches a conclusion which is inconsistent with that of the Court appealed from, and in adjusting the right claimed by the appellant, it is found necessary to grant relief to person who has not appealed, the power under Order 41, Rule 33 may properly be invoked".

Relevance of *Giasi Ram and Others Vs. Ramjilal and Others*, to the controversy is more pointed because duty of appellate court to exercise jurisdiction under Order 41 Rule 33 in appropriate cases is stressed stating that "it would be perpetrating grave injustice" in a particular case if that is not done because of words used in Rule 33 "which ought to have been passed" which means "which ought in law to have been passed" by the trial Court. Indeed, the Proviso draws the limit by affirmatively debarring exercise of jurisdiction under Rule 33 for passing order u/s 35-A. What cannot be doubted is Rule 22 and Rule 33 are mutually exclusive and it is not possible to agree with the view expressed in *Kamlabai's* case (1990 MPJR 140) because Rule 33 operates in a different field for different purpose and is not controlled by Rule 22. The words "although such respondents or parties may not have filed any appeal or objection" manifest clearly that legislative intent. *Kanaya Ram and Others Vs. Rajender Kumar and Others*, was relied on in this Court's decision in *Shamsher Khan*, 1988 ACJ 395 : 1987 Jab LJ 72 in taking the view that change in law having bearing on the rights of parties before the appellate Court is required to be taken note of under Order 41, Rule 33, CPC to mould relief accordingly. That decision was on Section 110-D of the Act and compensation was enhanced on the basis of guidelines provided in Section 92-A of the Act despite inapplicability in terms of that provision.

Recent Full Bench decision of this Court in *Smt. Sarmaniya Bai and Others Vs. Madhya Pradesh Rajya Parivahan Nigam and Others*, has held that such provisions of CPC, the application of which is not explicitly excluded thereunder or under the Act to a proceeding under the Act, may be invoked by the parties and in that view of the matter, the contention of the claimant that the provisions of Order 21, CPC were applicable to the execution of an award passed by the

Tribunal was upheld. In our view, the High Court, hearing an appeal u/s 110-D of the Act, for same reason, is entitled to exercise jurisdiction contemplated under Order 41, Rule 33, CPC to give necessary relief to the claimant due to him under the law. Powers which are to be exercised in appeal u/s 110-D are widely stated inasmuch as any person "aggrieved" in any manner by the award passed by the Claims Tribunal is entitled to prefer the appeal except when the amount in dispute in the appeal is less than Rs. 2,000/-. The provision does not expressly limit the powers and jurisdiction which the High Court may exercise in the appeal filed. What is clear, however, is that High Court is vested with the jurisdiction to adjudge the legality of the award and to give necessary relief to the parties before it because it is duty-bound, acting as an appellate Court, to examine the legality, propriety of the award as also due exercise of jurisdiction vested in it by the Tribunal. For doing so, the High Court must possess all powers in that behalf to make effective exercise of its jurisdiction, see, in this connection *ITO v. Mohd. Kunhi* AIR 1969 SC 430.

As a special law, providing a special forum, albeit in regard to remedy available under pre-existing dispensation, that makes special provision in respect to many matters. A Civil Court passing a money-decree, is entitled to pass orders in respect of interest as per Section 34, CPC, but deviation from that is made in Section 110-C and that is significant. On the principal sum adjudged "from the date of the suit to the date of decree" interest may be awarded till realisation or such earlier date as may be fixed by the Court ceiling is set at 6% per annum. On the other hand, Section 110-CC of the Act directs that "in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim" to vest wider jurisdiction in the Claims Tribunal for awarding interest. Neither is a ceiling set nor is the jurisdiction to award interest limited to the date of decree. The only limitation expressly provided on exercise of discretion of Claims Tribunal awarding interest is that simple interest has to be awarded and "from such date not earlier than the date of making claim". Another significant departure made in Section 110-C is that the expression used are "shall also be paid" carry in that a mandate against the judgment-debtor in regard to discharge of that liability and a duty of the Tribunal to pass that mandate. Such an express mandate is not readable in Section 34, CPC. Indeed, such requirement is also not to be read in Section 3, Interest Act, 1978 which makes Court's jurisdiction to allow interest to the person held entitled to the debt or damage claimed, "if it thinks fit".

We refer now to the case-law cited by counsel. The decision in *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, was rendered on an appeal by the respondent in the claim petition. He challenged Tribunal's decision exonerating the Insurer of the liability and shifting that to him. While allowing the appeal, the award of the Tribunal as well as the judgment of the High Court were modified not only holding the Insurer liable for the compensation awarded, but also for interest, which their Lordships awarded at the rate of 12% per annum from the date of the accident till payment despite there being no cross-

objection of the claimant. True, no objection was raised. Whether such an order could be passed by the High Court was not decided and not being posed that was made. Whether such an order ought to have been passed and not being passed by the High Court, it had to be passed by the Supreme Court was not posed even as a question to be decided. Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, took the view that the High Court erred in the exercise of its discretion u/s 110-C in not awarding interest from the date of the application though at the rate of 6% per annum award in that regard was made. Their Lordships directed not only interest to be paid from the date of application, but at the rate of 12% per annum. In Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others, relying on Narchinva Kamat and Chameli Wati, their Lordships enhanced similarly the interest to 12% per annum and made that payable from the date of application to the date of payment.

