Samundra Devi & Ors vs Narendra Kaur & Ors on 1 August, 2008

Equivalent citations: AIR 2008 SUPREME COURT 3205, 2008 (9) SCC 100, 2008 AIR SCW 5416, 2008 (3) AIR JHAR R 914, 2008 (3) SCC(CRI) 690, 2008 (11) SCALE 36, (2009) 5 MAD LW 40, 2008 (8) SRJ 279, (2010) 1 MPLJ 20, (2008) ILR (KANT) 4664, (2009) 1 GUJ LH 57, (2008) 41 OCR 353, (2008) 11 SCALE 36, (2009) 1 PUN LR 145, (2008) 6 MAD LJ 1046, (2009) 1 MAH LJ 38, (2009) 1 RAJ LW 361, (2008) 4 TAC 746, (2008) 3 TAC 776, (2008) 4 RECCIVR 395, (2008) 3 ACC 737, (2008) 4 ACJ 2616, (2008) 4 ALL WC 3206, (2008) 2 CAL LJ 188, (2008) 4 CPJ 25

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Bench: Cyriac Joseph, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4748 OF 2008
(Arising out of SLP (C) No.26125 of 2005)

Samundra Devi & Ors. ... Appellants

Versus

Narendra Kaur & Ors. ... Respondents

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against a judgment and order dated 16.05.2005 passed by the High Court of Madhya Pradesh at Jabalpur reducing the amount of compensation awarded in favour of the appellants herein by the Tribunal from Rs.13,32,000/- to Rs.6,96,000/- in an appeal preferred by the claimants in terms of Section 173 of the Motor Vehicles Act, 1988.

3. One Shiv Shakti Singh while proceeding in a car on 9.4.1998 met with an accident having been hit by a truck bearing registration No.MP- 09-KA-6899. The said truck was owned by the first respondent herein and was being driven at the relevant time by the second respondent. The said truck was insured with the respondnt No.3. As a result of the injuries sustained in the said accident, Shiv Shakti Singh died. The car was also damaged.

4. Appellants herein filed an application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for a sum of Rs.31,89,000/-. One of the contentions raised by respondent No.1 was that the accident took place owing to the acts of negligence on the part of the deceased himself. Respondent No.3 furthermore contended that the respondent No.2 did not possess a valid and effective driving licence.

Several issues were framed by the Tribunal, inter alia, as regards the breech of policy conditions as also the quantum of compensation.

By an award dated 8.2.2001, the Motor Vehicles Accident Claim Tribunal, held :

> (a) The accident took place due to the negligence of the driver of the truck;
>
> (b) The deceased having been earning a sum of Rs.10,000/-, the amount of contribution to his family was about 8,000/- per month and, thus, on application of the multiplier of 16, the total loss of dependency would be a sum of Rs.12,80,000/- A sum of Rs.15,000 as loss of companionship for applicant No.2, a sum of Rs.2,000/- towards funeral expenses and Rs.35,000/- towards costs of repairing of the Maruti Car, were also granted.
>
> (c) The driver of the truck did not possess a valid driving licence and, therefore, breach of policy of the contract of insurance was established as a result whereof the respondent No.3 was not liable to reimburse the owner of the vehicle any such amount payable by him by way of compensation payable.

5. Appellants preferred an appeal thereagainst, contending :

a) The insurer ought to have baan found to be liable to pay the amount of compensation along with the owner and driver; and

b) The appropriate multiplier adopted should have been 20 instead of 16.

6. Admittedly, no appeal was preferred against the said judgment and award by the owner and driver of the vehicle as also the insurer thereof. Before the High Court, the respondent No.3, inter alia, contended that in the event it be held that it was liable to reimburse the owner of the vehicle, it was entitled to contest the quantum of compensation as being excessive.

In view of the said contention, the High Court formulated the following questions for its consideration :

> "(i) Whether the insurer is liable to indemnify the owner of the vehicle and therefore liable to pay the compensation?
>
> (ii) If so, what will be the just compensation?"

> 7. The High Court, on perusal of the driving licence, the contract of insurance as also the testimonies of witnesses examined on behalf of the parties, held :
>
> "8. We accordingly hold that the Insurer having established that the driver was not `duly licenced' to drive the truck in question and also having established want of care on the part of the insured in allowing the insured truck to be driven by a driver who possessed only a LMV (Private) licence, on paying the compensation amount to the Appellants/Claimants and recover the same from the Insured (Respondent No.1)."

