(2015) 5 ALD 320

Andhra Pradesh High Court

Case No: Cross Objections (SR) No. 32576 of 2013 in C.M.A. No. 1139 of 2004

Mogli Shobha Rani		APPELLANT
	Vs	
Varalaxmi		RESPONDENT

Date of Decision: Feb. 21, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 13 Rule 10, Order 13 Rule 3, Order 16 Rule 2, Order 16 Rule 21
- Forest Act, 1927 - Section 10
- Motor Vehicles Act, 1988 - Section 10(2), 173

Citation: (2015) 5 ALD 320

Hon'ble Judges: M. Satyanarayana Murthy, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: K.M. Mahender Reddy, Advocate for the Appellant; Naresh Bheemapaka, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Satyanarayana Murthy, J.
The preliminary objection raised by learned counsel for the second respondent-Insurance Company is about maintainability of Cross-objections under the Motor Vehicles Act, 1988 (For short, "the Act"). Therefore, we feel that it is expedient to decide the preliminary issue of maintainability of cross-objections in the petition filed under Motor Vehicles Act. Admittedly, Cross-Objections (SR) No. 32576 of 2013 is filed by the petitioners-claimants challenging the quantum of compensation.

2. The Motor Vehicles Act, 1988, is a special enactment which is intended for the benefit of injured persons or the legal heirs of deceased persons in the motor accidents and it is benevolent and welfare legislation.

3. The main contention of second respondent-Insurance Company is that in the absence of any specific provision in the Motor Vehicles Act, which is special law, the Cross-objections are not maintainable. However, the same is refuted by the learned counsel for the Cross-objectors contending that even in the absence of any provision in Motor Vehicles Act, the provisions of C.P.C. permits to file Cross-objections. Both the counsel relied on several decisions of the Apex Court and other High Courts in support of their contentions, which will be referred at relevant stage.

4. Now the question to be decided by this Court is maintainability of Cross-objections.

5. Section 173 of Motor Vehicles Act provided an Appeal to the High Court against the Award passed by the Motor Accidents Claims Tribunal which is equivalent to Section 96 of C.P.C. Section 96 of C.P.C. is totally silent about the Cross-objections, but Order 41 Rule 22 of C.P.C. provides a right to file Cross-objections. Whenever an Appeal is filed by one party either questioning the adverse findings recorded against the cross-objectors or to support the finding of the trial Court, Order 41 Rule 22 of C.P.C. gives two distinct rights to the respondents in Appeal; the first is the right of upholding the decree of Court of first instance on any of the grounds on which the Court decided against them and the second right is that of taking any cross-objection to the decree which the respondents might have taken by way of Appeal. In the first case, second respondent-Insurance Company supports the decree and in the second case, he attacks the decree. The explanation to Order 41 Rule 22 of C.P.C. empowering the respondents to file Cross-objections in respect of a finding adverse to them notwithstanding that the ultimate decision is wholly or partly in their favour. Thus, there is sufficient remedy provided under Order 41 Rule 22 of C.P.C. to file Cross-objections by the respondents in the Appeal, but Motor vehicles Act and Rules framed there under are totally silent regarding the right to file Cross-objections either to support the decree or to challenge the adverse findings. In such a case, there is any amount of doubt about the maintainability of Cross-objections under the Motor Vehicles Act in Appeal filed against the Award passed by the Motor Accidents Claims Tribunal. The learned counsel for the second respondent-Insurance Company has drawn the attention of this Court to a Division Bench decision of this Court in The New India Assurance Co. Ltd. and P. Yasodarani, Lorry Owner Mettupalli Vs. Vasireddy Sujatharani, , wherein the Division Bench of this Court relying on various decisions rendered in Branch Manager, New India Assurance Co. Ltd. Vs. Are Ramulu @ S. Ramulu and Another, , United India Insurance Company Vs. Dasari Lakshmi and Others, , Vaidyanath Singh Vs. Gulabkali and Others, , New India Assurance Co. Ltd. Vs. Kehro Devi and Others held that Cross-objections in the proceedings initiated under the Motor Vehicles Act are not maintainable referring to the specific Rule i.e., Rule 473 of Andhra Pradesh Motor Vehicles Rules, 1999 regarding application of certain provisions of C.P.C. to the proceedings under the Motor Vehicles Act, and ultimately concluded that the Cross-objections are not maintainable. Relying on the similar citations, the learned counsel for the second respondent-Insurance Company supported his contentions.

