

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.08.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CMA No.3404 of 2014

and

M.P.Nos.1 of 2014 and 1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation
(Villupuram) Limited,
No.3/137, Salamedu,
Vazhutahreddy, Villupuram - 605 602. ... Appellant/Respondent

Vs.

1.V.Sathiyavani
2.Venkatesan
3.V.Komathi
4.Rita
5.Karthick Raja
(Minors 4 & 5 are rep. By their
mother V.Sathiyavani) ... Respondents/Petitioner

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal, II Small Causes Judge, Chennai in MCOP No.2094 of 2009 dated 01.02.2014.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.V.Velu

JUDGMENT

Being aggrieved by the judgment and decree in M.C.O.P.No.2094 of 2009 dated 01.02.2014 on the file of the Motor Accidents Claims Tribunal, II Small Causes Judge, Chennai, awarding compensation of Rs.17,25,000/- with interest, at the rate of 7.5% p.a., from the date of claim petition i.e., 30.04.2009 till the date of deposit, the Managing Director, Tamil Nadu State Transport Corporation (Villupuram) Limited, has filed this appeal mainly on the grounds inter alia that the Tribunal has erroneously fixed negligence on the driver of the State Transport Corporation bus, thus holding that the Transport Corporation as liable to pay compensation, and in the absence of any documentary evidence, the Tribunal ought not to have fixed the monthly income of the deceased at Rs.10,000/- per month for computing the loss of contribution to the family.

2. Caveator is on record.

3. It is the case of the respondents/claimants that on 24.04.2009 at 9.40 hours, when the deceased, Kogulraj was standing on G.S.T. Road, near Gas Company, near a Motorcycle opposite to TVS Show Room, Chenglepet, the Transport Corporation bus bearing Registration No.TN-32-N-2549, driven in a rash and negligent manner dashed against the deceased, due to which, he sustained grievous injuries and died on the spot. In this regard, a case in Crime No.238 of 2009, has been registered against the driver of the Transport Corporation on the file of D1 Chengalpet Police Station. Claiming that the deceased was a Diploma Holder cum Electrical Engineer and self employed, the respondents, have filed M.C.O.P.No.2094 of 2009 on the file of the Motor Accidents Claims Tribunal, II Small Causes Judge, Chennai for compensation of Rs.12,00,000/-. According to them, the deceased was earning a sum of Rs.10,000/- per month.

4. Before the claims Tribunal, the Transport Corporation, opposed the claim denying negligence. The Transport Corporation further submitted that the alleged accident, had occurred only due to the rash and negligent riding of the TVS Victor bearing Registration No.TN-19-0227 by the deceased and the claim petition has to be dismissed on the ground of non-joinder of necessary parties i.e., the owner and the Insurance Company of the said motorcycle. The Transport Corporation has disputed the age, avocation and income of the deceased and thus, prayed for dismissal of the claim petition.

5. Before the claims Tribunal, on the side of the respondents/claimants, three witnesses have been examined as P.Ws.1 to 3 and ten documents have been marked as Exs.P.1 to P.10. They are Ex.P.1 is the copy of FIR in Crime No.238/2009 registered at T1-Chengalpet Town Police Station. Ex.P2 is the Postmortem Certificate. Ex.P3 is the Legal heirs Certificate. Ex.P4 is the copy of charge sheet. Ex.P5 is the copy of Transfer Certificate. Ex.P6 is the Hall

Ticket. Ex.P7 is the copy of Mark sheets. Ex.P8 is the copy of Identity Card of P.W.3. Ex.P9 is the copy of Salary Certificate of P.W.3. Ex.P.10 is the copy of Course Completion Certificate of P.W.3. P.W.1 is the father of the deceased. P.W.2-Boopathy, is the eyewitness to the accident, P.W.3-Prakeash, who is the Co-worker of the deceased. On the side of the Transport Corporation, driver of the bus has been examined as R.W.1 and no document has been marked.

6. Adjudicating the rival contentions, on the above averments and documents, the claims Tribunal in M.C.O.P.No.2094 of 2009 came to the conclusion that R.W.1 driver of the bus was negligent in causing the accident. Accordingly, fastened liability on the Transport Corporation to pay compensation.

