

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.521 of 2011

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1. Branch Manager National Insurance Company Ltd, West Patel Maidan, Moh.- Kashipur, P.S.- Samastipur, Distt.- Samastipur

2. Divisional Manager National Insurance Company Ltd, Central Jail Road, Tilak Manjhi, Bhagalpur

.... Appellant/s

Versus

1. Urmila Devi W/O Sanjay Tanti R/O Vill.- Ambey, P.O.- Mirjanhat, P.S.- Habipur, Distt.- Bhagalpur

2. Kajal Kumari D/O Late Sanjay Tanti R/O Vill.- Ambey, P.O.- Mirjanhat, P.S.- Habipur, Distt.- Bhagalpur

3. Versha Kumari D/O Late Sanjay Tanti R/O Vill.- Ambey, P.O.- Mirjanhat, P.S.- Habipur, Distt.- Bhagalpur

4. Sonu Kumar S/O Late Sanjay Tanti R/O Vill.- Ambey, P.O.- Mirjanhat, P.S.- Habipur, Distt.- Bhagalpur

5. Yashoda Devi W/O Late Gajjo Tanti R/O Vill.- Ambey, P.O.- Mirjanhat, P.S.- Habipur, Distt.- Bhagalpur

6. Lila Devi W/O Sri Gajendra Thakur R/O Vill.- Rampur Maheshpur, P.O.- Morwa, P.S.- Tajpur, Distt.- Samastipur

7. Krishna Kumar Choudhary S/O Rajwali Choudhary R/O Vill.- Laskara, P.O.- Morwa, P.S.- Tajpur, Distt.- Samastipur

.... Respondent/s

with

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Miscellaneous Appeal No. 472 of 2011

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Kamal Pd. @ Kamal Kumar Yadav

.... Appellant/s

Versus

Anil Rai & Ors

.... Respondent/s

with

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Miscellaneous Appeal No. 572 of 2013

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1. The D.M. United India Insurance Co.Ltd. Akhara Ghat, Muzaffarpur.

.... Appellant/s

Versus

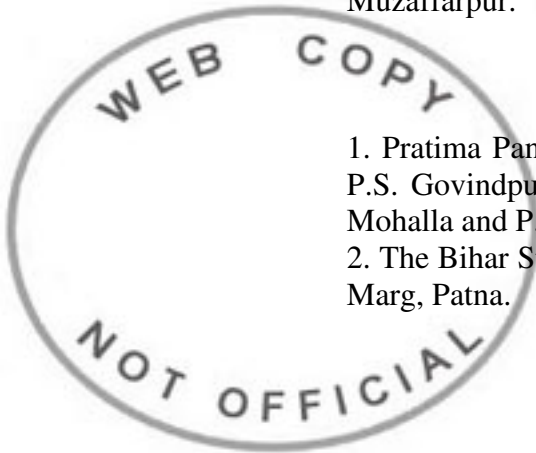
1. Pratima Devi wife of Late Raj Kumar Pandeya,

2. Mangru Pandeya (Minor) son of Late Raj Kumar Pandeya,

3. Kalawati Devi wife of Shri Indradeo Pandeya, All resident of village- Lauriya, P.S.Govindganj District- East Champaran. At present near Sanjay Cinema, Brahm Pura, Muzaffarpur.

.... Respondent/s

with



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Miscellaneous Appeal No. 573 of 2013

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1. D.M. United India Insurance Company Limited, Divisional office Akhara Ghat, Muzaffarpur.

.... Appellant/s

Versus

1. Pratima Pandeya wife of Late Raj Kumar Pandeya, resident of village Lauriya, P.S. Govindpur, District East Champaranm, at present near Sanjay Cinema Hall, Mohalla and P.S. Brahampura, District Muzaffarpur.

2. The Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Marg, Patna.

.... Respondent/s

with

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Miscellaneous Appeal No. 872 of 2012

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The Oriental Insurance Company, Ltd.

.... Appellant/s

Versus

Nand Kishore Mishar & Ors.

.... Respondent/s

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Appearance :

(In MA No. 521 of 2011)

For the Appellant/s : Mr. SHAILENDRA KUMAR, Adv.

