

(2004) 06 KL CK 0047

High Court Of Kerala

Case No: M.F.A. No. 194 of 1998

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Usha Gopalakrishnan

RESPONDENT

Date of Decision: June 3, 2004

Acts Referred:

- Motor Vehicles Act, 1988 - Section 170

Citation: (2005) 1 ACC 182 : (2005) ACJ 581 : (2004) 2 KLJ 66 : (2004) 2 KLT 679 : (2004) 3 RCR(Civil) 719

Hon'ble Judges: K. Thankappan, J; J.B. Koshy, J

Bench: Division Bench

Advocate: Mathew John, for the Appellant; Mathew Jacob, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

J.B. Koshy, J.

The only question to be considered in this order is regarding maintainability of the cross objection filed by the claimant in an appeal filed by the insurer in a motor accident claim matter. The insurance company in this case contested the case after getting permission u/s 170. In the appeal the contention of the insurance company is that the quantum of compensation awarded is very excessive. In the cross objection the contention of the claimant is that the quantum awarded is not sufficient and he wants enhancement of compensation. When the cross objection was filed an objection was raised by the Registry that cross objection will not be maintainable. The objection was raised mainly on the basis of the Division Bench decisions in [Oriental Insurance Co. Ltd., Ernakulam Vs. Mrs. Mary Pushpam and Others](#), and in [New India Assurance Co. Ltd. Vs. Peelari Edathil Kunhiraman Nambiar and Others](#), . In the decision reported in [Oriental Insurance Co. Ltd., Ernakulam Vs. Mrs. Mary Pushpam and Others](#), it was held that in an appeal filed by the insurer under the Motor Vehicles Act no cross objection will lie. In that case the Court only

followed the decision reported in [New India Assurance Co. Ltd. Vs. Peelari Edathil Kunhiraman Nambiar and Others](#), . In the above case, reported in 1994 (1) KLT 956, the insurance company filed the appeal contending that their liability was limited to Rs. 50,000/- in the policy, and therefore, they are liable to pay compensation only to an amount of Rs. 50,000/- and balance should be paid by the owner. Therefore, the relief claimed by the insurance company in the appeal was only against the owner contending that its liability to indemnify him is only upto Rs. 50,000/-. No substantial relief was asked against the claimant.

2. In [New India Assurance Co. Ltd. Vs. Peelari Edathil Kunhiraman Nambiar and Others](#), the matter was considered in detail, wherein it was held that liability of the insurer is only to indemnify the insured by paying to the claimant the amount of decree obtained by him, but not exceeding the sum assured, as if he is the judgment debtor. The liability is to pay the sum adjudged payable by the Tribunal on behalf of the owner of the vehicle. The contention of the appellant insurance company was that there was no valid policy and they are not liable to indemnify the insured. They did not question the quantum of compensation assessed by the Tribunal. Therefore, relief was claimed by the appellant insurance company in that case only against the owner of the vehicle and not against the claimant. Therefore, in the appeal filed by the insurer questioning their right of indemnification, no relief was claimed against the claimant and question of enhancement or reduction of compensation will not arise. In such circumstances, a cross objection is not maintainable under Rule 22 Order XLI of the Civil Procedure Code.

3. Rule 22(1) of Order XLI reads as follows:

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 this rule, file cross-objection in respect of the decree in so far 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.

The object of the rule is to adjust the rights of the parties in favour of the appellant so that contrary and unconstitutional decisions can be avoided. The rule is not intended to provide a kind of separate appeal on disputes essentially between

co-respondents and not arising as a result of any decision in favour of the appellant in the appeal. Therefore, cross objection was not maintainable if it is filed by a co-respondent whose right is not affected by the appeal. In [United India Insurance Co. Ltd. Vs. Smt. O. Jameela Beevi and Others](#), also only the question of indemnification was raised by the insurer and the Division Bench held that claimants are not entitled to maintain cross objection in such an appeal filed by a party who is a mere indemnifier and who is not questioning the quantum of compensation. A learned single Judge of this Court in [A.R. Sudhakaran and Others Vs. M.K. Varghese and Others](#), held that a cross objection will lie in view of Order XLI Rule 22 if claimant's rights are affected. In this case quantum of compensation is deputed by the insurance company. Therefore, the relief claimed in the appeal is only against the claimant and claimant's right will be affected if appeal is allowed. Facts and issues decided in the cases referred in registry's objection are different. Claimant will certainly be entitled to file cross objection when quantum of compensation awarded is disputed in the appeal by the insurance company after getting permission u/s 170 or by the owner or any other party. Hence the cross objection filed in this case is maintainable. Number the cross objection.