7. By determining the monthly income of the deceased as Rs.15,000/-, the Tribunal quantified the compensation as Rs.17,25,000/- with interest at the rate of 7.5% p.a. from the date of claim petition i.e., 30.04.2009 till the date of deposit, as hereunder:

Loss of income	-	Rs.16,20,000/-
Funeral Expenses	-	Rs. 25,000/-
Loss of love and affection-	Rs.	50,000/-
Loss of Estate	-	Rs. 20,000/-
Transportation charges	-	Rs. 10,000/-

Total	-	Rs.17,25,000/-

8. Being aggrieved by the findings of negligence fixed on R.W.1, driver of the transport Corporation, Mr.K.J.Sivakumar, learned counsel submitted that mere registration of FIR against R.W.1, driver of the Transport Corporation, is not sufficient to fix negligence. He further submitted that the claims Tribunal ought not to have considered the testimony of P.W.2, stated to be an eyewitness. It is also his further submission that the claims Tribunal ought to have considered that in the oral testimony of R.W.1, driver of the Transport Corporation bus, he has categorically deposed that the deceased while going to the front of the bus in a two wheeler without giving any signal suddenly turned to the right side and applied sudden break, and thus invited the accident.

9. On the quantum of compensation, learned counsel for the appellant/Transport Corporation submitted that the Tribunal had fixed the monthly income of the deceased, without any corroboration.

10. Per contra, Mr.V.Velu, learned counsel appearing for respondents/claimants submitted that the Tribunal, after due appreciation of evidence, has rightly recorded a finding of negligence against R.W.1, which does not require any interference. On the income of the deceased fixed at Rs.10,000/- per month, learned counsel appearing for the respondents/claimants submitted that as the

deceased had completed Diploma in Electrical Engineering and that a Co-worker, examined as P.W.3, has deposed that he was earning a sum of Rs.15,000/- per month, at the time of accident, the Tribunal after considering the above, has fixed the monthly income of the deceased and therefore, not committed any manifest error in determining the monthly income. According to him, had the deceased been engaged in any work, on the basis of his educational qualification, he would have earned a reasonable salary of Rs.10,000/-.

11. On the quantum of compensation awarded under the head of loss of love and affection, the learned counsel appearing for the respondents/claimants invited the attention of this Court that respondents 3 to 5 are younger than the deceased and that they have lost the love and affection and hence prayed that the quantum of compensation Rs.50,000/- awarded under the said head is too low, and sought for enhancement without any appeal having been filed.

12. Heard the learned counsel for the parties and perused the materials placed on records.

13. The accident has occurred on 24.04.2009. As per the version of the respondents, when the deceased was standing along with his father's Motorcycle, bearing Registration No.TN-19-0227, on G.S.T. Road, near Gas Company, opposite to TVS Show Room, Chenglepet, the Transport Corporation bus bearing Registration No.TN-32-N-2549, driven in a rash and negligent manner by R.W.1, dashed against the deceased, he sustained fatal injuries and died on the spot. Ex.P1, FIR in Crime No.238 of 2009, has been registered against the driver of the Transport Corporation on the file of D1 Chengalpet Police Station. The police, on investigation, has also laid a charge sheet and that the same has been marked as Ex.P4. P.W.1, father has adduced evidence. Supporting the same, P.W.2, eyewitness, has corroborated to the manner of accident. On the other hand, the oral testimony of R.W.1, driver of the Transport Corporation denying negligence, is not corroborated by any independent witness. The statement of the driver before the Tribunal that the deceased, had suddenly turned the motorcycle to the right side, applied breaks and invited the accident, is also not supported. It is a well settled law, finding of negligence, relating to motor accident claims cases, is arrived at on the principle of preponderance of probabilities. In a case on hand, oral testimony of P.W.1, father of the deceased is duly corroborated by P.W.2 eyewitness, Ex.P1-FIR and Ex.P4-charge sheet also substantiate the manner of accident.

14. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354], has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or

some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

15. In a decision in Union of India v. Saraswathi Debnath [1995 ACJ 980], High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

16. Testing the finding of negligence on the principle of preponderance of probability, this Court is of the view that there is no manifest error in fixing negligence on R.W.1, the driver of the Transport Corporation.

17. On the determination of monthly income at Rs.10,000/- per month, there is no documentary proof, as to what the deceased had received at the time of accident. There is also no document to substantiate that he was employed. Nevertheless, Ex.P5 copy of the transfer certificate, Ex.P6, Hall ticket and Ex.P7 copy of mark sheets have been filed to show that the deceased, had completed Diploma in Electrical Engineering Course. However, taking note of the testimony of P.W.3, stated to be a co-worker in Technical Section in Sri Iyyan Enterprises and that he was earning a sum of Rs.15,000/- per month with other allowances, the Tribunal has fixed the income of the deceased at Rs.10,000/- per month. As we have already observed that there is no document to prove employment, and the income of the deceased at Rs.10,000/- per month, has been fixed, solely on the basis of the testimony of P.W.3, claimed to be a Co-worker, as to what he was earning at the time of accident.