For the Respondent/s : Mr. Ganpati Trivedi, Sr. Adv.

Mr. Madan Mohan, Adv.

(In MA No. 472 of 2011)

For the Appellant/s : Mr. DURGESH KUMAR SINGH

For the Respondent/s : Mr.

(In MA No. 572 of 2013)

For the Appellant/s : Mr. RAMCHANDRA LAL DAS

For the Respondent/s : Mr.

(In MA No. 573 of 2013)

For the Appellant/s : Mr. RAMCHANDRA LAL DAS

For the Respondent/s : Mr.

(In MA No. 872 of 2012)

For the Appellant/s : Mr. ASHOK PRIYADARSHI

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-01-2016

In all these appeals, a short but important question of law has been raised by the appellants about the maintainability of the cross-objection filed by the claimants, while the Insurance Company has not challenged the

award on the quantum of compensation but challenge has been made limited to the extent that as at the time of accident, there was violation of terms of contract in between the insurer i.e., the Insurance Company and the owner of the vehicle, would the Insurance Company be liable to pay the compensation amount of the claimant or it is the owner who is obliged to pay the compensation amount computed by the Insurance Tribunal.

In all the cases, the accident took place, cases were filed by the respective claimants before the Claims Tribunal and the Claims Tribunal, after receiving the material on the record, computed the amount of compensation. The Insurance Company has not challenged the amount of compensation but the challenge is limited to the liability to pay the amount of compensation. The Insurance Companies in all these cases have claimed that they are not liable to pay the compensation amount, it is the liability of the owner or the driver to pay the compensation amount, as at the time of accident, the driver was not holding proper licence and the owner was not having proper road permit for running the vehicle.

Counsel for the appellants has submitted that as appellants are not challenging the quantum of compensation but restricted to liability to be paid by which party and, as such, so far quantum is concerned, it has reached finality. In such view of the matter, the claimant cannot make a prayer for enhancement of the compensation amount by filing the cross-objection.

In support of his submission, counsel for the appellants has submitted that the Motor Vehicle Act (hereinafter, referred to as the 'Act') specifically provides the provision to file an appeal under Section 173 of the Act. In Section 173 of the Act, there is no provision for filing cross-objection by the respondents. Section 173 of the Act talks about the bar of



jurisdiction of civil court where it has been provided that in the event of constitution of Claims Tribunal, no civil court will have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal as well as no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the claim for compensation shall be granted by the civil court. Section 166 of the Act provides the manner the claim application has been filed. Section 169 of the Act provides the procedure and the power of Tribunal where it has been provided that the Claims Tribunal shall have all powers of civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material object and for such other purposes as may be prescribed and the Claims Tribunal shall be deemed to be civil court for all purposes of Section 195 and Chapter-XXVI of the Code of Criminal Procedure. Section 176 of the Act gives power to the State Government to make the Rules for the purpose of carrying out the provision of Sections 165 to 174 of the Act and in particular such Rules as may be provided and for all or any of the following matters and one of the matters (b) has prescribed the procedure to be followed by the Claims Tribunal for holding enquiry under Chapter-XII. In terms of sub-section(c) the power vested in a Civil court would be exercised by a Claim Tribunal. In sub-section (d), gives power to the State Government to frame the Rules with regard to form and manner in which the fee, if any, on payment of which an appeal may be preferred against the award of the Claims Tribunal.

Rule 226 of the Bihar Motor Vehicle Rules (hereinafter, referred to as the 'Rules') provides the procedure regarding compensation arising out of accident. This provision is related to the procedure to be

followed by the Tribunal. Sub-rule (3) of Rule 249 of the Rules states save as provided in sub-rule (i) and (ii) the provision of Order 41 and Order 21 in the first schedule to the Civil Procedure Code, shall mutatis mutandis apply to the appeals preferred to the High Court under Section 173 of the Act.

So this Rule makes it clear that the provision of Order 41 does apply at the appellate stage, while dealing with the appeal, entire provision of Order 41 will apply, including the provision of Order 41 Rule 22 where it has been provided, even the person who has not filed an appeal can file a cross-objection against any part of award as well as the findings recorded against the respondents.

