

Apsrtc Vs. Burri Sulochana and Others

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Court : Andhra Pradesh

Decided On : Sep-07-1999

Reported in : 2001ACJ1222; 1999(6)ALD439; 1999(6)ALT808

Judge : Elipe Dharma Rao, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 110-D, 168 and 173; Andhra Pradesh Motor Vehicles Rules, 1989 - Rule 473; Trade Marks Act, 1940 - Sections 76; [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rules 1 and 22; [Arbitration Act, 1940](#) - Sections 39 and 41

Appeal No. : AAO No. 308 of 1992 and Cross Objection No. 21570 of 1992

Appellant : Apsrtc

Respondent : Burri Sulochana and Others

Advocate for Pet/Ap. : Mr. C.V. Ramulu SC for ;APSRTC, ;M/s. T.S. Rayalu and ;M. Bhaskara Rao, Advs.

Judgement :

1. The Andhra Pradesh State Road Transport Corporation filed this appeal against the judgment and decree dated 24-10-1991 in OP No.53 of 1990 on the file of the Motor Accidents Claims Tribunal (District Judge), Guntur, granting an amount of Rs.75,600/- by way of compensation to the petitioners/respondents, who are dependents of the deceased Bum Ramu.

2. The brief facts of the case are that, on 30-12-1989 at about 9 a.m. while the deceased Burri Ramu and his friend were going on Luna AHK 2805 to Vijayawada, the driver of the RTC bus bearing No.AEZ 5368 drove the same in a rash and negligent manner with high speed coming from Vijayawada and dashed against the Luna of the deceased near Dolas Nagar on National High Way No.5 i.e., Guntur to Vijayawada road, due to which the deceased Burri Ramu sustained multiple injuries and died and his friend sustained injuries. The death of the deceased occurred on the spot. The SHO, Tadepalli P.S. registered a case in Cr.No.195 of 1989. It was stated in the petition that the deceased, who was aged about 30 years, was earning Rs.1500/-per month at the time of the accident. Therefore, for the untimely death of their bread-winner the petitioners filed OP claiming an amount of Rs. 1,25,000/- by way of compensation. The respondent in the OP i.e., A.P. State Road Transport Corporation resisted the claim of the petitioners by filing counter affidavit. The respondent denied the relationship between the petitioners and the deceased, and the accident occurred due to the rash and negligent driving of the RTC bus by its driver and finally stated that the amount of compensation claimed by the petitioners is very high and exorbitant and liable to be rejected. The Tribunal has examined PWs.1, 2 and RW1 and marked documents Exs.A1 to A3. After evaluating the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the RTC bus by its driver and awarded compensation of Rs.75,600/- to the petitioners. Aggrieved by the same, the respondent in the OP preferred this appeal.

3. Heard the learned Counsel for the appellant as well as the learned Counsel for the respondents.

4. With regard to the quantum of compensation awardable to the petitioned respondents, the Tribunal has taken into consideration the evidence of PWs.1 and 2 who have asserted that the deceased was getting Rs.40/- to Rs.50/- per day. But the Tribunal has fixed the total income of the deceased at Rs.15/- per day and Rs.450/-per month and deducted Rs.150/- towards his personal expenses and arrived at a conclusion that the annual income of the deceased was Rs.3600/-. As the deceased was aged about 30 years at the time of his death, the Tribunal has

applied the multiplier 16 and awarded an amount of Rs.57,600/- towards loss of dependency. The learned Counsel for the appellant contended that the petitioners have claimed Rs.15,000/- towards pain and suffering and loss of amenities of life, and the Tribunal awarded an amount of Rs.12,500/- which is very high. The Tribunal awarded an amount of Rs.5,500/- towards loss of consortium to the first petitioner, who is aged about 23 years and she lost her husband at her young age. But as seen from the judgment of the Supreme Court in Kerala State Road Transport Corporation v. Susamna Thomos, : AIR 1994 SC1631 , wherein it was held that an amount of Rs.15,000/- has to be awarded for loss of consortium and another Rs.15,000/- has to be awarded for the loss of estate and non-pecuniary damages. Therefore, as per the principles laid down in the judgment of the Supreme Court (supra), and in view of the facts and circumstances of the case, though the first petitioner, who is the wife of the deceased, claimed Rs.10,000/- for the loss of consortium, she is entitled for 15,000/- for the loss of consortium as she is aged 23 years. Out of Rs. 18,000/-, which was awarded by way of compensation for the loss of amenities, pain and suffering and consortium, Rs.15,000/- is awarded towards loss of consortium and the remaining Rs.3,000/- is awarded towards loss of non-pecuniary damages. Therefore, the award passed by the Tribunal below awarding Rs.75,600/- towards loss of dependency, loss of amenities and loss of consortium is valid, proper and requires no interference by this Court.

5. Accordingly, the appeal fails and is dismissed, but without costs. The award is modified to the extent indicated above.

This appeal having been set down for being mentioned on 15-9-1999 pursuant to the judgment of the High Court dated 7-9-1999 and made herein and upon perusing the said judgment and upon hearing the arguments of the above Counsel.