6. Per contra, learned counsel for the Cross-objectors relied on several judgments in support of his contention, particularly, regarding maintainability of Cross-objections, which are as follows:

7. In AIR 1934 81 (Privy Council) , wherein the Privy Council held that though there is no provision for filing Cross-objections, the Privy Council held that the Cross-objections are maintainable.

8. In National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), , the Privy Council held that the Cross-objections are maintainable relying earlier judgments of Privy Council and other High Courts though there is no provision for filing Cross-objections.

9. In Pannalal Vs. State Bombay and Others, , the Hon''ble Ap(sic) Court held as follows, in Para 18:

18. In our opinion, the view that has now been accepted by all the High Courts that O. 41, R. 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 O. 41, R. 22 can be directed against the other respondents is correct. Whatever may have been the position under the old Section 561, the use of the word "cross-objection" in O. 41, R. 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant. As Rajamannar, C.J. said in ILR 1950 Mad 874 : (AIR 1950 Mad 379) (FB).

10. Thus, all the above 3 decisions pertains to different enactments but not pertaining to Motor Vehicles Act. However, in all the three decisions, the Hon''ble Apex Court and Privy Council are of the view that even in the absence of any provision for permitting the respondents in Appeal to file Cross-objections, cross-objections are maintainable.

11. The Full Bench of Karnataka High Court in K. Chandrashekara Naik and Another Vs. Narayana and Another, succinctly held as follows, at Para 20:

20. Order 41, Rule 22, C.P.C. provides that any respondent, though he may not have appealed from any part of the decree may not only support the decree on any of the grounds decided against him in the court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided that he filed such objection to 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. The above rule is apparently a special provision which gives a respondent, who in the first instance is satisfied with partial success in the Court below, another opportunity of challenging the part of the decree which has gone against him

upon his opponent preferring an appeal. In the appeal filed from any part of the decree before this Court, the procedure laid down in Order 41, Rule 22, C.P.C. has to be followed by this Court. Therefore, we are of the view, that cross-objections are maintainable, in appeals that lie to the High Court u/s 110-D of the Act.

12. In a Division Bench decision of this Court in Government of Andhra Pradesh Vs. K. Padma Rani and Others, , it was held as follows, at Paras 17 and 19:

17. Under Madras Forests Act, when a similar question arose the Full Bench of the Madras High Court in 4 I.D (N.S.) 215 held, where an appeal was preferred to the District Court against the decision of the Forest Settlement Officer u/s 10(2) the appeal is preferred to the District Court as one of the ordinary courts of the country with regard to whose procedure, order and decree the ordinary rules of CPC would apply. The Privy Council in (1916) ILR 39 617 (P.C.) (Privy Council) adverting to similar objection, stated thus:--

It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statue just quoted. In their Lordships'' opinion this objection is not well funded. Their view is that when proceedings of this character reach the District Court, that court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of CPC apply.

19. ..... Therefore, we are of the opinion that there is no substance in the preliminary objection raised by the learned Government Pleader and we hold following National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), and the other decisions referred to earlier that the cross-objections are maintainable.

13. In a Full Bench judgment of the Allahabad High Court in U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others, , it was held as follows, at Para 11:

11. In the light of the above discussion we are of the opinion that the view taken by this Court in Municipal Corporation of Delhi Vs. Kuldip Lal Bhandari and Others, and followed in other decisions of this Court is not warranted by law and a cross-objection as contemplated by Order 41, Rule 22 of the CPC is maintainable before the High Court at the instance of a respondent to an appeal filed u/s 110-D of the Motor Vehicles Act, 1939.

