

(2010) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 1894 of 2007 and Cross Objections

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mohammed Ahmedunnisa and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Arbitration Act, 1940 — Section 41

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, Order 13 Rule 3, Order 13 Rule 4, Order 13 Rule 5, Order 13 Rule 6

Criminal Procedure Code, 1973 (CrPC) — Section 195

Motor Vehicles Act, 1988 — Section 168, 169, 170, 173, 173(1)

Citation : (2010) 12 AP CK 0005

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; Venkateshwar Varanasi, for Respondent Nos. 1 to 6 and Kota Subba Rao, Respondent No. 1 in Cross Objections, for the Respondent

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—This appeal and cross objections are filed by the insurance company and the claimants respectively questioning quantum of compensation awarded by the Motor Accidents Claims Tribunal-cum-1 Additional District Judge, Karimnagar by award dated 01.03.2006 in O.P. No. 429 of 2005 granting compensation of Rs. 7,60,000/- to the dependant claimants for death of the deceased who died in road accident involving lorry bearing No. AP 21 U 3654 near Medipalli centre of Ramagundam. When questioned, counsel for the Appellant/insurance company stated that the Appellant did not seek and obtain required permission from the lower Tribunal at the appropriate stage u/s 170 of the Motor Vehicles Act (in short, the Act). Therefore, the appeal is liable to be dismissed on that ground alone as not maintainable.

2. It is contended by the Appellant's counsel that no cross-objections are maintainable in an appeal of this nature and that in any event when the appeal

itself is not maintainable, cross objections filed therein will not survive for consideration. The Appellant's counsel placed reliance on single-Judge pronouncement of this Court in Branch Manager, New India Assurance Co. Ltd. Vs. Are Ramulu @ S. Ramulu and Another, in this regard. It was held therein that since the appeal was being dismissed and not maintainable for not obtaining permission u/s 170 of the Act, as per ratio of the Supreme Court in Ashok Kohli Vs. Prakash Chand and Others, the question of cross objections surviving does not arise.

3. On the other hand, the counsel for claimants/cross-objectors contended that Are Branch Manager, New India Assurance Co. Ltd. Vs. Are Ramulu @ S. Ramulu and Another, supra is not good law having regard to pronouncement of the Supreme Court in Superintending Engineer and Others Vs. B. Subba Reddy, It is contended by the Appellant's counsel that the Supreme Court rendered Superintending Engineer and Others Vs. B. Subba Reddy, under the Arbitration Act, 1940 and not under the Motor Vehicles Act and that therefore it cannot be applied herein.

4. The Supreme Court in Superintending Engineer and Others Vs. B. Subba Reddy, laid down the following principles after examining its previous judgments and provisions of Section 41 of the Arbitration Act, 1940 and Order XLI, Rule 22 of the Code of Civil Procedure:

(1) Appeal is a substantive right. It is creation of the statute. Right to appeal does not exist unless it is specifically conferred.

(2) Cross-objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well.

(3) Court-fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeals by indigent person also apply to cross-objection.

(4) Even where the appeal is withdrawn or is dismissed for default, cross-objection may nevertheless be heard and determined.

(5) Respondent even though he has not appealed may support the decree on any other ground but if wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objection which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the Court like in appeal.

(6) Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the Respondent wanted to give quietus to whole litigation by his accepting the judgment and decree or order even if it was partly against his interest. When, however, the other party challenged the same by filing an appeal statute

gave the Respondent a second chance to file an appeal by way of cross-objection if he still felt aggrieved by the judgment and decree or order.

5. As per Section 41(a) of the Arbitration Act, 1940, the provisions of CPC are applicable to all proceedings before the Court and to all appeals under that enactment. Section 173(1) of the Motor Vehicles Act, appeal lies to the High Court on award of a Motor Accidents Claims Tribunal. Section 173 of the Act is silent with regard to the procedure applicable to an appeal before the High Court preferred by any aggrieved person thereunder. Neither the Act nor the Andhra Pradesh Motor Vehicles Rules, 1989 (in short, the Rules) prescribe any special procedure to be followed in appeals before the High Court. Section 169 of the Act prescribes procedure and powers of the Claims Tribunals during enquiry u/s 168 of the Act. Relevant portion of Section 169 of the Act reads as follows:

169. Procedure and powers of Claims Tribunals:

(1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material object and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Rule 473 of the Rules specifically make certain provisions of Code of Civil Procedure, 1908 applicable to proceedings before the claims Tribunals, and it reads as follows:

473. CPC to apply in certain cases:

The following provisions of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908), shall so far as may be, apply to proceedings before the Claims Tribunal namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXVIII, Rules 1 to 3.

