(1992) 04 MAD CK 0054

In the Madras High Court

Case No : A.A. No. 570 of 1984

United India Insurance Co. Ltd. APPELLANT

Vs

Rajammal and Others RESPONDENT

Date of Decision : 08-04-1992

Acts Referred:

Citation : (1993) ACJ 486 : (1992) 2 LW 147

Hon'ble Judges : K. Venkataswami, J;A. Abdul Hadi, J

Bench : Division Bench

Advocate : K.S. Narasimhan and R. Ravichandran, for the Appellant; R.T. Doraiswamy, T.D. Vasu, N. Chinnu, A.K. Kumaraswamy and S. Venkateswaran, for the Respondent

Final Decision : Allowed

Judgement

A. Abdul Hadi, J.—This appeal is by the insurance company against the award of the Claims Tribunal in M.C.O.P. No. 24 of 1984 for a sum of Rs. 76,800/- in favour of the claimant-respondent Nos. 1 to 4 herein, who are the legal representatives of the deceased, who died in the motor accident that took place on 10.1.1983 at 6.00 p.m. The vehicle involved in the accident is MDB 9318 and it knocked down the deceased while he was going by a cycle.

2. Only a short question is involved in this appeal. As per the claim of the appellant insurance company, its liability is only limited to Rs. 50,000/-. But the Tribunal has not apportioned the above-said award amount accordingly. For not apportioning the award amount, the Tribunal relied on the decision in Mehta Madan Lai v. National Insurance Co. Ltd. 1983 ACJ 348 and has held that the owner of the vehicle and the insurance company are jointly and severally liable.

3. But, the learned Counsel for the appellant argues that in the above-said case before the Supreme Court, the award amount itself was Rs. 42,000/-, that is, below the above-said sum of Rs. 50,000/- and that is why there is no scope for apportionment in that case. We agree with this contention of the learned Counsel

for the appellant and we hold that the insurance company could be made liable only for a sum of Rs. 50.000/- out of the above-said total award amount of Rs. 76,800/-. The learned Counsel for the owner, 7th respondent, could not argue anything contra to the above-said argument of the learned Counsel for the appellant. No other point was urged by the learned Counsel for the appellant.

4. The above-said claimants have also filed a cross-objection for enhancement of the compensation to the sum claimed in the petition, viz., Rs. 1,54,000/-. But, in this regard, the learned Counsel for the appellant took a preliminary objection stating that the cross-objection against the insurance company in the present case was not maintainable at all since in the appeal, the only question is whether the liability of the insurance company is limited only to Rs. 50,000/- and that in this appeal, the insurance company is neither questioning the finding regarding the negligence nor the finding regarding the quantum of compensation arrived at by the Tribunal. In support of this preliminary objection, the said counsel relied on the decisions in National Insurance Co. Ltd. v. H.N. Rama Prasad 1985 ACJ 864 (Kar), State of Kerala v. K.K. Padmavathi 1983 ACJ 707 (Ker) and United India Fire and General Insurance Co. Ltd. v. Pallamparty Indiramma 1982 ACJ 521 (AP). After going through the said decisions, we find that these decisions fully support the above-said submission of the learned Counsel for the appellant.

5. We may also particularly point out that the above-said decision in State of Kerala v. K.K. Padmavathi 1983 ACJ 707 (Ker), relies on a decision of a Full Bench of five Judges of this Court in Vadlamudi Venkateswarlu and Another Vs. Ravipati Ramamma and Another, , the relevant passage in the above-said Vadlamudi Venkateswarlu and Another Vs. Ravipati Ramamma and Another, is as follows:

One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent. The cross-objection must be an objection by a respondent against the appellant.

Further, we find that the above-said passage of the Full Bench has also been approved by the Supreme Court in Pannalal Vs. State Bombay and Others, . After quoting the above-said passage, the Supreme Court, in the said decision, observed as follows:

We think, with respect, that these observations put the matter clearly and correctly.

Further in the above-said State of Kerala v. K.K. Padmavathi 1983 ACJ 707 (Ker), it has been further observed as follows:

As early as in 1960 a Division Bench of this Court in Abubacker v. Abdulrahiman, 1960 KLT 348, had taken the view that memorandum of cross-objections which is directed solely against co-respondents, not the appellants, is not maintainable under Order 41, Rule 22. The law is well settled that as a general rule a respondent can file a cross-objection only against an appellant; and it is only in exceptional cases where the decree proceeds on a common ground or the interest of the appellant is intermixed with that of the respondent that a respondent could be allowed to urge a cross-objection against a co-respondent.

6. The learned Counsel for the cross-objectors no doubt relied on the above-said Pannalal Vs. State Bombay and Others, and also National Insurance Co. Ltd. v. Diwaliben 1982 ACJ (Supp) 610 (Guj). But the above-said Pannalal Vs. State Bombay and Others, , deals with a different case and, therefore, the said decision cannot apply to the present facts. On the other hand, as we have already pointed out, the above referred to observation in Pannalal Vs. State Bombay and Others, , approving the above referred to passage of the Full Bench of this Court would squarely apply to the present case. The above referred to National Insurance Co. Ltd. v. Diwaliben 1982 ACJ (Supp) 610 (Guj), is distinguishable. The subject-matter of the appeal therein by the insurance company was on the quantum of compensation itself since the insurance company thereof in its appeal sought to be fully exonerated from its liability. The other decision cited by the learned Counsel, viz., The Union Co-operative Insurance Society Ltd., Madras Vs. Lazarammal Ravel and Others, , only says generally that cross-objection can be filed in accident claim cases also. Then Rajasthan State Road Transport Corpn. v. Kiran Lata 1993 ACJ 130 (Raj), dealing with the scope of Order 41, Rule 33, Civil Procedure Code, has no application to the present case where the cross-objection filed itself is not maintainable as stated above. Further the Supreme Court has clearly explained the restrictive scope of Order 41, Rule 33, Civil Procedure Code, in Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others, and Choudhary Sahu (Dead) by Lrs Vs. State of Bihar, .

7. In the result, the award of the Tribunal is modified, restricting the appellant''s liability only to a sum of Rs. 50,000/- out of the total sum of Rs. 76,800/- awarded by the Tribunal. In other respects, the award will stand. Accordingly, the appeal is allowed with costs. The cross-objection is dismissed, but without costs.