14. In a Division Bench decision of this Court in Srisailam Devastanam Vs. Bhavani Pramilamma and Others, , it was held as follows, at Para 13:

13. In order to consider the grievance of the claimants for the rest of the claim disallowed by the lower Tribunal, we must first decide the question whether the cross-objections filed by them are maintainable since it has been disputed by the learned counsel for Devasthanam. Therefore, the question for consideration is whether the cross-objections

filed by the claimants are maintainable. Before considering this question, it would be profitable to consider the case decided on the point whether the appeal is maintainable against an order or award or a decision rendered by a regularly constituted Court. Entrusted by a competent legislature to adjudicate upon the rights and claims arising under a special enactment as early as in 1888 this question arose before a Full Bench of the Madras High Court in 4 I.D (N.S.) 215 . The question that arose therein was, whether a second appeal to the High Court would lie against the decision of the District Court constituted as a forest Court under Forest Act. An appeal is provided to the District Court against the decision of a Forest settlement officer and there is no provision for a regular second appeal provided to the High Court. The aggrieved party filed a second appeal in the High Court against the decision of a Forest Court (District Court). The question therefore that arose for decision before the Full Bench was whether the second appeal is maintainable against the decision of the Forest Court (District Court). The learned Judges, after considering the provisions of the Forest Act held that:

It is hardly probable that the legislature would have provided for the ultimate determination by the High Court of a class of accessory rights over land while intending at the same time to bar the jurisdiction of the High Court in the determination of the title to the land itself.

Ultimately the learned Judges held that the second appeal does lie to the High Court from a decision of the District Court under S. 10 of the Forest Act.

15. The learned counsel for the Cross-objectors also drawn the attention of this Court to several judgments under different enactments including the Workmen''s Compensation Act, 1923, and drawn the attention of this Court to a judgment of this Court in Singareni Collieries Company Ltd. Vs. Commissioner for Workmen''s Compensation and Another , wherein it was held as follows, at Paras 13 and 15:

When an appeal is allowed by a statue to the High Court the ordinary incidents of procedure of the High Court including a right to file cross-objections will be attracted. Even though there is no specific provision in the Workmen''s Compensation Act enabling the respondent to prefer cross-objections still the cross-objections are maintainable.

16. In APSRTC v. Burri Sulochana and others 1996 (6) ALD 439, this Court reiyir on the decision of the Apex Court in National wing Thread Company Limited (supra) held as follows, at Para 19:

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 or Order 41, Rule 22 CPC, and therefore, maintainable.

17. Similarly, in a Division Bench decision of this Court in APSRTC, Mushirabad, Hyd. Vs. Bassetty Nirmala and Others, , it was held as follows, at Para 5:

5. Be that as it may, the question with regard to the maintainability of cross-objections under Order 41, Rule 22 in an appeal filed against an award of the Motor Accidents Claims Tribunal is no longer res-integra. A similar question fell for consideration before us in CMA No. 1726 of 1997 along with cross-objections, and on a detailed hearing of the learned senior Counsel on behalf of the respective parties and after considering various decisions including the decision (supra) and the Full Bench decisions of Allahabad and Karnataka High Courts in U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others, and K. Chandrashekara Naik and Another Vs. Narayana and Another, , we held, by judgment dated 19.12.2001 that the "award" passed by the Motor Accidents Claims Tribunal is a "decree" and that the claimants are entitled to file cross-objections in the appeal, as provided under order 41, Rule 22 CPC. We, therefore, reject the objection raised on behalf of the appellant-corporation in this regard.

18. In a Division Bench decision of Karnataka High Court in New India Assurance Co. Ltd. and Another Vs. Devi Kumari and Others, , it was held as follows, at Para 6:

We do need to apply our minds to the last aspect because learned counsel Mr. Mahesh submitted that he is not being merely technical but he is only placing before the Court the correct legal position, as he points out that sub-clause (4) contemplates a situation where either because of default or mischief the main appeal is either withdrawn or dismissed for default and that naturally, the law postulates that the cross-objector should not be made to suffer because of this. His submission is that if the main appeal has been dismissed on the ground of maintainability then it affects the very genesis or the inception of the cross-appeal and even though it seems to be an unprecedented situation, which has not arisen earlier, his submission still holds good in the unusual situation that has arisen in these cases. We have examined this aspect of the law and what we find is that, had the appeal filed by the insurance company been dismissed on the ground of maintainability prior to notice being issued to respondent then there would have been no question of any argument with regard to the maintainability of a cross-appeal. When the notice was issued, the right accrued to the respondents to file their cross-appeal which they have done, and it so happens that in the circumstances set out by us the main appeal has been dismissed on the ground of maintainability and in our considered view, this would be very similar to a situation in which the main appeal is dismissed on merits before the cross-appeal is heard and in that unusual it would be wrong to hold that the cross-appeal must fail merely because of what has happened to the main appeal. Though the situation did appear to be very complicated on a simple analysis and having examined the law laid down that when once one has filed the cross-appeal on an independent existence of its own, we cannot uphold the proposition that the fate of the main appeal must govern the fate of the cross-appeal because in fact, experience has shown that in many instances the main appeal has failed and the cross-appeal for enhancement has survived.

19. In a Division Bench decision" of the Apex Court in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , the Apex Court incidentally directed the parties to file Cross-objections and those specific observation made in Para 10 are extracted

hereunder, for better appreciation:

11. The appellants challenged the award of the Tribunal by filing Miscellaneous Appeal (C) No. 765 of 2010 before the Chhatisgarh High Court for enhancement of compensation. The National Insurance Company also challenged the same award by filing Miscellaneous Appeal (C) No. 515 of 2010 before the Chhattisgarh High Court. Therefore, the Appellants withdraw their Miscellaneous Appeal (C) No. 765 of 2010 on 02.08.2010 with a liberty to file cross-objection for enhancement of compensation in Miscellaneous Appeal (C) No. 515 of 2010. The permission was so granted. The Appellants filed cross objection in Miscellaneous Appeal (C) No. 515 of 2010 for enhancement of compensation.

20. In a judgment of this Court in C.M.A. No. 4369 of 2003, this Court held as follows:

16. From the ratio laid down by the Apex Court, therefore, it is clear that in the appeal filed by the insurance company or the owner challenging the quantum of compensation, the claimants cannot seek enhancement of compensation without filing any cross appeal or cross-objections. Therefore, the claimants can question the inadequacy of the compensation granted by the Tribunal not only by filing a separate appeal but also by filing cross-objections in the appeal filed by the insurer or the insured.

21. In a Division Bench decision of this Court in Sharifa Bee and Others Vs. General Manager, Andhra Pradesh State Road Trans. Corpn. and Others, , it was held as follows, at Para 4:

4. The submission of the learned standing counsel for the respondent Corporation does not, in our opinion make a proper distinction regarding the maintainability, of the appeal and the question of taking out notices to the parties involved. The cross-objections were maintainable against the driver in as much as he has been shown as the 3rd respondent and the Cross-Objections were filed in time and the necessary court fee was paid. The cross objectors, however, are required to take out notice to the driver, if not initially at any rate after the appeal preferred by the Corporation stood dismissed for default against the driver on 06.09.1989. In our view, if the appellate Court came to the conclusion that it was obligatory for an appellant or a cross objector to take out notice to a respondent who was ex-parte in the trial Court and that such a notice is required to be taken in view of Order XLI, Rule 14(4), it will not be proper for the Court to dismiss the appeal or the Cross Objections as not maintainable merely because notices are not taken to the ex-parte respondent. The appeal or cross-objections would still be maintainable as all other formalities therefore have been complied with. If notice is not proposed to be taken to an ex-parte respondent, the Court can direct the appellants or the Cross objectors, as the case may be, to take appropriate notice to the respondent who was ex-parte in the trial Court. It is only when the appellants or the cross objectors refuse to take out notices to the ex-parte respondent that the Court may consider the question whether any decree could be passed against the remaining respondents in accordance with law. Merely

because of an endorsement that notices are not proposed to be taken to the respondent who remained ex-parte, the Court cannot dismiss the appeal or the cross objections as not maintainable, unless in spite a further direction by the Court to take out notices to such parties, the appellant or cross objector refuses to take out such notices. This is particularly so in cases relating to payment of compensation under Welfare Legislations. We may add one more reason as to why the appeal cannot be held to be not maintainable. Order XLI, Rule 14(1) itself provides that the interlocutory applications can be decided even if the ex-parte respondent has not been impleaded in the interlocutory applications in the appellate Court. If the interlocutory applications could be disposed of without taking out notices to the ex-parte respondent, that would itself made it clear that the appeal was maintainable. All that is required under the amendment of 1976 is, even in regard to the respondents who were ex-parte in the lower Court, the appellants or Cross Objectors must take out notices. In fact, normally no fresh notices are served and all those respondents cover the respondents in the cross objections. It is only in cases where the appeal stands dismissed against some of the respondents for default, that it becomes necessary for the Cross Objectors to take out notices afresh to such persons against whom cross objections were filed.

