

Urmila Devi vs Branch Manager, National Insurance ... on 30 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 709, AIRONLINE 2020 SC 78, 2020 (1) AJR 782, (2020) 2 SCALE 749, (2020) 1 ACC 512

Author: Chief Justice

Bench: Surya Kant, B.R. Gavai, S.A. Bobde

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 838 OF 2020
(Arising out of SLP(C) No. 12230 of 2016)

URMILA DEVI & ORS.

...APPELLANT(S)

VERSUS

BRANCH MANAGER, NATIONAL INSURANCE
COMPANY LTD. & ANR.

.... RESPONDENT(S)

JUDGMENT

1. Leave granted.

2. Heard the learned counsels for the parties.

3. The present appeal challenges the judgment and order dated 21.01.2016 passed by the learned single judge of the High Court of Patna in Miscellaneous Appeal No.521 of 2011 thereby, holding the cross-objection of the claimant to be not maintainable.

4. The facts, bare necessary, for decision of the present appeal, are as under:

5. On 2.5.2008, Sanjay Tanti, husband of appellant No.1; father of appellant Nos. 2 to 4 and son of appellant No.5 met with an accident while he was travelling from Ladma to Goradih by a Tata Maxi. The appellants filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act"). The owner of the vehicle was joined as Opponent No.1; the driver of

the vehicle was joined as Opponent No.2 whereas, the National Insurance Company Limited (hereinafter referred to as “the Insurance Company”) were joined as Opponent Nos. 3 and 4.

6. The claim of the Insurance Company was that the driver and owner of the vehicle had breached the terms and conditions of the insurance policy and, as such, they are not liable for payment of compensation.

7. The Motor Vehicle Accidental Claim Tribunal (hereinafter referred to as “the Tribunal”) vide judgment and order dated 29.1.2011, rejected the contention of the Insurance Company that the driver and owner of the vehicle had breached the terms and conditions and while allowing the Claim Petition directed the Insurance Company to pay compensation of Rs.2,47,500/□to the claimants in terms of the order dated 29.1.2011.

8. Being aggrieved by the judgment and award passed by the learned Tribunal, the Insurance Company preferred Misc. Appeal No.521 of 2011 before the High Court at Patna contending therein, that the learned Tribunal had erroneously fastened the liability on it. In the said appeal, a cross□ objection came to be filed by the appellants herein. When the appeal came up for hearing, it was noticed that the appeal was dismissed for want of office objections and the counsel for the appellants therein (Insurance Company) stated that the appellants (Insurance Company) were not interested in reviving the appeal. The appeal was, as such, disposed of by the High Court. Insofar as the cross□ objection of the appellants herein (the claimants) is concerned, the High Court vide the impugned judgment and order dated 21.01.2016 held, that when the appeal filed by the Insurance Company is only restricted to denial of its liability to make the payment of compensation then in such case the cross□ objection at the behest of the claimants in the shape of appeal would not be tenable. It, however, held that if the Insurance Company in the appeal challenges the quantum of compensation, in such a case, the claimant(s) will have a right to file an objection in terms of Order XLI rule 22 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) and, as such, dismissed the cross□ objection as not maintainable.

9. The High Court of Patna in view of Rule 249 of the Bihar Motor Vehicles Rules, 1992 has held, that there is no impediment for the claimant(s) to file cross□ objection in an appeal filed by the Insurance Company if the Insurance Company had challenged the quantum of compensation awarded to the claimant. It, however, held that if the appeal filed by the Insurance Company is restricted only to its liability to make the payment of compensation on the ground of breach of terms and conditions of the insurance policy by the vehicle owner and/or driver of the vehicle, then the cross□ objection filed by the claimant would not be tenable. It has been held, that in such a case the claimant(s) will have a right to file an appeal as provided under Section 173 of the M.V. Act.

10. Being aggrieved, the appellants are before us by way of present appeal by special leave.

11. The learned counsel appearing on behalf of the appellants submit that the High Court has totally erred in holding that the cross□ objection filed by the claimants was not maintainable since the appellant □ Insurance Company has not challenged the quantum of compensation.