The counsel for the appellants submits that the question is, there is no lis between the insurer and the claimant but it is between the insurer and the insured in view of violation of the contract, the Insurance Company is not liable to pay the amount of compensation.

Primarily, in case of accident, the liability will be either of the owner of the vehicle or the driver, though at the time of accident the owner was not driving the vehicle, but the of vicarious liability fastens on the owner for the act of his agent i.e. the driver but on account of the contract of insurance whatever liability comes on the head of the owner, will be indemnified by the Insurance Company and, as such, in an appeal, in the event the Insurance Company does not challenge the compensation amount, the claimant is not a necessary party, rather the owner of the vehicle or the driver are necessary party, the claimant is a proper party and the Claim Tribunal will be able to decide the litigation even in absence of the claimant as no relief has been sought against him.

Counsel for the appellants in support of his submission has relied on the following judgments:

2000(4) PLJR 231 : (Jay Singh v. Lal Muni Devi and the
Original Insurance Co Ltd.)

the Original Insurance Co Ltd.)

1996(2) PLJR 848 (New India Assurance Co. Ltd. v.

Maimun Nisha)

2005 ACJ 857(D.B., Himachal Pradesh),

AIR 1991 KERALA 381 (United India Insurance Co. Ltd.

V. Jameela Beevi)

2003(2) JLJR 755 (New India Assurance Company Ltd. v.

Jyotilal Mahto).

Whereas counsel for the respondents has taken a plea that as Rule 249 provides applicability of Order 41, it will include Rule 22 of the Rules and in such a situation, entire provision including Order 41 will apply while dealing with the appeal. It has further been submitted that the provision of Order 41 Rule 22 does not prohibit the applicability of cross-objection in a situation while the Insurance Company has not challenged the quantum of compensation rather challenge is confined to only the liability to pay compensation. Even though the Insurance Company has not challenged the quantum but in terms of aforesaid provision, the respondents would be entitled to file a cross-appeal on any point against any finding which was recorded against him, including prayer for enhancement of compensation amount. The provision of Order 41 Rule 22 will apply in full force not in a truncated manner as has been suggested by the counsel for the appellants and placed reliance on the judgments reported in

(2003)9 SCC 606 (Banarasi v. Ram Phal)

(2004)3 SCC 250 (MCD v. International Security &

Intelligence Agency Ltd.)

2003 ACJ 1526

2002 ACJ 1889 (FB, Karnataka High Court)

This Court summarizes the submissions of the parties in the following manner:

As per the appellants, as the Insurance Company is the indemnifier, not challenging the compensation amount rather raising objection about the fixation of liability who will give amount to the claimant, in such a situation the cross-appeal does not lie but had there been a situation when the Insurance Company would have challenged the amount of compensation, in such a situation the claimant will be at liberty to file cross-objection claiming for enhancement of amount of compensation, whereas the respondents have raised a grievance that as there is no prohibition or bar as provided under Order 41 rule 22, it does not disentitle the respondents to file cross-objection in even a situation the appeal has been filed by the insurer limiting his challenge with regard to the liability of insurer to pay the compensation amount.

For arriving to a right conclusion, it will be relevant to consider the provision of Order 41 Rule 22 CPC. It will be relevant to quote the provisions of Order 41 Rule 22 before 1976 amendment and post amendment 1976:

"22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal.—(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross-objection to

the decree which he could have taken by way of appeal, provided he has filed such objection in the appellate court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate court may see fit to allow.

(2) (3) ***

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the court thinks fit."

ORDER 41 RULE 22

Text as amended by Act 104 of 1976

(w.e.f. 1-2-1977) *Text pre-amendment*

"22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal.—(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he

could have taken by way of appeal, provided he has filed such objection in the appellate court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate court may see fit to allow.

Explanation.—A respondent aggrieved by a finding of the  court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree insofar as it is based on that finding, notwithstanding that by reason of the decision of the court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

(2)-(3) * * *

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the court thinks fit.”