22. Thus, in majority of Division Bench Judgments it was held that Cross objections are maintainable even though there is no provision in Motor Vehicles Act permitting the respondents in the Appeal to file Cross-objections. But, except in one Division Bench judgment of this Court in Vasireddy Sujatharani (supra) all the remaining judgments of different High Courts including the Full Bench Judgment of Karnataka and Allahabad High Courts are in support of the contentions of Cross-objectors but they are not binding. However, they have got their own persuasive value. In Amrit Bhanu shali and others (supra), the Supreme Court itself directed to file Cross-objections. However, no question was raised before the Apex Court about the maintainability of Cross-objections.

23. The Division Bench decision of this Court in Vasireddy Sujatharani (supra) did not refer the earlier Division Bench judgments of this Court about the maintainability of the Cross-objections in Motor Accident Original Petitions. Therefore, the Division Bench decision of this Court in Vasireddy Sujatharani (supra) did not overrule the earlier judgments. However, the other Division Bench judgments regarding maintainability of Cross-objections are based on the principles laid down by the Apex Court. Therefore, in view of the majority Division Bench judgments of this Court, persuaded by the Full Bench Judgments of Karnataka and Allahabad High Courts and influenced by the observations made by the Apex Court in Amrit Bhanu shali and others (supra) we find that in the absence of any specific provision about the applicability of provisions of Order 41 Rule 22 of C.P.C. Cross-objections are maintainable.

24. If the Courts are directed to follow only the provisions under Rule 473 of A.P. Motor vehicles Rules, 1989, it is difficult for any Court to decide any matter effectively since Rule 473 permits only to apply Order 5 Rule 9 to 13 and 15 to 30; Order IX, Order XIII Rules 3 to 10; Order XVI Rules 2 to 21; Order XVII and Order XXVIII Rules 1 to 3.

25. If the Tribunals strictly adhere to Rule 473, the Tribunals cannot receive documents or even the Tribunals are not competent to permit the parties to amend their pleadings, impaled legal heirs under Order 22 or 3rd parties under Order 1 Rule 10 of C.P.C. and parties can be permitted to amend pleadings under Order 6 Rule 17 of C.P.C. etc., Therefore, we feel that strict adherence of Rule 473 of A.P. Motor Vehicles Rules, would not serve the purpose of benevolent or welfare legislation, on the other hand, it amounts to driving the parties from pillar to post for redressal of grievance under the Motor Vehicles Act spending both their time and money, which ultimately defeats the very object of benevolent and welfare legislation and speedy redressal. While interpreting the provisions of benevolent Act, where two views are possible, the view favourable to the persons for whose benefit the Act is enacted, has to be taken into consideration to achieve the real object. Nevertheless, in view of the judgment of the Apex Court, even in the absence of any specific provision permitting Cross-objections, Cross-objections can be entertained and decided by Courts. Concurring with the view expressed by the Apex Court in Panna Lal (supra) and the Division Bench judgment of this Court, we have no slightest hesitation to accept the contention of Cross-objectors, while totally disagreeing with the principle laid down by this Court in Vasireddy Sujatharani (supra).

26. According to undisputed settled law, even in the absence of any Appeal, the Courts are competent to award just and reasonable compensation directing the parties to pay deficit Court fees on the enhanced compensation. When such liberty is given to the Tribunals and appellate Courts under Motor Vehicles Act, entertaining Cross-objections would not amount in deviating of any procedures.

Therefore, in view of the principles laid down by the Apex Court including the majority Division Bench Judgments of this Court and other High Courts, we are of the considered view that the Cross-objections are maintainable.