(1994) 08 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Siri Nath APPELLANT

Vs

Karam Singh Mehal Singh and Others RESPONDENT

Date of Decision : 24-08-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : (1994) 2 ACC 680

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

R.P. Sethi, J.—On the death of Paras Nath, in an accident on 24th April, 1974, the father and mother of the deceased, and his widow, who are the appellants before us, filed a claim petition under the Motor Vehicles Act, which was disposed of on 8th December, 1976 by awarding a sum of Rs. 20,000/- as compensation with interest at the rate of 6% per annum from the date of filing the petition to the date of the award. Not satisfied with the award, respondents Nos. 1 and 6 filed F.A.O. No. 121 of 1977, which was disposed of by the learned Single Judge vide judgment, dated 24th August, 1983 holding:

This appeal is now accepted with the finding that the owners, driver and the respective Insurance Company of the truck No. CHW 712 are not liable for payment of any compensation in this case and the entire liability for the amount awarded is that of the driver, owner and Insurance Company of the truck HRA 4227 and they are accordingly jointly and properly.

The appellants herein had neither filed appeal nor cross-objections against the award, but submitted before the learned Single Judge that they be paid enhanced rate of interest on the amount awarded as compensation. The learned Single Judge rejected their prayer on the ground that as the appellants had neither filed appeal nor cross-objections, they were not entitled to the grant of relief orally prayed. It is submitted on behalf of the appellants now that the learned Single Judge did not appreciate the relevant provisions of the law while passing the order in the appeal.

2. We have heard the learned Counsel for the parties and perused the record. It is true that generally no relief can be granted to a party who has not raised any objection regarding the legality or correctness of the judgment decree or award, passed in the proceedings to which he was a party but it is equally true that the Courts of law in specified cases can grant appropriate relief to do justice between the parties under exceptional circumstances by varying the decree in favour of the respondents.

Order 41, Rule 33 of the CPC provides:

33. Power of Court 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 are 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 order u/s 55-A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make order.

The learned Counsel for the appellants has relied upon the case of Sonaram Vs. Jaiprakash and Others, to show that the higher rate of interest should be granted to the claimants by taking recourse to the provisions of Order 41, Rule 33, Civil Procedure Code. After perusing the judgment in Sonaram''s case (supra), we are not inclined to take die view as was taken in that case to not only enhance the rate of interest but also me amount of compensation. It is well settled that the provisions of Order 41, Rule 33 CPC can be resorted to ex debito justice in appropriate cases. In similar circumstances, a Division Bench of the Bombay High Court in Maharasthra State Road Transport Corporation v. Kamlabai and Ors. 1989 ACJ 750, holding "It is, therefore, clear that although we cannot consider the plea of the claimants for higher ratio of interest in the absence of any appeal or cross-objection preferred by them, it is still open to us to pass appropriate orders about the interest, when we are modifying the award or compensation at the instance of the appellant-Corporation in the appeal preferred by it."

3. Resort to the provisions of Order 41, Rule 33 is not required to be liberally exercised but only in exceptional cases. Where the ends of justice so demand, the Court has the right to mould the relief by passing any decree or order which ought to have been passed despite the fact that the other side has hot filed any appeal or cross-objections. The general proposition of law as laid down by the learned Single Judge that no relief could be granted regarding the enhancement

of interest was, therefore, contrary to the provisions of law.

4. In the instant case, on the death of the deceased who was a young boy of 30 years of age, the Tribunal had awarded a meagre sum of Rs. 20,000/- only and the poverty of the appellants prevented them even from getting the benefit of awarded amount which was directed to be paid to them upon the condition that they will have to furnish security before they were paid the aforesaid amount.

5. The learned Counsel appearing for the respondents has submitted that 6% rate of interest as awarded, was reasonable and does not require any enhancement. The learned Counsel for the appellants has relied upon various judgments of the Supreme Court to urge that the rate of interest should be enhanced to 12% per annum. After going through the facts of the case, pleadings of the parties and the various judgments cited at the Bar, we are of the opinion that the rate of interest awarded by the Tribunal requires modification. In the facts and circumstances of the case, while allowing this appeal, we direct that the awarded amount shall be paid to the appellants along with interest at the rate of 12% per annum from the date of the filing of the petition till the date of deposit of the amount in Court by the respondents. The appellants are also held entitled to costs throughout.