

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.306 OF 2014

Universal Sompo General Insurance Co.Ltd.,
202-208, Crystal Plaza, Opp.Infinite Mall,
Link Road, Andheri (W),
Mumbai-58.Appellant/2nd respondent

-vs-

1.Uma
2.Minor Purushothaman
3.Minor Renuka
4.Manoharan
5.Sagunthala
Respondents 2 and 3 are miors,
represented by their
mother -first respondent.1to5th Respondents/
1to 5 Petitioners

6.SNY Auto Tech (P) Ltd.,
rep.by Prop.Sugantharambedu Village Road,
Irugattukottai,
Sriperampudur,
Kanchipuram Dist. ..6th Respondents/1st Respondent

Appeal against the judgment and decree, dated 21.02.2013,
made in M.C.O.P.No.339 of 2012, on the file of Motor Accident
Claims Tribunal, (III Additional District Judge), Vellore.

For appellant : Mrs.R.Vijaya Kamala

For respondents 1 to 5 : Mr.P.A.Sudesh Kumar

J U D G M E N T

(Judgment of the Court was delivered by S.Manikumar,J.)

Universal Sompo General Insurance Co.Ltd., Mumbai,
has questioned the quantum of compensation of Rs.14,55,715/-,
with interest, at the rate of 7.5% per annum, from the date of
claim till deposit, awarded to the wife, two minor children,
and parents of one Thirunavukkarasu, who died in the accident,
which occurred on 22.02.2011.

2. Before the Claims Tribunal, respondents/legal representatives of the deceased claimed that, at the time of accident, the deceased was aged 32 years, and as a Cutting Operator in Ittarus Shoe Company, Ambur, earned a sum of Rs.6,000/- per month. Age of the deceased was fixed as 33 years, on the basis of Date of Birth, mentioned in Ex.P-12, Transfer Certificate. To prove the avocation, besides oral evidence, respondents/claimants have marked Ex.P-7 -Salary Slips (Series). Accepting the avocation pleaded, and taking note of Ex.P-7 series, monthly salary slips, the Claims Tribunal fixed the income of the deceased as Rs.6,000/- per month. Having regard to the age of the deceased, the Tribunal added up 50% towards future prospects and fixed the income as Rs.9,000/- per month, for the purpose of computing the loss of dependency. Taking note of the judgment of the Hon'ble Supreme Court in Sarala Verma v. Delhi Transport Corporation, 2009 (6) SCC 121, the Tribunal applied 17 multiplier. As there were five dependants, the Tribunal deducted 1/4th towards personal and living expenses of the deceased. The Tribunal worked out the loss of dependency as Rs.13,77,000/- (Rs.9,000 x ¼ x 17x 12).

3. Taking note of Ex.P-5 - Medical Bills, the Tribunal has awarded Rs.3,715/- towards Medical Expenses. Rs.5,000/- has been awarded for transportation. For loss of love and affection, the Tribunal has awarded Rs.10,000/- each to the legal representatives. Altogether, a sum of Rs.50,000/- has been awarded under the said head. In addition to the above, the Claims Tribunal has awarded Rs.5,000/- for funeral expenses and Rs.15,000/- for loss of consortium. In fine, the Tribunal awarded a sum of Rs.14,55,715/-, as compensation to the legal representatives of the deceased, with interest, at the rate of 7.5% per annum from the date of petition till realisation.

4. Assailing the correctness of the quantum of compensation, Mrs.R.Vijaya Kamala, learned counsel for the appellant/insurer, submitted that the Claims Tribunal erred in fixing the monthly income of the deceased as Rs.9,000/-, in the absence of any proof. According to her, as the employer of the deceased was not examined, credence ought not to have been given to Ex.P-7 series. She further submitted that when the deceased did not have a permanent employment, 50% of the salary ought not to have been added, under the head future prospects, for computing the loss of dependency. She also submitted that the Tribunal ought to have taken only a notional income of Rs.4,500/-, for assessment of dependency.