The Court made the following judgment :

Cross objections in CMA No.308 of 1992

6. Not satisfied with the award of the Tribunal dated 24-10-1991 in OP No.53 of 1990 on the file of the Chairman (District Judge), Motor Accident Claims Tribunal, Guntur granting a sum of Rs.75,600/- as compensation to the claimants in OP No.53 of 1990 for the death of the deceased, Burri Ramu, in a motor vehicle accident that was occurred on 30-12-1989 at about 9-00 a.m. while the deceased and his friend were going on Luna AHK-2805 to Vijayawada, the driver of the RTC Bus bearing No.AEZ-5368 drove it in a rash and negligent manner and dashed the luna near Dolas Nagar on National High Way No.5 i.e., Guntur to Vijayawada road, as a result of which Burri Ramulu sustained multiple injuries and died. Therefore, the claimants, who are dependants of the deceased filed the said OP. Assailing the order in the said OP, the respondent-corporation filed CMA No.308 of 1992 while the petitioners-claimants filed the cross objection for enhancement of the compensation from Rs.75,600/- to Rs. 1,25,000/- with interest.

7. At the time of hearing the CMA the learned Standing Counsel for the corporation has taken an objection that the cross-objections filed by the claimants are not maintainable on the ground that the Section 173 of the [Motor Vehicles Act, 1988](#) and Rule 473 of the A.P. Motor Vehicles Rules, 1989 do not contemplate filing of cross-objections. Section 173 of the M.V. Act, 1988 contemplates as under:

Subjection to the provisions of subsection (2) any person aggrieved by an award of a claims Tribunal, may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty five thousand rupees or fifty percent of the amount so awarded, whichever is less, in the manner directed by the High Court;

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

However, sub-section (2) of this section prohibits the filing of an appeal against any award of a Claim Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

8. Section 173 gives right to the aggrieved person to file an appeal before the High Court subject to the condition that the person who feels aggrieved by the award has to deposit Rs.25,000/- or 50% of the amount so awarded whichever is less and it further prescribes the time limit of 90 days for preferring an appeal and prohibits filing of appeal if the award is passed for less than ten thousand rupees. Therefore, Section 173 does not contemplate any procedure for filing the appeal except indicating the circumstances under which the appeal has to be preferred to the High Court against the award passed by the Tribunal.

9. Rule 473 of the A.P. MV Rules, 1989 specifies the application of certain provisions of the Code of Civil Procedure to the proceedings under M.V. Act before the Claims Tribunal. Therefore, the said provisions of the Rule are not applicable to the proceedings in the High Court.

10. The preliminary objection raised by the learned Counsel for the respondent-corporation is that Section 173 of the M.V. Act, 1988 does not provide the right of filing cross-objection before the High Court.

11. The Supreme Court in *N.S. Thread Company v. James Chadwick and Brothers*, : [1953]4SCR1028 , while considering Section 76 of the Trades Marks Act, 1940, where a right of appeal lies to the High Court, observed :

'.....That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76, it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act.....'

A similar objection about the maintainability of the cross objections arose in the Madhya Pradesh High Court at Jabalpur Bench in *Manjula Devi Bhuta and another v. Mansjursi Raha ami others*, 1968 ACJ 1, wherein the Bench held that as soon

as the Court becomes seized of an appeal, even where an appellate jurisdiction is conferred under a special statute, the rule of practice and procedure of the Court applicable to a civil appeal will, in the absence of any specific rule to the contrary govern such appeal.

12. Same view was expressed by the Delhi High Court in *Delhi Transport Undertaking and another v. Raj Kumari and others*, 1972 ACJ 403, holding that as soon as the High Court becomes seized of an appeal, even where an appellate jurisdiction is conferred under a special statute, the rules of practice and procedure of the said Court becomes applicable to the appeal unless there is any specific rule to the contrary in the special statute.

13. A contrary view was taken by the Madras High Court in the *Union Cooperative Insurance Society Limited, Madras v. Lazarammal Ravel and others*, 1974 II MLJ 160, holding that regarding the cross-objections two preliminary' objections were raised, the first is that the appeal being one arising under a special statute and the Civil Procedure Code not being applicable to the Tribunal constituted under the said statute, viz., the Motor Vehicles Act, no cross objections can be filed. It is pointed out that under Section 110-D, though there is provision of any of the aggrieved parties to file an appeal, there is nothing in the section permitting a respondent to an appeal to file cross-objection. But this view was not held to be correct on the ground that under Section 110-D of the M.V. Act, provides filing an appeal to the High Court and once an appeal is entertained by the High Court, all the Rules in the Civil Procedure Code would be applicable to such an appeal inasmuch as no other procedure is prescribed under the said Act. It is true that all the provisions of the Civil Procedure are not applicable to the Tribunal, because it is a creature of the Statute, but the appeal against the order of the Tribunal is to the High Court and not to any other Tribunal constituted under the statute. That means, the provisions of Order 41, Rule 22 CPC would be applicable and the respondents in the appeal would be entitled to present a memorandum of cross-objections as provided under the said Rules.