12. Per contra, the learned counsel for the Insurance Company submit, that the High Court has rightly rejected the cross-objection of the appellants herein. It is submitted that since the Insurance Company had not pressed the appeal, the cross-objection was rightly rejected by the High Court.

13. The provisions of Section 173 of the M.V. Act and Order XLI rule 22 of the CPC, relevant for the present appeal, read thus:

Section 173 of the M.V. Act.

“173. Appeals. (1) Subject to the provisions of sub-section (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.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.” Order XLI rule 22 of the CPC “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.

(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) * * * (4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal 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 appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.”

14. Rule 249 of the Bihar Motor Vehicle Rules, 1992 reads thus:

“249. Manner of appeals. □(1) Every appeal against the Claims Tribunal shall be preferred in the form of a memorandum signed by the appellant or an advocate or attorney of the High Court duly authorised in that behalf by the applicant and presented to the High Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the award.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the award against which the appeal is preferred without any argument or narrative and such grounds shall be numbered consecutively.

(3) Save as provided in sub□rules (1) and (2), the provisions of Order XLI and Order XXI in First Schedule to the Code of Civil Procedure, 1908 (V of 1908) shall mutatis mutandis apply to appeals preferred to the High Court under Section 173.”

15. In view of the aforesaid provision, the High Court has rightly come to a conclusion that the claimants would be entitled to file a cross□objection. However, it has restricted the right of the claimants to file cross□objection only when an appeal is filed by the Insurance Company challenging quantum of compensation by placing reliance on previous judgments of Patna High Court. It has been held, that when the Insurance Company has not challenged the quantum of compensation but only challenges its liability to pay compensation on the ground that there is a breach of terms and condition by the driver and/or the owner of the vehicle, the cross□objection would not be tenable at the instance of the claimants.

16. An issue arose before the learned Three□Judge Bench of this Court in the case of Municipal Corporation of Delhi & Ors. vs. International Security & Intelligence Agency Limited¹, as to whether in an appeal under Section 39 of the Arbitration Act, 1940, a respondent has a right to file cross□objection and, if so, whether the cross□objection must be heard and decided on merits though the appeal by reference 1 (2004) 3 SCC 250 to which cross□objection has been filed is itself dismissed as not maintainable.

17. This Court in the said judgment observed thus:

“14. Right of appeal is creature of statute. There is no inherent right of appeal. No appeal can be filed, heard or determined on merits unless the statute confers right on the appellant and power on the court to do so. Section 39 of the Act confers right to

file appeal, insofar as the orders passed under this Act are concerned, only against such of the orders as fall within one or other of the descriptions given in clauses (i) to (vi) of sub-section (1) of Section 39. Parliament has taken care to specifically exclude any other appeal being filed, against any order passed under the Act but not covered by clauses (i) to (vi) abovesaid, by inserting the expression "and from no others" in the text of sub-section (1). Clause (a) of Section 41 extends applicability of all the provisions contained in the Code of Civil Procedure, 1908 to (i) all proceedings before the court under the Act, and (ii) to all the appeals, under the Act. However, the applicability of such of the provisions of the Code of Civil Procedure shall be excluded as may be inconsistent with the provisions of the Act and/or of rules made thereunder. A bare reading of these provisions shows that in all the appeals filed under Section 39, the provisions of the Code of Civil Procedure, 1908 would be applicable. This would include the applicability of Order 41 including the right to take any cross-objection under Rule 22 thereof to appeals under Section 39 of the Act.

15. Right to prefer cross-objection partakes of the right to prefer an appeal. When the impugned decree or order is partly in favour of one party and partly in favour of the other, one party may rest contented by his partial success with a view to giving a quietus to the litigation. However, he may like to exercise his right of appeal if he finds that the other party was not interested in burying the hatchet and proposed to keep the lis alive by pursuing the same before the appellate forum. He too may in such circumstances exercise his right to file appeal by taking cross-objection. Thus taking any cross-objection to the decree or order impugned is the exercise of right of appeal though such right is exercised in the form of taking cross-objection. The substantive right is the right of appeal; the form of cross-objection is a matter of procedure.

16. Though the statement of law made hereinabove flows simply by the reading of the relevant statutory provisions yet some available decisions may also be noticed.

