

Apsrtc Vs. Salvaraj Vijaya and Others

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Court : Andhra Pradesh

Decided On : Feb-17-1995

Reported in : I(1996)ACC133; 1996ACJ124; AIR1995AP319; 1995(2)ALT258

Judge : Syed Shah Mohammed Quadri, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 10(2), 92A, 110B and 110D; [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rules 1, 22, 22(1) and 33

Appeal No. : Appeal Against Order No. 2019 of 1989

Appellant : Apsrtc

Respondent : Salvaraj Vijaya and Others

Advocate for Def. : Durga Prasad, Adv.

Advocate for Pet/Ap. : C.V. Ramulu, Standing Counsel, for APSRTC

Judgement :

1. This is an appeal under Sec. 110-D of the [Motor Vehicles Act, 1939](#) (old Act). The General Manager, APSRTC, who is redesignated as the Managing Director, APSRTC, is the appellant. The appeal is filed against the order and decree of the Additional District Judge-cum-Motor Accidents Claims Tribunal, Tirupati in O.P. 873/87 dated 14-8-1989. By the decree under appeal, the Tribunal awarded a total compensation of Rs. 1,99,600/-. The amount of Rs. 15,000/-, already paid under

Sec. 92A of the Act, has been deducted from the total amount and the balance of Rs. 1,84,600 / - has been awarded to the claimants with costs and subsequent interest at 12 per cent per annum from the date of the petition till realisation. The claim came to be granted in the following circumstances :

2. On 18-4-1987, at about 7-30 PM, one Shri Selvaraj was going on a bicycle with a pillion rider. At that time one RTC bus bearing No. AAZ 6252 alleged to have come at a high speed without blowing horn and dashed against the bicycle due to which Selvaraj fell down and died due to multiple injuries. His wife, three children and parents viz., respondents 1 to 6 herein filed O.P. 873 of 1987 claiming a total compensation of Rs. 3 lakhs before the Tribunal. The defence of the appellant-Corporation was that the vehicle was not being driven in a rash and negligent manner but the deceased himself was coming in an ill-orderly fashion in a zigzag way, and that the accident took place due to the negligence of the deceased.

3. On those pleadings, the Tribunal framed the following issues :

1) Whether the deceased M. Selvaraj died due to rash and negligent driving of the bus bearing No. AAZ 6252 by its driver?

2) Whether the petitioners are entitled to compensation and if so to what amount?

3) To what relief?

4. On behalf of the claimants two witnesses were examined and exhibits A-1 to A-10 were marked. On behalf of the appellant-corporation, 3 witnesses i.e., RWs. 1 to 3 were examined and exhibits B-1 to B-5 were marked. On considering the material placed before the Tribunal, it came to the conclusion that both the driver of the APSRTC bus as well as the deceased were at fault and recorded a finding that the accident occurred due to contributory negligence. According to the Tribunal, the driver was negligent to the extent of 60 per cent and the deceased was negligent to the extent of 40 per cent. It has further recorded a finding that having regard to the age of the deceased, the correct multiplier would be 15, but having regard to the facts and circumstances of the case, the annual income should be multiplied by 20 as the deceased was only 36 years old. The tribunal

also determined the monthly income of the deceased at Rs. 1,500/- and deducted 1/3rd of the said amount towards his personal expenses and the balance was treated as his contribution towards his family. Multiplying that amount with 20, the above said compensation was awarded.

5. Shri Aga Reddy, learned standing counsel for the appellant, contends that having noted that the correct multiplier would be 15, the Tribunal gravely erred in choosing 20 as the multiplier and thus wrongly enhanced the compensation to which the respondents-claimants were not entitled to. He relied on the decision of the Supreme Court in G.M., K.S.R.T. Corpn. Trivandrum v. Susamma Thomas, : AIR 1994 SC1631, in support of his contention that multiplier method is the best method to determine the compensation in accident claims cases.

6. There can be no doubt that the multiplier method has been accepted as the best method available to arrive at a just and reasonable compensation in accidents claims cases. This has been accepted as the most scientific method. The judgment relied upon by the learned counsel for the appellant is the latest pronouncement of the Supreme Court in support of the proposition that the well established principle is 'multiplier'. In the said judgment, their Lordships of the Supreme Court observed as follows (at page 1635 of AIR) :

'It is necessary to reiterate that the multiplier-method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire further earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss-of dependency for 45 years -- virtually adopting a multiplier of 45 -- and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid

down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation.'

7. Mr. Durga Prasad, the learned counsel appearing for the claimants, submits that the deceased was the owner of an Ice Factory and he was earning Rs. 5,000/- per month. After deducting all the expenses his contribution towards family was Rs. 2,000/- per month, therefore, he contends that, Rs. 2,000/- should have been taken into account as the correct monthly income, but the tribunal has arbitrarily taken only Rs. 1,000/- as the contribution to the family.

