
(1999) 12 RAJ CK 0008
In the Rajasthan High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Sharda and Others

RESPONDENT

Date of Decision : 13-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1939 — Section 110C(2A)

Citation : (2000) 2 ACC 648 : (2000) 2 WLC 132

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Judgement

V.S. Kokje, J.—This is an appeal by the Insurance Company on two points. The first point is as to whether the liability of the Insurance Company was unlimited, as taken by the Motor Accident Claims Tribunal deciding the case and the second point is as to whether the quantum of compensation granted was exorbitant, in the circumstances of the case.

2. On the first point, the learned Counsel for the Insurance Company now feel satisfied that he has no case, as under the policy extra premium has been paid for making the liability of the Insurance Company unlimited. He, therefore, does not press the first point. So far as the second point is concerned, an Insurance Company can contest the case on merits of grant of compensation only in exceptional circumstances. This is an appeal arising out of an accident, the claim petition in respect of which was governed by the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). The ground on which the Insurance Company could defend the claim petition were limited and on the point of quantum of compensation the Insurance Company could not contest the case. Section 110-C(2-A) of the Act provided that where, in the course of any inquiry, the Claims Tribunal is satisfied that--(i) there is collusion between the person making the claim and the person against whom the claim is made, or (ii) the person against whom the claim is made has failed to contest the claim, the Tribunal may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the

proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim was made.

3. In this case, no permission has been sought from the Tribunal or this Court for contesting the case on other grounds than the grounds that were available to the Insurance Company. Merely because in the memorandum of appeal a ground is taken that the compensation granted by the Tribunal was exorbitant, it does not mean that this Court has automatically permitted the appellant, by admitting such an appeal, to raise all the grounds. It is true that the owner of the vehicle did not contest the case before the Tribunal and did not put a single question to the witnesses examined on behalf of the claimant. But that by itself would not lead us to believe that permission to contest the case on all grounds was granted to the Insurance Company, especially when such a permission has to be granted in writing, after recording reasons. Both the grounds, on which the appeal was made, therefore, fail and the appeal deserves to be dismissed.

4. There is a cross-objection filed by the claimants in the case for enhancement of compensation. A preliminary objection has been raised by the learned Counsel for the appellant-Insurance Company as to the maintainability of the cross-objections in the circumstances of the case.

5. It is contended that no cross-objection can be filed by a respondent against co-respondent as a cross objection can only be urged against the appellant. The learned Counsel for the respondents, however, submitted that there is no prohibition for a cross objection being filed against a co-respondent also in a case and in this particular case, where the only contesting party before the Tribunal was the Insurance Company whose Counsel also put questions pertaining to the quantum of compensation in cross-examination and wherein the Insurance Company has, in its memorandum of appeal, taken specific grounds relating to the quantum, the respondent can maintain its cross-objection. He also submitted alternatively that if for any reason the cross-objection is held to be not maintainable then the Court's power under Order 41, Rule 33 can be invoked and according the learned Counsel, this is a fit case in which such powers should be invoked, to do justice between the parties.

6. Several decisions rendered by different High Courts were cited in support and against the question of maintainability of a cross-objection for enhancement of compensation by the claimant in an appeal preferred by the Insurance Company alone. I need not go into all those cases because two decisions of the Supreme Court on the point cover the entire field.

7. In *Pannalal Vs. State Bombay and Others*, , it was held that the wide wording of Order 41, Rule 33 was intended to empower the Appellate Court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. 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". It was further held by the Supreme Court that if a party who could have filed a 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 the provisions of Order 41, Rule 33, C.P.C. As to the maintainability of a cross-objection under Order 41, Rule 22, C.P.C. it was observed that Order 41, Rule 22 permits as a general rule a respondent to prefer an objection directed only against the appellant and it is only in exceptional cases, such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the question being re-opened between the objecting respondent and other respondents, that an objection under Order 41, Rule 22 can be directed against the other respondents. The use of the word "cross-objection" in Order 41, Rule 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant. That the legislature also wanted to give effect to the view that in exceptional cases an objection can be preferred by a respondent against a correspondent is indicated by the substitution of the word "appellant" in the third paragraph by the words "the party who may be affected by such objection".