5. Per contra, it is the contention of Mr.P.A.Sudesh Kumar, learned counsel for the contesting respondents 1 to 5/claimants, that in Vellore District, there is lot of leather manufacturing activity and that the deceased was engaged in a shoe company, as a Cutting Operator. Having regard to the number of dependants in the family, learned counsel for the

respondents/claimants submitted that Rs.6,000/- fixed as monthly income of the deceased cannot, by any stretch of imagination, be said to be on the higher side. He further submitted that the addition of 50% to the income, drawn at the time of accident, under the head 'future prospects', cannot be said to be unjust or unreasonable, in the light of the decisions of the Hon'ble Apex Court in Santhosh Devi v. National Insurance Co.Ltd., reported in 2012 AIR SCW 2892 and Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (9) SCC 54. He further submitted that though the deceased was working in a private company, salary or earning would not remain static for all the years to come and, therefore, addition of 50% of the income under the head future prospects, for the purpose of computing the loss of dependency, need not be interfered with.

6. Pointing out the quantum of compensation of Rs.10,000/- awarded under the head loss of love and affection to the respondents/claimants and a lesser amount of Rs.5,000/- for funeral expenses, and Rs.15,000/- only to the wife, for loss of consortium, Mr.P.A.Sudesh Kumar, learned counsel for the respondents, prayed for suo motu enhancement of the same, by exercising the power of this Court under Order 41 Rule 33 of C.P.C.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. As rightly pointed out by the learned counsel for the respondents/claimants, judicial notice can be taken that in Vellore District, there is manufacturing as well as sale of leather articles. Prior to death, deceased was stated to be a Cutting Operator in Ittarus Shoe Company, Ambur, and earned Rs.6,000/- per month. Dependants are five in number, including two minor children, aged about 5 years and 3 years. Parents were stated to be aged 60 years and 57 years respectively.

9. It is the submission of the appellant/insurer, that in the absence of non-examination of the employer, Ex.P-7 series (pay slips) ought not to have been given credence. The Tribunal has fixed the monthly income, on the basis of income, for the month of August, 2008. The accident has occurred on 22.02.2011. Though the salary slip produced was of the year 2008, it cannot be contended that the deceased would have remained unemployed after 2008 and, thus, the Tribunal has grossly erred in fixing the monthly income. Even taking for granted, that no income proof has been filed proximate to the date of death, still, having regard to the responsibility as the head of the family, to provide food, shelter, clothing, and other basic amenities to the dependants, in particular to the wife and children, and aged parents, one would have certainly engaged in some job or avocation to earn income. Needless to state that besides the above, one has to bear the expenditure for health, education, payment of electricity, water and other charges.

10. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, a sum of Rs.4,500/- has been claimed as the monthly wages of the deceased, stated to be a coolie. The claims tribunal has taken Rs.3,000/- for the purpose of computing the loss of contribution to the family. However, when the matter was taken up on appeal, the Hon'ble Supreme Court having regard to the wages of a labourer, during the relevant period (2004 - between Rs.100 to Rs.150/- per day) found fault with the tribunal for reducing the income from Rs.4,500/- to Rs.3,000/- and determined the same at Rs.4,500/-, per month.

11. In Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the Hon'ble Supreme Court, has determined Rs.6,500/- as the monthly income of a vegetable vendor, who sustained injuries in the accident, which occurred in February 2008.

12. In the light of what is discussed above and decisions extracted, Rs.6,000/- fixed as monthly income for the deceased, based on Ex.P-7 series (pay slips) cannot be said to be grossly excessive, warranting reduction. In so far as the addition of 50% of the income under the head 'future prospects' is concerned, though in the case of Sarala Verma v. Delhi Transport Corporation, 2009 (6) SCC 121, the Hon'ble Apex Court held that certain percentage of income can be added under the head future prospects, only to those who had permanent jobs, with an expectation of earning increments in salary, in the subsequent decisions in Santhosh Devi v. National Insurance Co.Ltd., reported in 2012 AIR SCW 2892 and Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (9) SCC 54, the Hon'ble Supreme Court extended the benefit of addition of certain percentage of income under the head future prospects to persons in unorganised sectors also.