In *Bhadurmal v. Bizaatunnisa Begum* [AIR 1964 AP 365 : (1964) 1 An WR 290] a Division Bench presided over by Jaganmohan Reddy, J. (as His Lordship then was) held cross-objection to be maintainable in an appeal preferred under Sections 47 to 49 of the Hyderabad Jagirdars Debt Settlement Act, 1952 because the provisions of the Civil Procedure Code were generally applicable by virtue of Section 51 thereof. The applicability of Order 41 Rule 22 to the appeals under that Act was held not excluded merely because provisions governing grounds of appeal and court fees were specifically enacted in the Hyderabad Act. In *Inayatullah Khan v. Diwanchand Mahajan* [AIR 1959 MP 58 : 1958 MP LJ 786] Chief Justice M. Hidayatullah (as His Lordship then was) upheld maintainability of the cross-objection in an election appeal under Section 116-A of the Representation of the People Act, 1951 because the High Court as an appellate court hearing an appeal under Section 116-A was enjoined to exercise the same powers, jurisdiction and authority and to follow the same procedure as it would have exercised or followed in respect of a civil appeal under the Code of Civil Procedure. In *Ramasray Singh v. Bibhisin Sinha* [AIR 1950 Cal 372] the Division Bench consisting of Harries, C.J. and Bachawat, J. (as His Lordship then was) held that

conferment of right of appeal by Section 38 of the Bengal Money Lenders Act, 1940 which spoke of the order being appealable in the same manner as if it were a decree of the court implied a right in the respondent to file cross objection inasmuch as the jurisdiction to hear appeal was conferred on a pre-established civil court, namely, the Court of the District Judge and nothing was expressly stated as to the procedure regulating such appeal. In *A.L.A. Alagappa Chettiar v. Chockalingam Chetty* [AIR 1919 Mad 784 : ILR 41 Mad 904 (FB)] a Full Bench of the High Court of Madras presided over by Wallis, C.J. held that right of the respondent to proceed by way of memorandum of cross objections was strictly incidental to the filing of appeal by opposite party and therefore in an appeal under Sections 46 and 47 of the Provincial Insolvency Act, 1907, cross objections were maintainable as the procedure prescribed in the Civil Procedure Code is the standard procedure and applicable to courts exercising powers in insolvency cases.

17. With advantage, we may also refer to observations of this Court made in *Baru Ram v. Prasanni* [AIR 1959 SC 93 : 1959 SCR 1403] . Section 116A of the Representation of the People Act, 1951 contemplates an appeal being laid before the Supreme Court from every order made by the High Court under Section 98 or Section 99 of that Act. Section 116C provides for every such appeal being heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of any appeal from any final order passed by the High Court in exercise of its original civil jurisdiction subject to the provisions of that Act and the Rules, if any. All the provisions of the Code of Civil Procedure, 1908 and rules of the court shall, so far as may be, apply in relation to such appeal. P.B. Gajendragadkar, J. (as His Lordship then was) speaking for the Court observed: (AIR p. 99, para 11) “There is no doubt that, in an ordinary civil appeal, the respondent would be entitled to support the decree under appeal on grounds other than those found by the trial court in his favour.

Order 41 Rule 22 of the Code of Civil Procedure which permits the respondent to file cross objections recognize the respondent's right to support the decree on any of the grounds decided against him by the court below. In the present case no appeal could have been preferred by Respondent 1 because she had succeeded in obtaining the declaration that the appellant's election was void and it should therefore be open to her to support the final conclusion of the High Court by contending that the other finding recorded by the High Court which would go to the root of the matter is erroneous. Prima facie there appears to be some force in this contention;” However, the Court did not express any final opinion thereon as it was considered not necessary to decide the point in that appeal.

18. We have, therefore, no doubt in our mind that right to take a cross objection is the exercise of substantive right of appeal conferred by a statute. Available grounds of challenge against the judgment, decree or order impugned remain the same whether it is an appeal or a cross objection. The difference lies in the form and manner of exercising the right; the terminus a quo (the starting point) of limitation also differs.