Though there are specific provisions u/s 169 of the Act and Rule 473 of the Rules applicable to proceedings before the claims Tribunals, there is no provision either in the Act or in the Rules prescribing special procedure to be followed in appeals filed u/s 173 of the Act or limiting application of only certain provisions of the CPC to such appeals. The High Court entertains appeals u/s 173 of the Act in exercise of its civil appellate jurisdiction, in which case all the provisions of the CPC including Order XLI thereof are applicable. In that view of the matter and basing on *Superintending Engineer and Others Vs. B. Subba Reddy*, of the Supreme Court, I have no hesitation to hold that cross objections filed under Order XLI, Rule 22 CPC are maintainable in an appeal filed u/s 173 of the Act and that even though such appeal is not maintainable for any reason, cross

objections filed therein survive independently and have to be decided by this Court on merits independently. It follows that cross objections filed by the claimants herein are liable to be disposed of on merits independent of maintainability or otherwise of the appeal.

6. Division Bench of the Karnataka High Court in *New India Assurance Co. Ltd. and Another Vs. Devi Kumari and Others*, held that even though appeal filed by the insurance company is not maintainable for non-compliance of Section 170 of the Act, cross objections have independent existence and that fate of appeal will not govern fate of cross objections.

7. It is contended by the counsel for cross objectors/claimants that compensation awarded by the lower Tribunal is too low and is liable to be enhanced having regard to material placed by the claimants herein. There is no dispute that the deceased was aged 48 years by the date of accident. The deceased was dealer in J.K. Tyres and was running business under the name and style of Asif Tyres. Apart from doing business at Karimnagar, the deceased was having branch at Mancherial also. The deceased was also having agriculture besides business in tyres. The claimants filed Exs. A-7 to A-9 copies of income tax assessments/returns for the years 2001-02, 2002-03 and 2003-04 respectively. As per Ex. A-7 the deceased returned his income from business as Rs. 50,000/- and agricultural income as Rs. 30,000/- for the year 2000-01 totaling Rs. 80,000/-. As per Ex. A-8, income of the deceased was Rs. 60,000/- and Rs. 40,000/- respectively for the assessment year 2002-03 corresponding to accounting year 2001-02 totaling Rs. 1,00,000/-. As per Ex. A-9, income of the deceased was Rs. 1,00,000/- and Rs. 60,000/- respectively for the assessment year 2003-04 corresponding to accounting year 2002-03 totaling Rs. 1,60,000/-. Therefore, it is contended by the cross objectors' counsel that the lower Tribunal should have assessed income of the deceased at a rate more than Rs. 60,000/- per year. The 2nd claimant who is the eldest son of the deceased as P.W. 1 admitted that presently he is looking after tyres shop of the deceased. The deceased have 4 major sons apart from one major unmarried daughter and wife. The claimants did not file any material to show any loss of income or decrease in income either in business or agriculture subsequent to death of the deceased, when compared to income that was derived from business and agriculture during life time of the deceased. In spite of it, the lower Tribunal generously took annual contribution of the deceased to his family members as Rs. 60,000/- and calculated the compensation amount. It is contended by the cross-objectors' counsel that for the age of 48 years, as per *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, the proper multiplier is 13 and not 12. Even though there are six claimants herein, as pointed out earlier, all four sons of the deceased are major sons. The only dependants on the deceased can be his widow and his unmarried daughter. The lower Tribunal did not deduct any part of Rs. 60,000/- towards personal expenditure of the deceased. The lower Tribunal observed that it was the value of loss of services of the deceased to his family members. In spite of it, I do not propose to disturb finding of the lower Tribunal

on the quantum of compensation because the appeal filed by the insurance company is not maintainable. In case multiplier has to be increased from 12 to 13, then pecuniary dependency of the dependants who are only 2 in number has to be drastically reduced and some amount has to be deducted towards personal expenditure of the deceased. Since the main appeal is not maintainable in law, I do not propose to disturb the total quantum of compensation awarded by the lower Tribunal.

8. In the result, the appeal as well as the cross objections are dismissed. No costs.