

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1344 OF 2013**

UNITED INDIA INSURANCE CO LTD

through its branch office at Yashodhan Complex,
In front of Science College, Sadar Bazaar, Satara

...Appellant

~ VERSUS ~

1. RAJANI SURESH BHORE,

Aged 19 years, Occupation Education
R/o. Pruthaviraj Apartment, Behind Dudhali
Pavelion, Plot No. 89, F-1, Shivaji Peth,
Kolhapur

2. SALIM ELAHI BAGWAN,

Age 43 years, Occupation Driver,
R/o. 134, Krantisingh Nana Patil Nagar, Ring
Road, Kolhapur.

3. SALIM SIKANDAR TAHSILDAR,

Age 47 years, Occupation Vehicle owner,
R/o. 204, "G" Ward, New Sahupuri,
Kolhapur Luxury Bus No. MH-09-BC-9357

...Respondents

APPEARANCES

FOR THE APPELLANT

Mr Ketan Joshi, Advocate.

FOR THE RESPONDENT

Mr Swapnil Waradkar, Advocate

AMICUS CURIAE

Mr DS Joshi, Advocate.

CORAM : G.S.Patel, J.

DATED : 29th June 2017

JUDGMENT:

1. At my request, Mr DS Joshi has rendered assistance as *amicus*. The matter raises a question of some importance, one that frequently arises in First Appeals under the Motor Vehicles Act, 1988 (“**the MV Act**”). Shortly put, the question is this: when an opponent to the original claim appeals, questioning the quantum of compensation awarded, absent either an appeal for enhancement or cross-objections by the original claimant, can an appellate court directly order enhancement of the compensation? If the mandate under the MV Act is to award compensation that is ‘just’, can this be done as a matter of course without the appellate court having before it a claimant’s substantive appeal (or cross objections) seeking enhancement? Mr Ketan Joshi for the present Appellant say this cannot be done. The claimant must prefer a substantive appeal or at least file cross-objections. Mr Waradkar for 1st Respondent — the original claimant before the Motor Accident Claims Tribunal, Satara — would have it that it is always within the power of the appellate court to render substantial justice and to enhance the compensation to a level it considers just, and it matters not whether the claimant has or has not filed his or her own appeal or cross-objections.

2. On hearing the rival submissions, and the submissions by Mr DS Joshi as *amicus*, and on considering the authorities placed, I have concluded, for reasons that follow, that while an appellate court cannot as a matter of course or routine order an enhancement

without having before it a substantive appeal or at cross-objections, it can do so only in extreme situations, and only where the award of the Tribunal is manifestly *unjust*. These cases are exceptions to the general rule, and the exceptional circumstances must be fully explained. I have found Mr Waradkar's submission to be too overbroad and without sufficient limiting parameters, likely to result, if accepted, in wholly unintended consequences. Equally, I believe the submission that an appellate court can *never* step in to right a palpable wrong to be far too rigid, and just as likely to result in a perpetuation of injustice. The correct position is in between and it requires a careful balancing of competing equities. There can be no absolute acceptance of the submissions of either the Appellant or the 1st Respondent — both represent extreme positions. The middle ground is where the answer lies, thus: that in the normal course, an appellate court will not when considering a challenge by an original opponent to the compensation awarded grant an enhancement to the original claimant without the claimant filing a substantive appeal or at least cross objections seeking that enhancement. This is the general rule. The exception is only where the appellate court is satisfied that the tribunal's decision is wholly erroneous and has resulted in the award of compensation that is manifestly unjust; that is to say, there is such a facial failure to award just compensation that nothing further is necessary. The limitation on appellate power is not just a self-imposed discipline; it is mandated by statute. The relaxation of that limitation is a result of a harmonious construction of substantive and procedural law. Further, this limitation is to be carefully separated from the power of the appellate court to correct a purely computational or similar error — for instance, where an incorrect multiplier has been used, or a

wholly incorrect deduction made. The discussion before me does not relate to such situations. It is focussed on the limitations of the discretionary power of an appeal court.