19. In *Superintending Engineer v. B. Subba Reddy* [(1999) 4 SCC 423] a two Judge Bench of this Court observed (vide SCC p. 434, para 24):

“If there is no right of cross-objection given under Section 39 of the Act, it cannot be read into Section 41 of the Act. Filing of cross-objection is not procedural in nature. Section 41 of the Act merely prescribes that the procedure of the Code would be applicable to the appeal under Section 39 of the Act. We are, therefore, of the opinion that cross-objection by the respondent was not maintainable....” Such observation is not correct and proceeds on certain wrong premises. Firstly, form of cross-objection is procedural and is only a manner of exercising right of appeal which is substantive, as we have already stated. Secondly, it is not merely the procedure prescribed by the Code of Civil Procedure which has been made applicable to proceedings under the Arbitration Act by Section 41(a) of the Act; the entire body of the Code of Civil Procedure, 1908 has been made applicable to all proceedings before the court and to all appeals under the Arbitration Act, 1940. The provision is general and wide in its applicability which cannot be curtailed; the only exception being where the provisions of the Arbitration Act and/or of the rules made thereunder may be inconsistent with the provisions of the Code of Civil Procedure, 1908 in which case the applicability of the latter shall stand excluded but only to the extent of inconsistency. We may hasten to add that to the extent of our disagreement with the law laid down in B. Subba Reddy case [(1999) 4 SCC 423] the proposition appears to have been rather widely stated in that case. In fact the question before the Court in B. Subba Reddy case [(1999) 4 SCC 423] was whether cross-objection seeking the relief of award of interest at a higher rate was maintainable though such an order did not fall within the purview of Section 39(1) of the Act.

20. Once we hold that by taking cross-objection what is being exercised is the right of appeal itself, it follows that the subject-matter of cross-objection and the relief sought therein must conform to the requirement of Section 39(1). In other words, a cross-objection can be preferred if the applicant could have sought for the same relief by filing an appeal in conformity with the provisions of Section 39(1) of the Act. If the subject-matter of the cross-objection is to impugn such an order which does not fall within the purview of any of the categories contemplated by clauses (i) to (vi) of sub-section (1) of Section 39 of the Act, the cross-objection shall not be maintainable.”

18. It, thus, could be seen, that this Court has held that the right to prefer cross-objection partakes of the right to prefer an appeal. It has been held, that when the impugned decree or order is partly in favour of one party and partly in favour of the other, one party may rest contented by his partial success with a view to giving a quietus to the litigation. It, however, held that if he finds that the other party was not interested in giving an end to the litigation and proposed to keep the lis alive by pursuing the same before the appellate forum, he may like to exercise his right of appeal. It has been held, that he too may in such cases and circumstances exercise his right to file appeal by taking cross objection. It has been next held, that taking any cross-objection to the decree or order impugned is the exercise of right of appeal though such right is exercised in the form of taking cross-objection. It has been held, that the substantive right is the right of appeal and the form of cross objection is a matter of procedure.

19. While arriving at the said decision, this Court relied on the judgment in the case of Bhadurmal vs. Bizaatunnisa Begum², wherein an issue with regard to maintainability of cross objection in an appeal preferred under Sections 47 to 2 AIR 1964 AP 365 49 of Hyderabad Jagirdars Debt Settlement Act, 1952 was considered. It also relied on the judgment in the case of Inayatullah Khan vs. Diwanchand Mahajan³, wherein maintainability of cross objection in an election appeal under Section 116A of the Representation of the People Act, 1951 was upheld. It further relied on the judgment of the Calcutta High Court in the case of Ramasray Singh & Ors. vs. Bibhisan Sinha⁴, upholding the right of the respondent to file cross objection in an appeal contemplated under Section 38 of Bengal Money Lenders Act, 1940.

20. It further relied on certain observations of this Court in the case of Baru Ram vs. Prasanni⁵. This Court did not agree with the contrary view taken by the learned two Judge Bench of this Court in the case of Superintending Engineer & Ors. vs. B. Subba Reddy⁶. However, holding so, this Court held that since the right to appeal under Section 39 of the Arbitration Act, 1940 was only restricted to clauses (i) to 3 AIR 1959 MP 58 4 AIR 1950 Cal 372 5 AIR 1959 SC 93 : 1959 SCR 1403 6 (1999) 4 SCC 423

(vi) of sub section (1) thereof, the cross objection also must conform to the said requirement. In other words, it was held that a cross objection would be maintainable only if the subject matter thereof falls in any of the category carved out under clauses (i) to (vi) of sub section (1) of Section 39 of the Arbitration Act, 1940.