8. Despite noticing the fact that the appeal was by the claimants, the High Court took into consideration the contention raised by the respondent No.3 that no documentary evidence having been produced to establish the income of the deceased, it should be reduced to 49,000/- for the period ending 31.3.1996 and Rs.53,000/- for the year 31.3.1997. As regards to the finding of the learned Tribunal that the deceased had income from the agricultural lands, it was opined that as agricultural land continued to be owned by the family; what was lost was only the valuable supervision of the deceased. On the said findings, it was held :

> "14. On an overall consideration of the evidence, we are of the view that the income of the deceased from the profession and the value (cost) of supervision of agriculture land should be as Rs.5,000/- per month or Rs.60,000/- per annum. If one-third is deducted towards personal and living expenses of the deceased, the contribution to the family would be Rs.40,000/- per annum. As the deceased was 39 years, the appropriate multiplier is 16.

Therefore, the total loss of dependency will be Rs.6,40,000/-.....

15. Normally, we would not have interfered by reducing the compensation in an appeal filed by the claimants. But as noticed above, the insurer was exonerated and when it is sought to be made liable, it can point out that the compensation is excessive. Though we pointed to the Appellants' counsel that by not pressing the appeal, the claimants may have the advantage of an award for Rs.13,32,000/-

against the owner as the owner has not challenged the award, he submitted that unless the insurer is made liable, the chances of recovery are difficult and therefore the appellants would like to pursue the appeal."

9. The appeal was, thus, allowed, directing :

> "(a) The insurer (Third Respondent) is also jointly and severally made liable to pay the compensation to Appellants.
>
> (b) The comepsnation is reduced from Rs.13,32,000/- to Rs.6,96,000/- with interest @ 12% per annum from the date of petitioner till date of deposit.
>
> (c) On payment by the Insurer, it shall be entitled to recover the amount paied from the owner of the vehicle (insured), namely the First Respondent, by executing the award."
>
> "Normally, we would not have interfered by reducing the compensation in an appeal filed by the claimants. But as noticed above, the insurer was exonerated and when it is sought to be made liable, it can point out that the compensation is excessive. Though we pointed to the Appellants' counsel that by not pressing the appeal, the claimants may have the advantage of an award for Rs.13,32,000/- against the owner as the owner has not challenged the award, he submitted that unless the insurer is made liable, the chances of recovery are difficult and therefore the appellants would like to pursue the appeal."

10. The appellant is, thus, before us.

11. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in reducing the amount of compensation from Rs.13,32,000/- to Rs.6,96,000/-. It was urged that the reasonings of the High Court are not legally sustainable as the owner and driver as also the insurer had not preferred any appeal against the award dated 8.2.2001 passed by the learned Motor Vehicles Accident Claims Tribunal.

12. Mr. M.K. Dua, learned counsel appearing on behalf of the respondent, on the other hand, would support the judgment.

13. The claimants/appellants filed an application for grant of compensation on the premise that they suffered damages owing to the acts of rashness and negligence in driving on the part of the respondent No.2. The owner of the vehicle as also the driver thereof were, thus, principally liable to pay compensation to the dependents of the deceased.

14. A contract of insurance as is well known is a contract of indemnity. In a case of accident, the primary liability under law for payment of compensation is that of the driver. The owner of the vehicle also becomes vicariously liable therefor. In a case involving a third- party to the contract of

insurance in terms of Section 147 of the Motor Vehicles Act, 1988 providing for a compulsory insurance, the insurer becomes statutorily liable to indemnify the owner. Indisputably, the insurance company would be liable to indemnify the insured in respect of loss suffered by a third party or in respect of damages of property. In a case, therefore, where the liability is fastened upon the insurer, the insurer would be bound to indemnify the insured unless the exceptions contained in Section 149 of the Act are attracted.

15. It has not been disputed before us that in certain situations while opining that the insurance company would not be liable to reimburse the insured, a direction upon the insurance company to pay the amount of compensation to a third party and recover the same from the owner of the vehicle is permissible. Such a direction has been issued by the High Court. The said directions are not under challenge.