3. First, to the facts of the case. The judgment in question is dated 12th April 2013. It arose out of an accident injury claim filed by the 1st Respondent, Rajani Suresh Bhore. She claimed Rs. 50 lakhs on account of these injuries. She said she was permanently disabled in an accident that took place on 27th July 2010. On that day, she was with her father in a luxury bus travelling on the Pune-Bangalore Highway from Pune to Kolhapur. According to her, the driver of the bus, one Salil Elahi Bagwan, Opponent No. 1, was driving in a most reckless and irresponsible manner. As he approached Kesurdi, his wayward driving caused the bus to brush against a goods truck no. MH-02-DG-7177. The left side of the bus was damaged, quite extensively — it seems to have been actually ripped open. As ill-luck would have it, Rajani was at that time in Seat No. 4 on the cleaner's side of the bus. As a result of this accident, she was grievously injured in her left femur, chest and left humerus. She was treated at various hospitals but was never fully cured. She suffered a permanent disablement of 60%: her left hand was amputated at the elbow. Her claim said that she had suffered greatly, incurred substantial medical expenses, travelling expenses, costs of an attendant, special diet and so on.

4. At the time of accident, she was still a student, 19 years old. She had just completed a computer course. This is important to the question of an assessment of an income, and to which I will presently turn. She said that she might have earned a salary of Rs.

3,000/- per month but this potential was entirely lost to her on account of the accident and its consequent injury. She said too that the injury left her with significantly diminished marital prospects, and she mounted a claim under that head as well.

5. The claim was filed jointly and severally against all the opponents for an amount of Rs.50 lakhs. Opponent No. 1, as I have noted, was the driver of the bus. Opponent No. 2 was its owner. Opponent No. 3 was the insurer, the United India Insurance Co Ltd, now before me in Appeal. The driver and the owner did not appear. They filed no written statement. The insurer denied negligence on the part of the driver and also raised certain other defences, with which I am not concerned since these have not been pressed as grounds in Appeal.

6. Before the Tribunal, the Claimant led documentary and oral evidence to prove the bus driver's negligence and her injuries. The insurer examined the driver of the bus.

7. Rajani Bhore's evidence is unshaken in cross-examination as to the events leading up to and surrounding the accident in question. She also relied on the First Information Report, spot panchanama and other documents. It emerged in evidence that the impact of the two vehicles colliding along their length was so severe that the truck in question (hit on its right side) toppled to its left and fell into a ditch. The Assistant Police Inspector of the local Police Station visited the spot and he saw that the truck was indeed lying on its left and that the bus had in fact brushed against the truck. He also found that Rajani Bhore was not only the passenger injured; there were

others as well. Some were shifted to other hospitals. Three died. The Inspector made enquiries himself and personally saw the damage to the truck and the bus. He, therefore, proceed to lodge a complaint. The spot panchanama at Exhibit 38 shows that the bus was totally damaged. The collision was so severe that the damage extended all the way down the left of the bus to the very last seat: all the seats and cushions, windows and glass panes were destroyed. Rajani Bhore's father filed a separate claim and was also able to give eye-witness testimony.

8. As against the driver and the owner, the Tribunal was persuaded to draw an adverse inference. It was careful, however, to note that the driver, though he did not himself enter a written statement, nonetheless came as the insurer's witness. His version was that while he was attempting a cautious overtaking manoeuvre of the truck in front of him, another car overtook him on his right, passed both the bus and the truck, swerved in front of the truck and that caused the truck to brake abruptly and stop, and that this caused the bus to collide with the truck. He accepted that the effect and impact of the collision was that the left of the bus he was driving collided with the right of the truck for a distance of 15 to 20 feet, four or five window-lengths. The Tribunal did not believe this story of another car being on the scene. This was not even pleaded by the insurer. The Tribunal found from the evidence before it that the driver had been negligent, and that he had not kept sufficient safe distance between himself and the truck that he was attempting to pass.

9. I have considered the material on record including the documents and oral testimony. It is impossible to find fault with the Tribunal's assessment and appreciation of this evidence. In my view, no other finding could have possibly been recorded. There is no dispute at all about the injuries that Rajani Bhore suffered or about the partial permanent disability to which she is now been subjected, or the amputation of her left arm below the elbow. In this context, it is only necessary to note what she said and which appears to have largely gone unchallenged, viz., that she had completed her computer training course. I will leave aside for the moment the question of her claim as to what she might have earned. It is necessary for any court in a situation like this while assessing the question of disability and even the loss of opportunity to address itself to what it is that the Claimant was trained to do, and could have done as a vocation. For instance if a person is trained to be a driver and suffers amputation to the leg, it could result in a 100% disability because this avocation is no longer a possibility. In this particular case, Rajani Bhore's disability has been reckoned at 60%, being an amputation of her left arm below the elbow. Her age has been factored. At the time of the trial, she was in her first year in the Arts course.