8. In a later case this was further explained. In *Mahant Dhangir and Another Vs. Madan Mohan and Others*, , it was held that generally, the cross-objection could be urged against the appellant. It is only by way of exception of this general rule that one respondent may urge objection as against the other respondent. The type of such exceptional cases are also very much limited. For instance, when the appeal by some of the parties cannot effectively be disposed of without opening of the matter as between the respondents interest or in a case where the objections are common as against the appellant and co-respondent. The Court in such cases would entertain cross-objection against the co-respondents. On the scope of mutual relation between Rule 22 and Rule 33 of Order 41 of the C.P.C. the Court observed that Rule 22 and Rule 33 are not mutually exclusive. They are closely related with each other. If objection cannot be urged under Rule 22 against co-respondent, Rule 33 could take over the come to the rescue of the objector. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The Appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The Appellate Court could also pass such other decree or order as the case may require. The words "as the case may require" used in Rule 33 of Order 41 have been put in wide terms to enable the Appellate Court to pass any order or decree to meet the ends of justice. The only constraint on the power are these: That the parties before the lower Court should be there before the Appellate Court. The question raised must properly arise out of the judgment of the lower Court. If these two requirements are there, the Appellate Court could consider any objection against any part of the judgment or decree of the lower Court. It may

be urged by any party to the appeal.

9. Thus, the aforesaid two decisions of the Supreme Court clearly laid down that a cross-objection against a co-respondent is maintainable only in exceptional circumstances when the question involved in the appeal is so intermixed with the question raised in the cross-objection that the appeal cannot be independently decided without pondering over or deciding the questions raised in the cross-objection. The decisions also laid down that in cases where a cross-objection has not been preferred or if preferred it is not maintainable, then the power under Rule 33 of Order 41 can be exercised to do justice between the parties.

10. In the circumstances of this appeal, it cannot be said that without entering into a discussion on the question raised in the cross-objection, this appeal cannot be decided. As already stated, the appeal was preferred on two points. The first point regarding the limited liability of the Insurance Company has been conceded in favour of the respondent by the appellant and, therefore, does not survive. The second point relating to the quantum is not open for the Insurance Company to canvass and, therefore, without going into the merits of the cross objection the appeal can be decided independently. The exceptional circumstances are, therefore, not available to the respondent to give a go by to the general rule, that is, a cross objection was not entertained against a co-respondent. Actually, the cross objection is directed against the owner of the vehicle because he is primarily liable for compensation in the accident case. The liability of the appellant Insurance Company is only secondary arising out of its contract with the owner of the vehicle. The cross-objection, therefore, is directly against a co-respondent and not against the appellant who should not have been concerned with the compensation part at all because of the limited scope of the right to contest available to the Insurance Company under the law. It is, therefore, clear that the cross objection under Order 41, Rule 22, C.P.C. is not maintainable.

11. It is, therefore, to be considered whether the relief which is sought through the cross objection can be given to the respondent under Rule 33. The two constraints set out in Mahant Dhangir's case (supra), are that the parties before the lower Court should be there before the Appellate Court and the question raised must properly arise out of the judgment of the lower Court. Not only that the parties before the Tribunal are parties to this appeal but the owner of the vehicle, respondent in this case, has been specifically noticed of the cross objection also under the orders of this Court. It is, therefore, clear that an opportunity to contest the claim to enhance compensation, raised by the respondent has been specifically provided to the owner of the vehicle by serving the cross objection also separately on him. Whether he should take the opportunity to contest the cross-objection is his own look out. The questions raised in the cross-objection do properly arise out of the award of the Tribunal because a plea that inadequate compensation has been awarded, essentially arises out of the award of compensation. The respondent cross-objector has also pointed out that the interest on the sum awarded has been given from the date

of the award and not from the date of the application. This point also clearly arises out of the award. There is, therefore, no embargo on considering the claim raised in the cross-objection on merits, by invoking the powers of this Court under Order 41, Rule 33 of the Code of Civil Procedure.