21. This Court further found that the entire Order XLI rule 22 CPC would apply to a cross objection including the provisions of sub rule (4) thereof. It was held, that if the original appeal is found to be incompetent or not maintainable if it is filed against an order not falling under any of the clauses (i) to (vi) of sub section (1) of Section 39, then the cross objection shall also fail on that ground and cannot be adjudicated upon on merits. It could, thus, be seen that the view taken by the Court is that the cross objection would be tenable only if appeal is validly tenable.

22. A perusal of Section 173 of the M.V. Act would reveal that the said provision does not restrict the right to file an appeal as is restricted under Section 39 of the Arbitration Act, 1940. It provides, that any person aggrieved by an award of a Claims Tribunal, subject to the provisions of sub section (2) thereof, may prefer an appeal to the High Court. The restriction imposed under sub section (2) of Section 173 is with regard to non filing of appeal against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees. Needless to mention that this is subject to the provisions about limitation.

23. As already discussed herein above, the learned single judge of the High Court himself has observed that in view of Rule 249 of the Bihar Motor Vehicle Rules, 1992, there cannot be any issue with regard to the tenability of the cross objection. Sub rule (3) of Rule 249 of the Bihar Motor Vehicle Rules, 1992 would show, that save as provided in sub rules (1) and (2), the provisions of Order XLI and Order XXI in First Schedule to the CPC shall apply mutatis mutandis to appeals preferred to the High Court under Section 173 of the M.V. Act.

24. A conjoint reading of the provisions of Section 173 of the M.V. Act; Rule 249 of the Bihar Motor Vehicle Rules, 1992; and Order XLI rule 22 of the CPC would reveal, that there is no restriction on the right to appeal of any of the parties. It is clear, that any party aggrieved by any part of the Award would be entitled to prefer an appeal. It is also clear, that any respondent, though he may not have appealed from any part of the decree, apart from supporting the finding in his favour, is also entitled to take any cross-objection to the decree which he could have taken by way of appeal.

25. When in an appeal the appellant could have raised any of the grounds against which he is aggrieved, we fail to understand, as to how a respondent can be denied to file cross-objection in an appeal filed by the other side challenging that part of the Award with which he was aggrieved. We find, that the said distinction as sought to be drawn by the High Court is not in tune with conjoint reading of the provisions of Section 173 of the M.V. Act; Rule 249 of the Bihar Motor Vehicle Rules, 1992; and Order XLI rule 22 of the CPC.

26. As a matter of fact, it could be seen from the prayer clause in the appeal preferred by the respondents herein (Insurance Company) before the High Court that the entire award was challenged by the respondents – Insurance Company. Not only that, but the appellants herein (the claimants) were also impleaded as party respondents to the said appeal. In such circumstances, the High Court has erred in declining to consider the cross-objection of the appellants herein (the claimants) on merits.

27. There is another angle to it. Sub-rule (4) of Rule 22 of Order XLI of the CPC specifically provides, that even if the original appeal is withdrawn or is dismissed for default, the cross-objection would nevertheless be heard and determined after such notice to the other parties as the Court thinks fit. We are, therefore, of the considered view, that even if the appeal of the Insurance Company was dismissed in default and the Insurance Company had submitted that they were not interested to revive the appeal, still the High Court was required to decide the cross-objection of the appellants herein on merits and in accordance with law.

28. In the result, the appeal is allowed. The impugned judgment and order dated 21.1.2016 holding that the cross-objection of the present appellants was not maintainable is quashed and set aside. The matter is remitted back to the High Court for deciding the cross-objection filed by the present appellants on its own merits. There shall be no order as to costs.

.....CJI.

[S.A. BOBDE]J. [B.R. GAVAI]J. [SURYA KANT] NEW DELHI;

JANUARY 30, 2020