Keeping in view the aforementioned principle in mind, the question which arises for our consideration is as to whether it was permissible for the High Court to interfere with the quantum of compensation as awarded by the learned Tribunal, although no appeal was preferred either by the owner or the driver of the vehicle nor any appeal was preferred by the insurance company.

16. Indisputably, in relation to a third party, the grounds upon which the insurer can deny its liability are contained sub-section (2) of Section 149 of the Act. Ordinarily and subject to just exceptions, the insurance company would have no right to question the quantum of compensation in absence of any leave having been granted in its favour in terms of Section 170 of the Act. The High Court, with respect, failed to consider this aspect of the matter. Appellants preferred appeals before it on limited grounds. Their contentions could have been rejected or accepted. The High Court, however, could not have considered the contention raised on behalf of the respondent No.3 which was not available to them in law. It was legally impermissible for the respondent No.3 to question a finding of fact arrived at by the Tribunal, taking umbrage under Order 41 Order Rule 33 of the Code of Civil Procedure or otherwise. It could not have been permitted to do so. It is well settled that what cannot be permitted to be done directly, cannot be permitted to be done indirectly. Indisputably, no leave was obtained in terms of Section 170 of the Act. The quantum of compensation awarded by the learned Tribunal was accepted by the owner. Only in some exceptional cases and that too when the liability to pay the amount of compensation is fastened upon the insurance company and insured, it can be heard on issues relating to the quantum of compensation and not otherwise.

17. In this case, the respondent No.3 has been given liberty to recover the amount of compensation from the owner of the vehicle. The insurance company has been held to have no statutory liability as one of its contentions that the driver was not holding a valid and effective driving licence has been upheld.

18. In the aforementioned situation, we are of the opinion that even Order 41 Rule 33 of the Code of Civil Procedure was not applicable as in a situation of this nature, the respondent No.3 ordinarily could not have maintained an independent appeal on the quantum of compensation having regard to the fact situation obtaining herein, and, thus, in our opinion, the High Court committed a serious error in issuing the impugned directions, despite noticing that even no appeal has been preferred by

the owner or driver of the vehicle as also respondent No.3.

19. Order 41 Rule 33 of the Code of Civil Procedure has limited application. When there exists a legal interdict, the same would not apply. It was so held in S. Nazeer Ahmed v. State Bank of Mysore & Ors. [(2007) 11 SCC 75], stating :

> "8. We also see considerable force in the submission of learned Counsel for the appellants that the High Court has misconceived the object of Order XLI Rule 33 of the Code and has erred in invoking it for the purpose of granting the plaintiff Bank a decree. This is a case where the suit filed by the plaintiff Bank had been dismissed by the trial court. The plaintiff Bank had come up in appeal. It was entitled to challenge all the findings rendered against it by the trial court and seek a decree as prayed for in the plaint, from the appellate court. Once it is found entitled to a decree on the basis of the reasoning of the appellate court, the suit could be decreed by reversing the appropriate findings of the trial court on which the dismissal of the suit was based. For this, no recourse to Order XLI Rule 33 is necessary. Order XLI Rule 33 enables the appellate court to pass any decree that ought to have been passed by the trial court or grant any further decree as the case may require and the power could be exercised notwithstanding that the appeal was only against a part of the decree and could even be exercised in favour of the respondents, though the respondents might not have filed any appeal or objection against what has been decreed. There is no need to have recourse to Order XLI Rule 33 of the Code, in a case where the suit of the plaintiff has been dismissed and the plaintiff has come up in appeal claiming a decree as prayed for by him in the suit. Then, it will be a question of entertaining the appeal considering the relevant questions and granting the plaintiff the relief he had sought for if he is found entitled to it. In the case on hand therefore there was no occasion for applying Order XLI Rule 33 of the Code. If the view of the High Court was that the suit was barred by Order II Rule 2 of the Code, it is difficult to see how it could have resorted to Order XLI Rule 33 of the Code to grant a decree to the plaintiff in such a suit. In that case, a decree has to be declined. That part of the reasoning of the High Court is therefore unsustainable."

20. In view of our findings aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J. [S.B. Sinha] .....J. [Cyriac Joseph] New Delhi;

August 1, 2008