10. The record does not indicate any qualifications in the field of computers, computer programming or computer science. Her disability has been reckoned as 100%, although her disablement is taken at only 60%. This is an important distinction and one that courts are required repeatedly to make. The extent of the physical disability or its proportion to the rest of the human body is not necessarily an indicator of the corresponding disability in relation to

earning capacity, i.e., working disability. A physical disablement of even 60% could result in a functional disability of 100%, depending on what the disablement actually is. I find the Tribunal quite approached this carefully, in a considered and measured fashion. It took the disability at 100% of the future earning capacity and it also considered a notional income and future rise in income and took this to be Rs. 5,000/-. Of necessity, this had to be notional. Rajani Bhore was until then a student.

11. This is the principal challenge in the Appeal. The insurer claims that the notional income of Rs.5,000 was accepted totally without reason. At best, Rs. 3,000/- could have been taken and at most another 30% added as increase in future income.

12. I do not think that this is a ground that calls for interference as such. This is in fact precisely where the substantive question of law arises. The Tribunal took this figure of Rs. 5,000/- in discharge of its duty to award just compensation.

13. It is difficult in a situation like this to arrive at precise figures. Where a person is employed or has been employed and there is evidence of actual income, other considerations and factors will certainly weigh, and courts always look at documents evidencing income. But in this case the claim was, from the beginning, only a case of loss of future income. It had to be a notional figure, but it had to be a figure that was just and reasonable, one that would result in 'just compensation' being awarded within the meaning of the statute.

14. Now it does not need to be restated that it is the duty of the court to ensure that the compensation awarded is 'just'. This can only mean that the amount must be such as will satisfy the conscience of the Court. But this is not an open-ended license either to any court at any level to engage in complete arbitrariness. Whatever be the claim, the Courts must ensure that the amount awarded is not fanciful, albeit notional, that is to say, it is not in the nature of a wholly unjustifiable windfall gain; and at the same time it is not so trivial as to be entirely illusory. The question of just compensation speaks not to the amount of compensation but to the approach of the court. It is a question of balancing the competing rights and demands. To assail notional income taken by saying that some other equally notional figure should have been taken hardly merits attention. By this reasoning any figure at all could be assailed; if Rs.5,000 is said to be unjustified, this is equally true of Rs.3,000. In appeal, I must have due regard to the approach taken by the Tribunal court below. It is not for me to randomly alter a considered figure unless I find it is plainly excessive or plainly trivial, i.e., a figure of the kind that would satisfy the test of legal 'perversity' — a figure that could not possibly be taken and is wholly irrational. In a situation like that, a Court could always step in and in such rare and exceptional cases provide the necessary balance. The present figure of Rs.5,000 taken by the Court does not meet this criteria. It calls for no correction or interference.

15. The Tribunal awarded a rounded-off amount of Rs.23,25,000 against the claim for Rs.50 lakhs in the manner shown below (this tabulation is taken from page 23 of the impugned judgment):

I]	Rs.9,60,000	Future loss of income (Rs.5000 × 12 × 16)
II]	Rs.8,79,000	Medical expenses
III]	Rs.50,000	Travelling expenses
IV]	Rs.10,000	Expenses towards special diet
V]	Rs.25,000	Expenses towards attendant
VI]	Rs.3,00,000	For pain and suffering
VII]	Rs.1,00,000	For loss of marriage prospects
	Rs.23,24,000	Total amount of compensation
	Rs.23,25,000	Rounded off compensation

16. The difficulty with the judgment under Appeal, if it can be called that, is that given Rajani Bhore's age of 19, the Tribunal applied a multiplier of 16. This is clearly an error, possibly inadvertent. The correct multiplier ought to have been 18 and this would have made a difference to the final total income taken in the result. Using Rs. 5,000/- as the base, the annual income was computed to be Rs. 60,000/- and with a multiplier of 16 yielded a figure of Rs. 9,60,000/-. This figure needs to be corrected by applying the multiplier of 18 to Rs. 10,80,000/-. The difference thus between the figure taken by the Tribunal and correct figure is Rs. 1,20,000/-.