13. In Santhosh Devi v. National Insurance Co. Ltd., reported in 2012 AIR SCW 2892, the Hon'ble Apex Court, at Paragraph 14, held as follows:

"We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this Rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc.,

would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of *Sarla Verma v. Delhi Transport Corporation*, 2009 (2) TN MAC 1 (SC), judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a

person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

14. In *Rajesh v. Rajbir Singh* reported in 2013 (9) SCC 54, (Decided by three Judges' Bench) the Hon'ble Supreme Court, held that in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for purpose of computation of compensation: (i) by 50% where his age was below 40 years, (ii) by 30% where he belonged to age group of 40 to 50 years, and (iii) by 15% where he was between age group of 50 to 60 years. However, it is observed that no such addition/enhancement permissible where deceased exceeded the age of 60 years. Relevant paragraph in *Rajesh's* case (cited supra), is extracted hereunder:

"11. Since, the Court in *Santosh Devi's* case (supra) actually intended to follow the principle in the case of salaried persons as laid in *Sarla Verma's* case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

15. Though it is the case of *Mrs.R.Vijaya Kamala*, learned counsel for the appellant-Insurance Company, that in case of employees in unorganised sector or non-salaried or persons, without any permanent job, addition of 50% under the head, "future prospects", with the income drawn, at the time of death, should not be made, for computation, this Court is not inclined to accept the said submission that for the reason, that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but we are of the considered view that the expression "future prospects" should also be extended to the likelihood of increase in wages, salary or other emoluments and thereby, increase in income, earned by either a skilled or semi-skilled person, considering the upward increase in cost price, inflation and such other factors.

16. Judicial notice can also be taken, that the cost of essential commodities, labour, etc., have never remained static and it is always on the rise. Periodically, electricity and water charges, are on the increase. Consequent to the upward revision of fuel, cost of transportation has increased. To meet out the basic amenities, there would be an increase in the income. In relation to employment, education plays an important role. If there are more qualified persons and less number of jobs, then there is a possibility of fixing lesser salary, in the case of unorganised sectors. However, there cannot be a thumb rule, that there would not be any change in income, forever.

17. Thus, in the light of the subsequent decisions, and having regard to the number of dependants in the family, addition of 50% to the income drawn at the time of death, under the head future prospects, for computing the loss of dependency, cannot be said to be faulty. If income of a vegetable vendor in the accident, which occurred in February, 2008, could be fixed as Rs.6,500/-, considering the variation in the consumer price index, inflation and other imponderables over a period of time, in the present case, Rs.9,000/-, taken for the purpose of computing loss of dependency, is not on the higher side, but, in our considered view, it would be just and reasonable.

18. Thus, the only challenge made by the appellant/insurer fails. What is required to be considered is, whether the Claims Tribunal has awarded a just and reasonable compensation under the heads (1) 'loss of love and affection', (2) 'funeral expenses', and (3) 'loss of consortium'.

19. Just and reasonable compensation has to be awarded to the legal representatives of the deceased. Few decisions on this aspect are as follows:

(i) In R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755, wherein, the Apex Court held as follows:

"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

(ii) In yet another decision in Divisonal Controller, KSRTC v. Mahadeva Shetty and another reported in (2003) 7 SCC 197, in Paragraph 12, the Supreme Court has held that,

"Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded."

In Paragraph 15 of the said judgment, the Supreme Court has held that,

"Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just."

(iii) In Nizam Institute of Medical Sciences v. Prasanth S.Dhananka reported in (2009) 6 SCC 1 = 2010 ACJ 38 (SC), the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 crore, the Bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act:

"We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a

correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. ...At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity." (emphasis supplied)

(iv) In *Reshma Kumari and others v. Madan Mohan* reported in (2009) 13 SCC 422, this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort

of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jashuben*, 2008 ACJ 1097 (SC), held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor." (emphasis supplied)

20. Having regard to the error committed by the Claims Tribunal in not awarding a just and reasonable compensation under the above heads, this Court, in exercise of the powers under Order 41 Rule 33, is inclined to rectify the same and suo motu enhance the compensation. Reference can be made to few decisions :

(i) In *National Insurance Co. Ltd., v. M. Jayagandhi* reported in 2008 (1) TNMAC 177, on the question as whether in the absence of any Cross Objection, the High Court could suo moto enhance the compensation, by exercising power under Order 41, Rule 33 CPC., this Court, at Paragraphs 37 and 38, held as follows:

"37. The question arising for consideration is whether in the absence of any Cross Objection, the Appellate Court could suo motu enhance the compensation. The Appellate Court exercising power under Order 41, Rule 33, CPC could enhance the quantum of compensation

even without Cross-Objection. The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation which should be just. Reference could be made to the decision of the Supreme Court in Sheikhpura Trans. Co. Ltd. v. Northern India Transporter's Ins. Co. Ltd. , 1971 ACJ 206 (SC), wherein it is held that pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately, but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the Claimants of future pecuniary benefits and on the other any pecuniary advantage which from what-ever sources come to them by reason of the death, i.e. the balance of loss and gain to a dependant by the death must be ascertained. The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. Broadly speaking, in the case of death, the basis of compensation is loss of pecuniary bene-fits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be un-reasonable, excessive nor deficient.