Order 41 Rule 22 CPC before amendment and after amendment has been dealt with by the Hon’ble Supreme Court about the applicability of cross-appeal filed by the respondents. Basically, it has been



held that under un-amended CPC, the respondents cannot take cross-objection challenging the finding adverse to him, as the decree is entirely in his favour and he may support the decree without cross-objection. The amendment effected in order 41 Rule 22 CPC in the text of sub-rule (i) read with explanation newly inserted gives him a right to take his cross-objection to a finding recorded against him either by answering an issue or while dealing with an issue. The advantage for preferring such cross-objection has been dealt with in sub-rule(4) which provides that in spite of such appeal having been dismissed or withdrawn or dismissed for default, the cross-objection filed by the respondents shall still be available to be adjudicated upon on merit which was not available before amendment. It will be relevant to quote Para-8, 9, 10 and 11 of the judgment in the case of Banarasi v. Ram Phal(supra):

8. Sections 96 and 100 CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the *person who can file an appeal*. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one *aggrieved* by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal. (See *Phoolchand v. Gopal Lal*¹, *Jatan Kumar Golcha v. Golcha Properties (P) Ltd.*² and *Ganga Bai v. Vijay*

*Kumar*³.) No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 CPC provide for an appeal against *decree* and not against *judgment*.

9. Any respondent though he may not have filed an appeal from any part of the decree may still *support the decree* to the extent to which it is already in his favour by laying challenge to a *finding* recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging the finding on ground (B) and persuade the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of the defendant-appellant the decree could still be



sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross-objection. A right to file cross-objection is the exercise of right to appeal though in a different form. It was observed in *Sahadu Gangaram Bhagade v. Special Dy. Collector, Ahmednagar*⁴ that the right given to a respondent in an appeal to file cross-objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross-objection is the exercise of right of appeal and takes the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross-objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross-objection though certain finding may be against him. Appeal and cross-objection — both are filed against *decree* and not against *judgment* and certainly not against any finding

recorded in a judgment. This was the well-settled position of law under the unamended CPC.

10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a *finding*. The difference which has resulted we will shortly state. A respondent may *defend* himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to *attack* any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is *partly* in favour of the appellant and *partly* in favour of the respondent.

(ii) The decree is *entirely* in favour of the respondent though an *issue* has been decided against the respondent.

(iii) The decree is *entirely* in favour of the respondent and all the *issues* have also been answered in favour of the respondent but there is a *finding* in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the  617 amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any *finding* adverse to him as the decree is *entirely* in his favour and he may support the decree



without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a *finding* recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any *finding* by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any *finding* recorded against the respondent.

Again, applicability of cross-appeal came for consideration before the Hon'ble Supreme Court reported in (2004)3 SCC 250 (supra) with respect to the matter of Arbitration Act. The question was raised as to whether in an arbitration proceeding, in case of appeal filed under Section 39, the question of applicability of cross-appeal was the subject matter. The Hon'ble Supreme Court has dealt with Sections 39 and 41 of the Arbitration Act, specifically Section 41 which shows the applicability of provisions of CPC that includes the applicability of Order 41 which deals with right of

respondents to file cross-objection under Order 41 Rule 22, CPC.

The Hon'ble Supreme Court has held that the respondent has right to file cross-objection as provided under Order 41 Rule 22 CPC. It will be relevant to quote Para 14 and 15 of the aforesaid judgment (MCD v. International Security & Intelligence Agency Ltd.):

14. Right of appeal is creature of statute.

There is no inherent right of appeal. No appeal can be filed, heard or determined on merits unless the statute confers right on the appellant and power on the court to do so. Section 39 of the Act confers right to file appeal, insofar as the orders passed under this Act are concerned, only against such of the orders as fall within one or other of the descriptions given in clauses (i) to (vi) of sub-section (1) of Section 39. Parliament has taken care to specifically exclude any other appeal being filed, against any order passed under the Act but not covered by clauses (i) to (vi) abovesaid, by inserting the expression "and from no others" in the  text of sub-section (1). Clause (a) of Section 41 extends applicability of all the provisions contained in the Code of Civil Procedure, 1908 to (i) all proceedings before the court under the Act, and (ii) to all the appeals, under the Act.