8. To what compensation are the claimants entitled? is the question which falls for consideration in this appeal.

9. Out of the two witnesses examined on behalf of the claimants-respondents herein, P.W. 1 is the father of the deceased and P.W. 2 is an independent witness who spoke about the accident. P.W. 1 spoke to the fact that the deceased was earning Rs. 5,000/- per month and out of that his net income after deducting the expenses w's Rs.2,750/-. He further stated that the deceased was making a contribution of Rs. 2,000/- towards the expenses of the family. Nothing useful was elicited in the cross-examination to discredit the testimony of this witness. Even the Tribunal did not disbelieve the testimony of this witness. Indeed the tribunal took note of the details of the income and expenditure as spoken to by this witnesses. But it has arbitrarily fixed the net income at Rs. 1500/-per month out of which he deducted Rs. 500/-towards the personal expenses. The way the Tribunal proceeded to consider the evidence of P.W. 1 is not satisfactory. In considering the evidence of a witness it is open to the Tribunal, having regard to the cross-examination and other circumstances either to accept or not to accept the evidence. In the event of not accepting the oral evidence, the Tribunal was at liberty to come to its own conclusion with regard to income of the deceased on the material placed before it. But not having rejected the evidence of the witness, it is not a correct approach to ignore the evidence and arrive at an arbitrary conclusion.

Thus, in my view, the trial court committed an error in fixing the loss of income at Rs. 1,000/- per month. The loss of income for the family ought to have been fixed at Rs. 2,000/- per month as spoken to by the witness, P.W. 1. If that amount is taken as the correct figure for loss of income, then the annual loss of income would be Rs. 24,000/- and if this is multiplied by the admitted multiplier 15, we arrive at the figure Rs. 3,60,000/-. 60 of this amount comes to Rs. 2,16,000/-. Thus, the claimants-respondents are entitled to Rs. 2,16,000/- as compensation. After deducting Rs. 15,000/- already paid, it will come to Rs. 2,01,000/-.

10. The Tribunal further granted Rupees 20,000/- under the head 'pain and suffering'. The learned counsel for the appellant submits that the claimants are not entitled to any amount under this head. Justice Jagannadha Rao (as he then was) in *Bhagwandas v. Mohd. Arif*, : AIR 1988 AP99, held that in accident cases, a sum of Rs. 7,500/- can reasonably be awarded under the head 'pain and suffering'. I am in respectful agreement with the learned Judge. Accordingly the amount granted under the head 'pain and suffering' at Rs. 20,000/- is reduced to Rs. 7,500/-.

11. Thus the total amount of compensation to which claimants will be entitled to comes to Rs. 2,08,500/-. The Tribunal also granted a sum of Rs. 5,000/- to each of the three children towards loss of love and affection and the total amount under that head comes to Rs. 15,000/-. This is also objected to by the learned counsel for the appellant. In *A.P.S.R.T.C. v. G. Aruna*, : 1994(3)ALT58 (DB) a Division Bench of this court has taken the view that under this head no amount can be awarded. This judgment is binding on me. Therefore, following the said judgment the amount of Rs. 15,000/- has to be deleted from the total compensation awarded by the Tribunal.

12. As already stated supra, the Tribunal has awarded Rs. 1,99,600/-. From out of this amount, Rs. 15,000/- already paid to the claimants was deducted and an amount of Rs. 1,84,600/- was awarded. No appeal or cross-objection has been filed by the claimants challenging the quantum as awarded by the Tribunal. I, therefore, restrict the amount to the amount awarded by the Tribunal.

13. Sri Aga Reddy, however, vehemently contends that having found that wrong multiplier has been adopted by the Tribunal, the appellate court cannot go into the question of correct determination of the income as it will be contrary to the provisions contained in Order 41 Rules 22 and 33 of the Code of Civil Procedure. For this contention he placed reliance upon the judgment of a Division Bench of the Madras High Court in National Insurance Company Ltd. v. Ramachandran, .

14. It may be useful to refer to Rules 22 and 33 of Order 41 which read as follows:--

Order XLI, Rule 22. Upon hearing respondent may object to decree as if he had preferred separate appeal:--

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour, and may also take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation:- A respondent aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under the rule, file cross-objection in respect of the decree insofar as it is based on that finding, notwithstanding that by reason of the decision of the court on any other finding which is sufficient for the decision of the suit, the decree is wholly or in part in favour of that respondent. (Explanation is newly inserted as per Amendment Act of 1976).

(2) Form of objection and provisions applicable thereto:-- Such cross-objection shall be in the form of a memorandum, and the provisions of Rule (1) so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.'

O. XLI RULE 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 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 decree.' (Amended by Act of 1976).

Provided that, the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.'

15. Rule 22 of Order 41 is in two parts. The first part enables any respondent in an appeal who has not appealed against the judgment, to support the decree as well as to canvass the correctness of the finding against him in the court below and to urge that that issue ought to have been decided in his favour. The second part

enables him to attack the decree even without filing any appeal against the decree by filing cross-objection to the decree within one month from the date of service of notice of hearing of the appeal on him or on his pleader. The provision also enables him to seek extension of time for filing cross-objection. By Amendment Act of 1976 an explanation is added to sub-rule (1) of Rule 22. The explanation entitles a respondent in an appeal against the judgment and decree of the first instance, to file cross-objections in respect of any finding decided against him notwithstanding that by reason of the decision of the Court on any other finding the decree is wholly or in part in favour of that respondent. Thus it is clear that a respondent has a right not only to support the decree on any ground whether decided in his favour or against him without filing any appeal or cross-objection to the decree appealed against, but also to challenge the decree by filing cross-objection against any finding or part of the decree.