38. Of course, the Claimants who are widow, minor daughter and mother have not filed any Cross-Objection. Even without a Cross-Objection, questioning the quantum, the Court could suo motu enhance compensation under Or. 41, R. 33, CPC. In this context, reference could be made to 1999 ACJ 977 [Karnataka] wherein it has been held as follows:

"(6) I am in general agreement with the basic proposition of law that has been canvassed by the appellant's learned advocate when he points out that it is a well settled principle that a party who suffers an order or a decree and does not Appeal against it or assail it would normally not be permitted at the hearing of the Appeal to try and take advantage of the situation by asking for enhancement. The issue is not that but really as to whether this situation prescribes an absolute and total bar to the Court granting a relief if in the interest of justice such a relief is an absolute must. One has to view the situation from a rather practical point

of view the first of them being with regard to the very poor quality of legal assistance that is usually available in and around the M.A.C.T. and thereafter, the second aspect of the matter being that the status of the parties and their general condition themselves may be such that they are unable to agitate the matter further and the third aspect of the matter which is relevant having regard to the present case, is the possibility of certain further tragic occurrences such as deaths that may have intervened, all of which may contribute to a situation wherein the Court finds that no Appeal or Cross-Objections have been filed. The essence of doing justice requires that compensation when awarded has got to be reasonable and fair and it has also got to be adequate having regard to the totality of the circumstances. The hearing of the Appeal involves a total review of the case and the Appeal is virtually an extension of the proceedings before the lower Court. The law is well settled with regard to one interesting aspect of the matter, namely, that the Courts do come across a few instances where instead of over-pitching the case before the Trial Court, a very modest amount is claimed and the Tribunals in these circumstances have been wrongly limiting the relief to the amount that has been claimed on the ground that even though the party is entitled to something higher, what was asked for is a lower figure. This Court had occasion to correct these orders and to lay down that the Tribunal is required to pass an order quantifying the compensation correctly irrespective of what has been claimed on the basis of the principle that it is not the amount that is claimed in that matter, insofar as if the Court has to the power to award a lesser amount, that it is equally equipped with the power to award a higher amount. It is that principle which applies with equal force to the Appeal Court and though I do not dispute that a Court would normally not permit a party to ask for enhancement unless an Appeal or Cross-Objections have been filed but there could be a very small category of cases in which the Court would make an exception, the reason being that the essence of doing justice requires that a Court will not refuse a relief only because of a technical or a procedural bar. I need to amplify here that if the technicalities are upheld, the result would be doing injustice insofar as the party will be left with a compensation lesser than what a fair evaluation entitles the party to. Again, I do not on the basis of the law as

enunciated by the Courts in the decisions set out by me above, subscribe to the view that there exists any bar in the way of this Court exercising such powers. The powers do exist under Order 41, Rule 33, Civil Procedure Code and more importantly, such powers can certainly be exercised under section 151, Civil Procedure Code in the interest of justice."

Applying the above decision, in Tamil Nadu State Transport Corporation v. Vasantha and Ors. , 2006 (3) ACJ 1917: 2006 (1) TN MAC 336 Justice Arumuga perumal Adithyan has enhanced compensation, exercising power under Or. 41, R. 33, CPC and Section 151, CPC."

(ii) In Tamil Nadu State Transport Corporation v. Saroja and Ors., reported in 2008 (1) TNMAC 352, this Court has considered the same issue and answered as follows:

"6. On point:

The learned counsel for the respondents/claimants placing reliance on Order XLI, Rule 33 of C.P.C. and the various decisions emerged thereunder would pray that the compensation might be enhanced even though no cross-objection has been filed by the claimants, whereas the learned counsel for the appellant - Transport Corporation would cite the decision of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. R. Swaminathan & Ors. , 2006 (2) ACC 701 (SC), and develop his arguments to the effect that unless there is a cross objection, the question of enhancing the compensation would not arise. Hence, it is just and necessary to refer to the decision of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. R. Swaminathan & Ors. , 2006 (2)ACC 701 (SC). An excerpt from it would run thus:

"Apparently the first respondent claimant was satisfied with the Tribunal's Award as he did not file any Appeal there against to the High Court. Nonetheless, being aggrieved by the Single Judge's judgment, the claimant filed a Letters Patent Appeal before the Division Bench of the High Court. This Appeal was allowed and by the impugned judgment the High Court has awarded total compensation amounting to Rs.7,44,000/- under different heads with a direction for payment of inte-rest at 18% from the date of Petition. The appellant-Insurance Company is aggrieved thereby and is in Appeal before us.