12. The parties were also heard on the question of quantum, in the aforesaid circumstances. The Tribunal has granted a total compensation of Rs. 1,92,000/- in the case. The facts are that the deceased was 21 years of age at the time when he met with the accidental death. The claimants had claimed that he was earning Rs. 1,625/- per month, was spending only Rs. 425/- on himself and the remaining amount of Rs. 1,200/- was spent by him on the parents, his wife and children. According to the claimants, looking to the longevity in the family, the deceased was expected to live up to the age of 65 years and would have earned his livelihood till his death. On this basis the compensation at the rate of Rs. 1,200/- per month for the 44 years' working span of life was claimed, amounting to a total sum of Rs. 6,33,600/-. The only evidence led before the Tribunal was that of the claimant's side. As already stated, the owner did not contest and the Counsel for the Insurance Company put certain cursory questions only in cross-examination. On that evidence the Tribunal came to the conclusion that the claimant earned about Rs. 1,500/- per month and spent Rs. 500/- on himself and spent Rs. 1,000/- per month on the dependents. The dependency was, therefore, determined at Rs. 1,000/-. The Tribunal held that the life expectancy could be taken to be upto 60 years and, therefore, applying a multiple of 20, the Tribunal arrived at the compensation amount.

13. Having heard the learned Counsel and having gone through the evidence in the case, I find that the calculations leading to the compensation amount have gone away because the Tribunal did not consider the fact that the income of the deceased at the time of his accidental death cannot be taken to be frozen at a particular amount. A person who was earning at the age of 21, Rs. 1,500/- per month would certainly have earned much more with his growing age and experience. The working span, if it is taken up to 60 years, would have provided him a scope of improvement in the income to a large extent. Unpredictable factors like inflation also affect the calculation of compensation in such cases. Leaving an allowance for all such things, it can be said that the average income of the deceased could have been Rs. 2,500/- per month throughout the working span of life. The endeavor of any Tribunal considering to financially compensate the dependents should be to see that the dependent family roughly receives the same amount throughout the working span of life of the deceased as it would have received if the life span of the deceased had not been cut-short by the accident. The amount which would have been spent by the deceased on his family for about 40 years would thus come to Rs. 9,60,000/-. If this amount is deposited in a fixed deposit, it would fetch an yearly interest of Rs. 96,000/- at the rate of 10% which comes to Rs. 8,000/- per month besides keeping the capital of Rs. 9,60,000/- intact. This would clearly be exorbitant. As the amount is being paid in a lumpsum, it would be proper to award Rs. 2,40,000/- as

compensation for loss of financial support to the claimants which would fetch a monthly sum of Rs. 2,000/- to the claimants. Besides this the Tribunal has not awarded any amount for loss of consortium, love and affection etc., a sum of Rs. 60,000/- deserves to be awarded on this count. The claimants are entitled to total compensation of fe. 3,00,000/- instead of Rs. 1,92,000/- awarded by the Tribunal. The enhanced amount shall be apportioned amongst the claimants-respondents in the same proportion in which the amount awarded by the Tribunal was directed to be apportioned.

14. The direction as to the interest to be calculated from the date of the order also deserve to be modified because there is no rational basis for not granting it from the date of the application. The direction is, therefore, modified and the interest shall be chargeable from the date of the claim petition. The interest shall be calculated from the date of the application till the date of deposit/payment and the amount already deposited/paid shall be taken into account while calculating interest.

15. The appellant Insurance Company is held liable to pay the entire amount of compensation.

16. The appeal is disposed of.