16. A perusal of Rule 33 of Order 41 shows that it vests very wide power in the appellate court to pass any decree and make any order as the case may require. This power extends to passing an order in favour of any of the respondents or parties though, such respondents or parties might not have filed any appeal or cross-objection. Further where there have been decrees in cross-suits or where two or more decrees are passed in one suit the power can be exercised by the appellate court in respect of all or any of the decrees even though an appeal may not have been filed against such decree.

17. The above said two provisions fell for consideration of the Supreme Court in *Choudhary Sahu v. State of Bihar*, : [1982]2SCR178 shall presently deal with the facts of this case but here the principles enunciated by the Supreme Court may be noted. The first part of the Rule 22(1), observes the Supreme Court, authorises the respondent to support the decree not only on the grounds decided in his favour but also on any of the grounds decided against him in the court below, but if he wants to challenge the decree he has to take recourse to the second part and has to file a cross-objection even if he has not already filed an appeal against the decree. The principle underlying Rule 33 is expounded by the Supreme Court by declaring that the object of the rule is to avoid contradictory and inconsistent decisions on the same question in the same suit and that as the power under this rule is in

derogation of the general principle that a party cannot avoid a decree against him without filing an appeal or cross-objection, it has to be exercised with caution; it referred to its earlier decision in *Nirmala Bala Ghose v. Balai Chand Ghose*, : [1965]3SCR550 and reiterated the following principles (at page 1884) :

'The rule is undoubtedly express in terms which are wide, but it has to be applied with discretion, and to cases where interference in favour of the appellant necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the court to adjust the rights of the parties. Where in an appeal the court reaches a conclusion which is inconsistent with the opinion of the court appealed from and in adjusting the right claimed by the appellant it is necessary to grant relief to a person who has not appealed, the power conferred by Order 41, Rule 33 may properly be invoked. The rule, however, does not confer an unrestricted right to re-open decrees which have become final merely because the appellate court does not agree with the opinion of the court appealed from.'

18. Now reverting to Ramachandra's case (*supra*), the Motor Accident Claims Tribunal awarded compensation at Rs. 1,28,000/- to the claimants. On appeal by the Insurance Company, impleading the owner of the vehicle as one of the parties, it was contended that not more than Rs.50,000/- can be awarded against the Insurance Company as that was the outer limit of the liability. This contention was not in dispute. What was debated was that the owner's liability should also be limited to Rs. 50,000/- and he should not be made liable to the balance of the amount of Rs. 78,000/-. This was rejected by the Division Bench of the Madras High Court. The Bench held that the owner cannot invoke Order 41, Rule 33 of the Code of Civil Procedure for getting the amount reduced in the appeal filed by the Insurance Company. He has not filed either the appeal or the cross-objection. In my view, this judgment has no application to the facts of the case. There, the question was whether one of the respondents in the appeal can rely on the Order 41, Rule 33 to vary the decree. Here the question is entirely different. The question in this appeal is whether the respondents can maintain the decree without filing any cross-objection or appeal. In my view, Order 41, Rule 22 is a complete answer to the claim of the respondents.

19. The learned counsel for the appellant also relied upon the judgment in *Choudhary Sahu v. State of Bihar* (supra). In that case, the appeal arose under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act. The Collector having considered the objection in response to notice under Section 10(2) of the Act allotted 12 units to the appellants therein. The appellants carried the matter in appeal before the Commissioner of the Division. The Commissioner set aside the order of the Collector and remanded the case to him for fresh disposal in accordance with law. The contention before the Supreme Court was that in appeal before the Commissioner allotment of the units by the Collector in favour of the appellant was not in dispute. Therefore, in the appeal filed by the appellant the Commissioner could not have deprived him of the benefit of the units as awarded by the Collector. The State of Bihar supported the order of the Commissioner under Order 41, Rule 22 as well as under Order 41, Rule 33 of C.P.C. Analysing Order 41, Rule 22, the Supreme Court laid down that the first limb of the Rule authorises the respondent to support the order not only on the grounds decided in its favour but also on the grounds decided against it. The first limb of the rule thus authorises the respondent only to support the decree and it does not authorise the respondent to challenge the decree. If it wants to challenge the decree, it has to come on record, viz., it has to file a cross-objection, if it has not filed an appeal against the decree.

20. This observation of the Supreme Court in *Choudary's* case clearly supports the contention of the respondent herein. With regard to application of the principle underlying in the Order 41, Rule 33, the Supreme Court observed that that rule was widely expressed and that it must be applied with care and caution. The said judgment in my view supports the conclusion reached by me.

21. For the reasons indicated above, the appeal of the Andhra Pradesh State Road Transport Corporation is dismissed, but having regard to the circumstances of the case, I direct the parties to bear their own costs.

22. Appeal dismissed.