The issue that arises in this case is, whether the Division Bench of the High Court was justified in in-creasing the compensation amount beyond the amount awarded by the Tribunal despite the fact that the Award of the Tribunal was not at all challenged by the claimant. The only reason

given by the Division Bench of the High Court for doing so is:

"In this connection, we may observe that we are aware of the fact that we are enhancing the compensation even though the injured has not claimed it. But, the question is covered by catena of decisions justifying enhancement of compensation even if cases where the injured has not preferred an Appeal, provided the circumstances of the case warrants the same."

To say the least, this was a very facial way of interfering with the award when no interference was called for. We called upon the learned Counsel on both sides to show us at least one case (out of the catena of judgments referred to in the impugned judgment) in support of this proposition. Learned counsel frankly confessed that there was none. On the other hand, the learned Counsel for the appellant drew our attention the judgment of this Court in *Banarsi v. Ram Phal*, 2003 (2) SLT 258: 2003 (9) SCC 606, which supports the proposition that in an Appeal filed by the defendant laying challenge to the grant a smaller relief, the plaintiff as a respondent cannot seek a higher relief if he had not filed an Appeal on his own or had not taken any cross-objection. In the present Appeal it would appear that the claimant neither Appealed against the award of compensation passed by the Tribunal, nor filed any cross-objection in the First Appeal filed by the Insurance Company. Thus, we are satisfied that the Division Bench of the High Court wholly erred in increasing the compensation amount beyond the amount awarded by the Tribunal in the Appeal filed by the Insurance Company."

7. A mere perusal of the excerpt from the said decision would clearly indicate that the Hon'ble Apex Court in that decision has not laid down as a universal rule of interpretation of Order 41, Rule 33 of C.P.C. Taking into consideration, the method and manner in which the Division Bench of this Court in the Letters Patent Appeal, without citing adequate reasons and precedents, enhanced the compensation amount to an extent of Rs. 7,44,000/- with 18% interest from that of Rs. 3,00,000/- awarded by the Single Bench of the same Court, the Hon'ble Apex Court found fault with it.

8. Furthermore, the above excerpt also would reveal that without even relying upon any precedent, the Division Bench of this Court, simply enhanced the compensation and that too to the extent of double that of what the Single Judge of this Court ordered. It is also clear that when the Hon'ble Apex Court wanted a precedent in that regard, the learned

counsel for the appellant therein cited only the decision of the Hon'ble Apex Court in Banarsi v. Ram Phal , 2003 (2) SLT 258: 2003 (9) SCC 606. As such, in the peculiar facts and circumstances of that case, the Hon'ble Apex Court felt that the power under order 41, Rule 33 of C.P.C. invoked by the High Court and that too in a case where such an enhancement was not at all warranted, looked askance at it. It is therefore explicit that the Hon'ble Apex Court in the cited decision has not laid down the law that even in a fit case, the High Court should not invoke Order 41, Rule 33 of C.P.C. in the absence of filing cross Appeal. Furthermore under Order 41, Rule 33, there are earlier decisions of the Hon'ble Apex Court, which could be cited as under:

- (i) Municipal Board, Mount Abu v. Hari Lal , 1988 ACJ 281.
- (ii) Dangir v. Madan Mohna , AIR 1988 SC. 54.
- (iii) M.D. Pallavan Transport Corporation Ltd., v. Kalavathi , 1998 (1) ACJ 151.
- (iv) State of Punjab v. Bakshish Singh , 1998 (8) S.C.C. 222.