However, the applicability of such of the provisions of the Code of Civil Procedure shall be excluded as may be inconsistent with the provisions of the Act and/or of rules made thereunder. A bare reading of these provisions shows that in all the appeals filed under Section 39, the provisions of the Code of Civil Procedure, 1908 would be applicable. This would include the applicability of Order 41 including the right to take any cross-objection under Rule 22 thereof to appeals under Section 39 of the Act.

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

or order impugned is the exercise of right of appeal though such right is exercised in the form of taking cross-objection. The substantive right is the right of appeal; the form of cross-objection is a matter of procedure.

Now there is no dispute about the applicability of Order 41 Rule 22 CPC, but the question in the present case is when the indemnifier files an appeal making a complain that the insured has violated the terms of contract, the terms of contract is between the owner and the Insurance Company and in the present case, the question is, there is no lis against the claimant. Real question is, who will make the payment i.e. whether the Insurance Company or the owner or the driver of the vehicle. In the present cases, no challenge is about the quantum of compensation. Had there been a challenge there is no doubt that the claimant would have been aggrieved party. When he is not an aggrieved party, can he in a situation like the present one, file a cross-appeal.

As per the judgment of this Court reported in *New India Assurance Co. Ltd. v. Maimun Nisha* (supra) the Court has accepted that when there is no challenge to the quantum, the question of right to file a cross-appeal or cross-objection under Order 41 Rule 22 CPC does not arise. It is relevant to quote Para-7 of the judgment:

“Para:7 : The decree with regard to the quantum of compensation has never been challenged by the Insurance Company and only their liability has been challenged. In a case wherein the quantum has not been challenged, it is submitted on behalf of appellant that enhancement of the decree, cannot be considered by way of Cross Objection

under Order 41 Rule 22 CPC. Where only the liability of the Insurance Company has been challenged and quantum which has become final between the co-respondents, cannot by way of Cross Objection, be challenged in the appeal.”

Similar was the issue raised in 2000(4) PLJR 231 where though the Court has applied the provisions of Order 41 Rule 33 with the purpose to do complete justice between the parties but the Court has not specifically dealt with the issue but by and large, accepted the principle laid down in 1996(2) PLJR 848 (supra). It is proper to quote Para-10 and 11 of the judgment as follows:

“Para-10 : The next point, which arises for consideration is: whether the cross appeal by the claimant for enhancement of compensation was maintainable. It is the stand of the learned counsel for the vehicle owner that the Misc. Appeal No. 520 of 1996(R) had been preferred by the insurance-company and, therefore, no cross-objection/cross appeal filed by the claimant for enhancement of compensation could have been entertained. This point was not pressed by the vehicle owner before the learned Single Judge in the Misc. Appeal. It is suffice to say that there is no specific prohibition under the Act to entertain cross-objection/cross-appeal filed by the claimant under Order 41 rule 22 of the Civil Procedure Code for enhancement of compensation and under the provision of Order 41 rule 33 of the Code, the appellant court can make appropriate order to do complete justice between the parties and to decide the matter in a way that a claimant is given

just compensation (Ref:- Manjit Singh Vs. Rattan Singh: 1987 ACJ 1204, Nirmal Singh Vs. C.M. Jaya: 1997 ACJ 44).

Para-11 : Learned counsel for the appellant-vehicle owner, on the other hand, has relied on a decision of learned Single Judge of this Court in **National Insurance Company Vs. Maimun Nisha and others** [1996(2) PLJR 848] in support of the contention that the cross-objection by a claimant under Order 41 rule 22 of the Code of Civil Procedure could not be entertained in an appeal filed by the insurance-company. In that case, the quantum of compensation had not been challenged by the insurance-company and it had only challenged its liability. But in the instant case, the insurance-company challenged its liability as well as the quantum of compensation. It has been held in that case that where only the liability of the Insurance Company has been challenged and quantum which has become final between the co-respondents, cannot by way of Cross-Objection, be challenged in the appeal. The aforesaid decision in Maimun Nisha (supra) has no application to the facts of the present case.”