17. There is one other aspect on which the Award needs rectification. An amount of Rs. 8,79,000/- has been taken as medical expenses. It seems to have been overlooked, and this is

undisputed before me, that Rajani Bhore's father received reimbursement of an amount of Rs. 2,40,000/- towards her medical expenses. This amount of Rs. 2,40,000/- must, therefore, be reduced from the Award of Rs. 8,79,000/- towards medical expenses. However, this amount of Rs. 2,40,000/- may conveniently be adjusted in the following fashion. First an amount of Rs. 1,20,000/- can be added to the future loss of income taken at Rs. 9,60,000/- so as to yield the correct figure of Rs. 10,80,000/- (on applying the multiplier of 18). The Award also does not include any amount for loss of amenities. A figure of Rs. 1,00,000/- can be taken towards this and the remaining Rs. 20,000/- can be appropriated under another head of special diet. The result would be that the net figure awarded remains unchanged but with the necessary internal changes and corrections. If this be so, then this sufficiently disposes of the Appeal itself.

18. But this yields a slightly different issue and that is on a more substantive question of law. The point of law that is raised before me turns on a reading of Order 41 Rule 22 and Order 41 Rule 33, for it is Mr Waradkar's submission that the amount awarded should be enhanced. After all, the claim was for Rs.50 lakhs, and the judgment awarded less than half that amount. It is his submission that, even apart from the multiplier correction (and which Mr Ketan Joshi fairly accepts is necessary), and the adjustment for the medical reimbursement, the overall compensation under the various heads of general damages such as pain and suffering and loss of marital prospects are far too low. Mr Waradkar's submission is that it matters not that Rajani Bhore has not filed an appeal of her own or even cross-objections. His instructions are to say that she does not

wish to do so. He therefore submits that an appellate court can do whatever the trial court could have done; and, further, that in pursuit of the mandate to award just compensation, the appeal court should, and must, do that which the Tribunal failed to do. The submission is opposed by Mr Ketan Joshi, saying that absent a substantive appeal by Rajani Bhore, and leaving aside any question of obvious corrections as noted earlier, there being no case made out of the amount being illusory, the appeal court not only should not countenance a claim made orally across the Bar for enhancement, but that it cannot. A substantive appeal or cross objections are mandated by Order 41 Rule 22, and that cannot be written off the statute book by reference to the general power in Order 41 Rule 33.

19. The two Rules read thus:

Order 41 — Appeals from original decrees

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 Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

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

(2) **Form of objection and provisions applicable thereto.**—Such cross-objections shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) ***

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

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

33. Power of Court of appeal

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may

not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals, and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

(Emphasis added)

20. The claimant, Rajani Bhore, has not filed any Appeal of her own impeaching this judgment though she could have done so. She has also not filed any cross-objections. What I have before me is the Appeal by the insurer, one that, as I have noted, suggests some other equally notional income figure but without apparent basis. That may not matter much: the only Appeal before me is for reduction of the compensation granted. The question is this: would it be possible in a situation such as this, therefore, having regard to the frame of Order 41 Rule 33 and Order 41 Rule 22 to interfere with the order under Appeal and *increase* the compensation granted without the Respondent to the Appeal actually filing an appeal or cross-objections of her own and mounting a substantive challenge?

21. I believe the Appellants are right and Mr DS Joshi, learned Amicus supports this that the powers of the Court under Order 41 Rule 33, though wide, must necessarily be constrained in the normal course by the provisions of Order 41 Rule 22. That Rule requires the filing of a cross-objection to the decree and taking any point that might have been taken in an Appeal. In this particular case, Rajani Bhore could have always have sought an increase in the overall compensation. Today, it is the sheerest happenstance that there a contra adjustment is available from the medical reimbursement and this neutralises the effect of the incorrect multiplier. Even if it did not, something facially incorrect such as wrong multiplier or overlooked reimbursement can be rectified in appeal. Today neutralization will not happen in every case, and in any case, it does not address the submission for an overall increase.

22. Mr Waradkar argues that, very recently, a learned Single Judge of this Court took the view that since it is the duty of the Motor Accident Claims Tribunal and of Appellate Courts to award just compensation and in two cases, enhanced the compensation invoking the appellate court's powers under Order 41 Rule 33. In *The State of Maharashtra v Kamladevi Kaushal*¹, Sonak J increased the compensation from Rs.1,65,000 to Rs.9,75,000/-. In *New India Assurance Co Ltd v Seema Sudam Auti*,² Sonak J awarded Rs.78,11,533/- instead of Rs.71,36,917/-. Mr Ketan Joshi submits that those two decisions turned narrowly on their peculiar facts. To apply them across the board would result in appellate courts and tribunals awarding entirely fanciful amounts, without apparent basis.