Obviously, the view which is consistently prevailed by the Summit Court on the interpretation of Section 110-CC is that Claims Tribunal, and in appeal, the High Court also, in determining the compensation payable to the claimant preferred application u/s 110-A of the Act, ought to award, in addition to the compensation, simple interest at the rate of 12% per annum from the date of application. By holding so, their Lordships have expressed the view, non-exercise or improper exercise of jurisdiction by the Tribunal or High Court u/s 110-C taints the award made in regard to the compensation. Reason for that is not far to see as Section 110-CC vests jurisdiction in Tribunal to make direction in regard to interest payable to the claimant "in addition to the amount of compensation" determined. They also purport to hold that the duty of the Claims Tribunal and the High Court to "specify" the rate of interest and the date from which that becomes payable is discharged by specifying the interest at the rate of 12% per annum and the date of payment as the date of application. That mandate, in our view, in regard to interpretation of Section 110-CC has become the law of the land, as contemplated under Article 141 of the Constitution and that is binding on all Courts in India. We are buttressed in this conclusion noticing the emerging trend as well at the summit level. In a recent decision rendered on 3-5-1990 in the case of Ramesh Chandra v. Randhir Singh, 1990 (II) 86. The view taken is that for award of interest, no pleading is necessary, while in the decision rendered on 15-11-1989, in the case of R. L. Gupta v. Jupiter General Insurance Company, 1990(1) MPWN 177, in categorical terms, the Apex Court observed that "there have been several orders of this Court in recent cases in compensation disputes where the Court has awarded 12% interest" and on that ground, their Lordships raised interest also from 6% to 12% while enhancing the compensation.

Brief survey, we also make of this Court's decisions cited at the Bar, bearing on the interpretation of Section 110-CC. Shamsheer Khan (supra) took note of Narchinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, and Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others, and took the view that the Court was "bound by the supreme judicial dicta" and on

that basis interest on the enhanced amount of compensation was raised to 12% per annum from the date of the application. Five Division Benches of this Court have also taken the same view following the same reasoning. Indeed, in *State of M.P. v. Diwan Chand*, 1988 (1) MPWN 64, that cross-objection interest was enhanced from 6% to 12% per annum from date of application till payment. In *Lachiyabai Vs. Darshan Singh and Another*, interest was awarded at the rate of 12% per annum from the date of application till payment. To the same effect are also decisions in *Modhiya v. Rameshchandra* 1987 1 MPWX 223; *State of Madh Pra v. Ashadevi* 1988 Jab LJ 485 : (AIR 1989 M P 93) and in *Nisar Fatima v. M.P.S.R.T.C.* 1988 Jab LJ 725 : (AIR 1989 NOC 130) . Without cross-objection, in Insurer's appeal, interest was directed to be paid by him at the rate of 12% per annum from date of application in *New India Assurance Co. Ltd. and Others Vs. Smt. Shakuntalabai and Others*,

Evidently, the trend-setter is the decision of a learned single Judge of this Court rendered on 30-11-1985 in *State of M.P. v. Shatiba* 1986 (1) MPWN 54, wherein Section 110-CC was compared with Section 34, CPC to hold the view that in the absence of specific statutory mandate prescribed in Section 110-CC, about rate of interest, minimum interest charged by commercial Bank being 12%, that should be specified to make the award of interest reasonable. Without cross-objection of the respondent, the award was modified in appeal by this Court by raising the interest from 6% to 12%. For the view taken, inspiration was derived from a Bench decision of the Gauhati High Court in the case of *United India Fire and General Insurance Company v. Malati Bala* (1985) 1 Gau 443 . In that case, the award of the Tribunal was faulted by the High Court for not giving reasons for awarding only 6% interest and not higher interest, taking the view that Tribunal had committed jurisdictional error in doing so and that could be corrected by the High Court without cross-objection of the claimant/respondent. In the case of *Sardar Ishwar Singh, Truck Owner and Another Vs. Himachal Puri and Others*, decided on 18-9-1989, power was exercised suo motu in owner's appeal to enhance interest to 12% per annum while enhancing the compensation. We have no doubt that in so far as this Court is concerned, it has been the considered and consistent view of several Benches of this Court for at least last five years that for proper award of interest Under Section 110-CC it is necessary to specify, even without cross-objection, the rate of interest, to be payable at 12% per annum from date of application till realisation, while awarding or enhancing compensation in appeal.

For all the aforesaid reasons, we hold that *Kamlabai* (supra) does not lay down the law correctly. We hold further that in appeal u/s 110-D of the Act, the High Court can act without cross-objection and enhance interest to 12% per annum, payable from the date of application till realisation, on the compensation awarded.

In our view, on merits, decision in the appeal may be rendered by the Referring Judge and as such, the matter shall go back to him for final hearing and disposal

of the appeal.