In *United India Insurance Co. Ltd. V. Jameela Beev* (supra) identical question was raised where the Hon’ble Court has said that it merely indemnify the insurer with whom he has a contract of insurance. Claimants are not entitled to maintain the cross-objection in such an appeal by a party who is merely indemnifier. It will be relevant to quote Para 11 and 16 of the judgment:



Para-11 : That brings us to the question of burden of proof of a fact which excludes the liability of the insurer. The substance of the appellant's case is that there is a breach of a term of the contract of insurance in as much as the vehicle was driven by an unlicensed driver. The law grants immunity to the insurer from liability to indemnify if the breach of the terms of policy is committed. A breach is the infringement or violation of a promise or obligation on the part of the insured. In this case, the promise was that the vehicle shall be driven by a licenced driver. It is not enough to allege and prove the fact that a breach has occurred. The Supreme Court has explained the concept of breach of promise in the case of Skandia Insurance Co. Ltd.¹⁴in these words (at page SC 1190; AIR 1987):-

Para-16: The claimants have filed cross objects to this appeal. The appellant, insurer, merely indemnifies the insured with whom he has a contract of insurance. The claimants are not entitled to maintain cross objections in such an appeal by a party who is a mere indemnifier. In our opinion, the cross objections by the claimants are incompetent.”

In the said judgment, the Court has put emphasis on violation of contract between insurer and the insured and in such legal dispute, the claimant is not a party to the dispute, no relief has been sought, right to file objection cannot apply.

In Jharkhand High Court in 2003(2) JLJR 755 (The New India Assurance Company Ltd. V. Jyotilal Mahto) specifically, this question was raised and the Court has returned the answer that in a case where there is

no challenge to the quantum, filing of cross-objection in appeal does not arise. It will be relevant to quote Para-5 of the judgment:

“Para-5 : The aforesaid Investigator was not examined and, therefore, his report was not proved. The Insurance Company also could not prove the certificate said to be issued by the District Transport Officer, Cuttack by examining any body from that office. Those papers, therefore, could not be marked as exhibits. In such circumstance, there was no occasion for the tribunal to consider the allegation of the insurance company regarding the forged driving licence. We are also not in a position to consider those papers in absence of any pleading or proper proof in support thereof. The tribunal also rightly did not consider them. We, therefore, find no substance in the submission of Mr. Ghose. There is no merit in this appeal.”

Counsel for the appellants has placed reliance on Himachal Pradesh judgment on perusal of which it appears that in Himachal Pradesh Motor Vehicle Rules, provision like Section 249 is not there and in such a circumstance, the Court has taken a view that applicability of Order 41 Rule 22 does not apply and while parting with the judgment the Court has given observation that the State Government may take a decision with regard to amendment of the Motor Vehicle Rules, thereby making provision for applicability of cross-objection by the respondents in a case of appeal filed by the other side. In such view of the matter, this Full Bench Judgment does not apply.

In the judgment that has been cited by the other side with regard to Karnataka High Court, National Insurance Company v. Prem and

others 2002 ACJ 1889 there also similar question was raised and answer has come that as there is no prohibition or impediment in filing the objection in an appeal in a case the Insurance Company has only challenged the liability, the claimant will have a liberty to raise objection in the appeal itself. This Court with great respect does not subscribe the view.

Looking to the facts of the present case, this Court is of the view that in nut shell, there is contract between the Insurance Company and the owner of the vehicle. Challenge is not on the amount of compensation but limited to the question who would pay and no relief has been sought against the claimant at present. In such a situation, this Court is of the view that cross-objection in the shape of appeal will not apply and the claimant, if so advised, could have filed or may file an appeal, as has been provided under Section 173 of the Act, but where there is challenge for the quantum of compensation, certainly in such cases, the claimant will have a right to file an objection in terms of Order 41 Rule 22 CPC.

In such view of the matter, the cross-objection filed by the claimant are not maintainable. The same are rejected. If so advised, they may take legal course as available under the Motor Vehicle Act.

So far M.A.No. 521 of 2011 is concerned, it stood dismissed for non-compliance of the order. Counsel for the Insurance Company has submitted that they are not interested to revive this appeal any more. Accordingly, the same is dismissed. So far other appeals are concerned, they will be heard on their merits.

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(Shivaji Pandey, J)