18. In the absence of any documentary evidence to show that the deceased, who had completed diploma in Electrical Engineering, was also employed, we are of the considered view that the Tribunal, ought

not to have, fixed the monthly income as Rs.10,000/-. However, taking note of the Course completion certificate of the deceased in Diploma in Electrical Engineering, and the likelihood of employment, on the basis of his technical qualification, we deem it fit to fix the monthly income at Rs.8,000/- instead of Rs.10,000/-, for the purpose of computing the loss of contribution to the family. The deceased was a bachelor and therefore, 50% has to be deducted towards his personal and living expenses. Thus fixing the monthly income at Rs.8,000/- and applying, 18 multiplier as per the decision of the Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, we compute the loss of contribution to the family. In the above said judgment, the Honourable Supreme Court has held that if the deceased was aged between 15 and 20 years, 50% of income can be taken into consideration for future prospects. Thus, fixing the monthly income of the deceased at Rs.8,000/- and by adding 50% of income towards future prospects, we compute the loss of contribution to the family as hereunder:

$$8,000+4,000 = 12,000 \times 12 \times 18 \times 50 / 100 = 12,96,000/-$$

19. Sisters of the deceased viz., respondents 3 and 4, are aged about 18 and 17 years and the brother of the deceased viz., 5th respondent is aged about 16 years. As rightly pointed out by the learned counsel appearing for the respondents/claimants that respondents 3 to 5 have lost the love and affection of their elder brother. A sum of Rs.50,000/- alone has been awarded as compensation under the head of loss of love and affection by the Tribunal to all the respondents, including the parents. The said sum is too low. Though no appeal has been filed, claiming enhanced compensation under the above said head of loss of love and affection in exercise of power under Order 41, Rule 33 CPC, we propose to enhance the compensation under the head of loss of love and affection as Rs.2 lakhs. Reference can be made to the following 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 Shekhupura 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 the said point is 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 increasing 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 Court has got power to enhance the compensation, 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."

20. A sum of Rs.20,000/- awarded by the Tribunal under the head loss of estate is hereby enhanced to Rs.30,000/-. A sum of Rs.10,000/- awarded by the Tribunal towards transport expenses is retained.

21. We also find from the impugned judgment that the Tribunal has not awarded any compensation under the head 'conventional damages' i.e., damage to cloth and articles. Hence, a sum of Rs.5,000/- is awarded under the above said head. Thus fixing the monthly income as Rs.8,000/-, the compensation payable to the respondents/claimants is as follows:

Loss of contribution to the family	Rs.12,96,000/-
Loss of love and affection	Rs. 2,00,000/-
Loss of Estate	Rs. 30,000/-
Transport Expenses	Rs. 10,000/-
Funeral Expenses	Rs. 25,000/-
Conventional damages	Rs. 5,000/-

Total	Rs.15,66,000/-

22. From the compensation now determined, respondents 3 to 5, would be entitled to Rs.3 lakhs each, as compensation. The balance amount of Rs.6,66,000/- would be apportioned equally between the parents viz., the respondents 1 and 2. Learned counsel appearing for the appellant/Transport Corporation submitted that on 13.04.2015, the entire award amount with proportionate interest and costs, has been deposited to the credit of M.C.O.P.No.2094 of 2009 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai. The Tribunal is directed to deposit Rs.9,00,000/, being the share of compensation awarded to respondents 3 to 5 in a Nationalised Bank, proximate to the residence of the respondents/claimants, in a Fixed Deposit for a period of three years and renewable thereafter. Out of the balance amount of Rs.6,66,000/- with proportionate interest and costs, respondents 1 and 2, the parents, are permitted to withdraw a sum of Rs.1,50,000/- each, with proportionate accrued interest. The balance amount from the share apportioned them, is directed to be deposited in a Nationalised Bank for a period of one year in a fixed deposit. We permit the respondents 1 and 2 to withdraw the accrued interest from the share of the minors, once in three months

23. The Tribunal has awarded a sum of Rs.17,25,000/- with interest at the rate of 7.5% p.a. from the date of claim petition i.e., 30.04.2009 till the date of deposit. After adjudication, we have now reduced the same to Rs.15,66,000/-. In view of the reduction in the quantum of compensation, the appellant/Transport Corporation is also permitted to seek for withdrawal of the balance amount with proportionate interest. Appeal is partly allowed as indicated. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CSIII)

True Copy

Sub-Assistant Registrar

vsm
To

1. The Presiding Officer,
Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai.
2. The Section Officer,
VR Section, High Court, Madras.

CMA No.3404 of 2014

aa14/08/2015

सत्यमेव जयते

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