9. The perusal of the aforesaid Judgments of the Hon'ble Apex Court would clearly highlight that without filing cross Appeal, the respondents in the Appeal could pray for reliefs and that the High Court under Order 41, Rule 33 could grant such reliefs also. This Court in several cases adhering to the aforesaid decisions of the Hon'ble Apex Court held that under Order 41, Rule 33 of C.P.C., this Court could enhance the compensation in appropriate cases. An excerpt from the decision of this Court in Managing Director, Thanthai Periyar Transport Corp., Villupuram v. Sundari Ammal and four Others reported in 1999 (2) CTC 560 would run thus:

"Unfortunately, in the instant case, there is no cross-objection. Therefore, it would be essential, in this context, to consider whether this Court has got powers to enhance the amount of compensation, in the event of coming to the conclusion that the award was on the lower side, even though there is no cross-objection by the claimants.

In Dangir v. Madan Mohan , AIR 1988 S.C. 54 and M.D., Pallavan Transport Corporation Ltd., v. Kalavathi , 1998 (1) A.C.J 151, it is held that this

even though the claimants had not filed any cross-objection against the award seeking for higher compensation, if this Court finds that the amount awarded by the Tribunal is not just and adequate.

As pointed out by the Apex Court in *State of Punjab v. Bakshish Singh*, 1998 (8) S.C.C. 222, the reading of the provision would make it clear that the Appellate Court has got wide power to do complete justice between the parties and which enables this Court to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed any Appeal or cross-objection.

The Apex Court in *Dhangir v. Madan Mohan*, A.I.R. 1988 S.C. 54, by referring Order 41, Rule 33, would make the following observation:

"The Appellate Court could exercise the power under Rule 33 even if the Appeal is only against a part of the decree of the lower Court. The Appellate Court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any Appeal or objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The Appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The words 'as the case may require' used in Rule 33, Order 41 have been put in wide terms to enable the Appellate Court to pass any order or decree to meet the ends of Justice. What then should be the constraint? We do not find many, we are giving any liberal interpretation. The rule itself is liberal enough. the only constraints that we could see may be these: That the parties before the lower Court should be there before the Appellate Court. The question raised must properly arise out of judgment of the lower Court. If these two requirements are there, the Appellate Court could consider any objection against any part of the judgment or decree of the lower Court. It is true that the power of the Appellate Court under S. 33 is discretionary. But, it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The Court should not refuse to exercise that discretion on mere technicalities."

10. And then the Division Bench of this Court in the decision in *The Managing Director, Annai Sathya Transport Corporation Ltd., Dharmapuri v. Janardhanam and 7 others*, 2000 (2) CTC 272 placing

reliance on the decision of the Hon'ble Apex Court held a similar view that without cross Appeal Order 41, Rule 33 of C.P.C. could be invoked in appropriate cases. An excerpt from it would run thus:

"At this stage, learned counsel appearing for the respondent/claimants would submit that the Tribunal has awarded interest only from the date of the Judgment and not from the date of the petition. The learned counsel for the respondents/claimants would submit that even though no Appeal has been filed by the respondents/claimants or no cross-objections have been filed by them, this Court has discretionary power by virtue of Order 41, Rule 33 of Code of Civil Procedure and also in view of the rulings of the Supreme Court in *Dhangir v. Madan Mohan*, AIR 1988 SC 54 to grant the proper relief. Of course, the Apex Court has pointed out in clear and categorical terms and the power conferred under Order 41, Rule 33 on the Appellate Court is discretionary, and then it must be used in proper case using the judicial discretion to render justice. The Apex Court in *United India Insurance Co., Ltd., v. Narendra Pandu-rang Kadam and others*, 1995 (1) SCC 320 has clearly laid down that the rate of interest must be awarded from the date of the petition and not from the date of the Judgment."

11. Over and above that the decision of the Hon'ble Three Judges' Bench of the Hon'ble Apex Court, in *Nagappa v. Gurudayal Singh and others*, 2003 ACJ 12: 2004 (2) TN MAC 398 (SC), could be cited here. An excerpt from it would run thus:

"Firstly, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'the M.V. Act'), there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the

legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to subsection (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is subsection (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under subsection (6) of Section 158 as an application for compensation under this Act". Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

(iii) In Tamil Nadu State Transport Corporation v. Pothumponnu [CMA(MD)No.714 of 2009, dated 05.08.2009], this Court, held as follows:

"17. Notice can be issued to the opposite parties/respondents only in case where their rights are going to be affected by way of variation/reduction. In this case, the claimants are going to be benefited. Hence, no notice is necessary in the appeal. When the Tribunal commits a mistake that too a material mistake, this Court cannot close its eyes and decide the matter mechanically. When the mistake is noticed by this Court, this Court has got power to do away with it, even while dismissing the appeal at the admission stage itself. The presence of the respondent is not a must. When there is a case for admission, the matter can be admitted and notice can be ordered. When there is no case made out for admission, the appeal deserved to be dismissed. While dismissing, the material irregularity committed by the Tribunal can be set right by awarding suitable amounts to the respondents without notice to them. The presence of the claimants or absence does not make any difference. Even if they are present and they do not bring it to the notice of this Court about the irregularity, this Court can always remedy the same suo motu under Order XLI Rule 33 of the Code of Civil Procedure and Section 173 of the Motor Vehicles Act and invoking Articles 227 of the Constitution of India. Moreover, Sections 163 and 166 are beneficial provisions of the Motor Vehicles Act aimed at consoling and compensating the victims of the accident. This Court's approach should be

humane in nature not whittled down by technicalities. The powers of the Court are wide enough to do complete justice."

21. In the light of the principles of law laid down, meagre compensation of Rs.50,000/- awarded to two minor children and parents under the head loss of love and affection requires to be enhanced and, we deem it fit to enhance the same to Rs.3,00,000/-, of which, Rs.1,00,000/- each is awarded to the two minor children and Rs.50,000/- each, to the parents.

22. The Hon'ble Supreme Court in Rajesh's case, cited above, at paragraph 18, has held as follows :

"18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "'funeral expenses'" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

23. In this case, the accident has occurred on 22.02.2011. Compensation of Rs.5,000/- for funeral expenses is less. Therefore, this Court is inclined to suo-motu enhance the compensation under the head 'funeral expenses', to Rs.25,000/-.

24. Loss of consortium of Rs.15,000/- awarded to the wife is less. Widow is aged about 22 years. The Hon'ble Apex Court in Rajesh's case, stated above, at paragraph 17, has held as follows :

"17.... In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of

consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

Following the same, first respondent/wife is awarded a compensation of Rs.1,00,000/-, under the head 'loss of consortium'.

25. Thus, in the backdrop of the legal principles, to be followed by the Claims Tribunal/Courts in awarding just compensation, this Court, by exercising the power under Order 41 Rule 33 of C.P.C., suo motu has enhanced the compensation under the abovesaid heads. A sum of Rs.2,000/- can be awarded towards damages to clothes and articles. Rs.5,000/- awarded for transportation is retained. Thus, the quantum of compensation, due and payable, works out to Rs.18,12,715/-, as apportioned hereunder :

Loss of income	:	Rs.13,77,000/-
Loss of love and affection	:	Rs. 3,00,000/-
(Rs.50,000/- enhanced to Rs.3,00,000/-)		
Rs.1,00,000/- each to the minor children and Rs.50,000/- each to the parents)		
Transportation	:	Rs. 5,000/-
Funeral expenses	:	Rs. 25,000/-
(Rs.5,000/- enhanced to Rs.25,000/-)		
Loss of consortium	:	Rs. 1,00,000/-
(Rs.15,000/- enhanced to Rs.1,00,000/-)		
Medical expenses	:	Rs. 3,715/-
Damages to clothing and articles	:	Rs. 2,000/-

TOTAL		Rs.18,12,715/-

26. Mrs.R.Vijaya Kamala, learned counsel for the appellant/insurer, submitted that 50% of the award with proportionate interest and costs has been deposited. Recording the above statement, the appellant/insurance company is directed to deposit the balance amount, with proportionate interest, to the credit of M.C.O.P.No.339 of 2012, on the file of Motor Accident Claims Tribunal, (III Additional District Judge), Vellore, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, respondents/claimants 1,4 and 5, being majors, are permitted to withdraw the award amount, as per the apportionment, with proportionate interest, by making necessary application before the Tribunal. As respondents 2 and 3, who are minors, their shares shall be deposited in a Fixed Deposit in a Nationalised Bank, proximate to the residence of the respondents/claimants, until they attain majority. However, the interest accrued on the minor shares shall be withdrawn by their guardian mother, once in three months.

27. Appeal is dismissed, as above. No costs. Consequently, the connected M.P.No.1 of 2014 is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Motor Accident Claims Tribunal,
(III Additional District Court),
Vellore.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s. R. Vijayakamala , Advocate, S.R.No.53470
+1cc to Mr.Pa.Sudeshkumar, Advocate, S.R.No.53577

KM(CO)
EU(28/10/2015)

C.M.A.No.306 OF 2014