14. The Division Bench of this Court in *Government of Andhra Pradesh Represented by its Secretary, Transport Department, Hyderabad v. Mrs. K.*

Padma Rani and others, 1975 (1) APIJ 258, after considering a catena of judgments held that there is no substance in the preliminary objection raised by the learned Government pleader that the cross-objections are not maintainable in an appeal filed under Section 110-D of the Act, which is analogous to Section 173 of the M.V. Act, 1988.

15. The learned Standing Counsel for the appellant-corporation has relied on a judgment of the Supreme Court in *Superintending Engineer and others v. B. Subba Reddy*, : [1999]2SCR880 , wherein the matter arose under Arbitration Act under Sections 39 and 41; and an appeal is provided under Section 39 of the Act. The Court held that filing of cross-objection is not procedural in nature and if there is no right of cross objection given under Section 39 of the Act, it can not be read into Section 41 of the [Arbitration Act, 1940](#).

16. The learned Senior Counsel appearing for the appellants has taken objection that the cross-objections are not maintainable under Section 41 of the Act; and when the matter was carried to the Apex Court against the judgment and decree of the Division Bench of this High Court, arising out of [Arbitration Act, 1940](#), where this Court made the award given by the Arbitrator as Rule of the Court dismissing the appeal tiled by the Superintending Engineer, the same appellant preferred an appeal before the Supreme Court and the contractor filed cross-objections under Order 41, Rule 22 CPC. The Supreme Court while considering Sections 39 and 41 of the Act, observed that Section 39 prescribes right of appeal to an aggrieved person. It provides that an appeal shall lie to the Courts authorised by law to hear appeals from original decrees of the Court passing the order.

17. Section 41 contemplates procedure and powers of the Court, and the provisions of the Code of Civil Procedure shall apply to all the proceedings before the Court and to all appeals under the Act; that the Court shall have, for the purpose of, and in relation to arbitration proceedings, the same power of making orders in respect of any of the matters set out in the second, schedule as it has for the purpose of, and in relation to, any proceedings before the Court; provided that nothing in the abovesaid clause, shall be taken to pre-judice any power which may be vested in an arbitrator or umpire for making orders with respect of any of such

matters.

18. The Supreme Court after considering the facts and circumstances of the case and catena of judgments held that Section 41 of the Act and Order 41, Rule 22 of the Code, contemplates the following principles:

(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-objections 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, has also 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 euietus 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.

From the reading of the principles laid down by the Supreme Court in James Chadwick's case, (supra), Mrs. K. Padma Rani's case (supra) of this Court and in B. Subba Reddy's case (supra), by the Supreme Court, they postulate that the statutes contemplate the right to file an appeal before the High Court, even in Special Enactments, when special enactments do not provide the right of filing cross appeals, the Rules for the appellate Court still govern. The principle laid down in B. Subba Reddy's case (supra) does not say that the cross-objections are not maintainable, but they are maintainable if they satisfy the conditions laid down viz., the cross-objections have to be filed like an appeal and they have all the trappings of an appeal, they are filed in the form of memorandum and the provisions of Rule I of Order 41 of the Code of Civil Procedure so far as these relate to the form and contents of the memorandum of appeal apply to cross-objections as well, that Court fee has to be affixed, etc.

19. For the above reasons, I hold that the cross-objections filed by the respondents-claimants in the form of memorandum of appeal affixing the Court fee, satisfy the requirements of Order 41, Rule 22 CPC, and therefore, maintainable.

20. Having held that the cross-objections are maintainable, I shall now proceed to determine the quantum of compensation payable to the cross-objectors.

21. In the original petition, they have asserted that the deceased was earning Rs.40/- per day out of masonry profession. But the Tribunal below has assessed his income at Rs. 15/- per day and after deducting his personal expenses, assessed the contribution to the family at Rs.300/- per month and applying the multiplier of 16, appropriate to the age of the deceased, awarded compensation of Rs.57,600/-. But I am inclined to take the daily earning of the deceased as Rs.20/- per day for the reason that the claimants have asserted that the deceased was earning Rs.40/- per day out of masonry work. Thus after deducting 1/3rd for the personal expenses of the deceased, the monthly contribution to the petitioner can be calculated at Rs.400/-. Thus the claimants will be entitled to total loss of dependency of Rs.76,800/- with the application of same multiplier 16, appropriate to the age of the deceased as 30 years. The widow of the deceased was aged 23

years and as she lost the company of her husband, she is entitled to a sum of Rs.15,000/- towards loss of consortium. The petitioners-claimants are further entitled to a sum of Rs. 15,000/- under the head of loss of estate and other non-pecuniary damages. Thus the cross objectors-claimants are, in all, entitled to a total compensation of Rs. 1,06,800/-, which, is rounded off to Rs.1,07,000/-.

22. In the result, the cross-objections are partly allowed enhancing the compensation from Rs. 75,600/- to Rs.1,07,000/- with interest at 12% p.a. from the date of petition till the date of realisation. No costs. The enhanced amount shall be apportioned and invested as per the guidelines issued by the Supreme Court in *Lilaben U. Gohel v. Oriental Insurance Company*, : [1996]3SCR450 .

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