1 First Appeal No. 103 of 2017 decided on 15th March 2017.

2 First Appeal No. 1991 of 2011, decided on 9 June 2017.

23. I must straightway say that I do not read MS Sonak J's decisions in *Kamladevi Kaushal* or *Seema Auti* as suggesting anything of the kind. Both contain a careful and elaborate discussion of precedent, and both adopt a cautious and tempered approach. The increase is not without disclosed basis. In *Kamladevi Kaushal*, the award made was of only Rs. 1,65,000/- including a no-fault liability to the widow, mother and two children of a person who died in a fatal accident. The First Appeal itself was old, of the year 1996, and itself much delayed. Service issues further delayed the matter. The Court took up the matter at the admission stage. In paragraph 4, MS Sonak J referred to the rival arguments which turned largely on whose testimony ought to have been credited. Then in paragraph 5, the Court observed that the compensation awarded by the MACT was "rather inadequate and could not be regarded as just compensation in the facts and circumstances of the present case". Parties were heard again on the issue of compensation including on the fact that the Claimants had filed no cross-objection.

24. At that time, before MS Sonak J it was argued that the decision of the Supreme Court in *Ranjana Prakash & Ors v Divisional Manager & Anr*³ wholly prohibited an Appeal Court from enhancing compensation in a claim made for reduction by one party unless the opposite party filed its own cross-objections or First Appeal. On this MS Sonak J framed three points for determination in paragraph 7:

"7] In this appeal therefore, the following points for determination arise:

3 (2011) 14 SCC 639.

(A) Whether, from the material on record, it can be said that the accident, from which the claim arises, took place entirely on account of negligence of deceased Kailashchandra or at least on account of contributory negligence on the part of deceased Kailashchandra?

(B) Whether the compensation awarded by the MACT constitutes 'just compensation' in the facts and circumstances of the present case?

(C) Whether in the absence of any cross appeal or cross objections on the part of the claimants, the appeal court is entitled to award 'just compensation' to the claimants, in the appeal instituted by the owner?"

(Emphasis added)

25. I am concerned with the third of these. Now this question was answered in paragraphs 20 to 25 thus:

"20] There is no merit in the contention of Mr. Dabke that the impugned award is consistent with the law as it stood on 5th August 1995 when the impugned award was made. The decision in case of Sarla Verma (supra), was delivered in the year 2009. However, the Hon'ble Supreme Court has basically declared the law and the MACT was duty bound to make an award towards loss of consortium, loss of love and affection as also towards funeral expenses. The MACT was also duty bound to take into consideration the correct income of the deceased. For all these reasons, it cannot be said that the compensation awarded by the MACT in the impugned award constituted "just compensation". The award of interest at the rate of 12%, however, appears to be on the higher side and the same is required to be scaled down to 8% per annum.

21] The third submission made by Mr. Dabke, no doubt, finds support in certain observations made in *Ranjana Prakash (supra)*. In the said case, however, the question as to whether the appeal court can enhance the compensation awarded by the MACT, in an appeal instituted by the owner/Insurance Company, did not directly arise. Since, the material on record in the said case did not warrant award of higher compensation. On the contrary, in ***Sanobanu Nazirbhai Mirza and ors. vs. Ahmedabad Municipal Transport Service ((2013) 9 SCR 882)***, another Division Bench of the Hon'ble Supreme Court, after relying upon the decision of the Larger Bench of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and ors. ((2003) 2 SCC 274)***, has held that it is the duty of the Tribunal and the appeal court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony.

22] In *Sanobanu Mirza (supra)*, the legal representatives of the deceased Nazirbhai, who died in a road accident on 30 May 1998 were awarded compensation of Rs.3,51,300/- by the MACT. In the appeal instituted by the Insurance Company, the Gujarat High Court, reduced this compensation from Rs.3,51,300/- to Rs.2,51,800/-. The claimants were directed to refund the excess amount of Rs.99,500/- along with interest at the rate of 9% per annum. The claimants, who had never instituted any appeal against the award of Rs.3,51,300/- made by the MACT, appealed to the Hon'ble Supreme Court against the order of the Gujarat High Court. In the appeal, the Hon'ble Supreme Court, applying the law laid down in *Santosh Devi vs. National Insurance Company Ltd. and ors - 2012 (6) SCC 421* and *Rajesh Vs. Rajbir Singh - 2013 (6) Scale 563* determined "just compensation" at Rs.16,96,000/- as against the determination of Rs.3,51,300/- by the MACT and Rs.2,51,800/- by the Gujarat High Court. The question

naturally arose as to whether it was permissible to award this amount of Rs.16,96,000/-, in the absence of any appeal by the claimants to the award of compensation at the rate of Rs.3,51,300/-by the MACT before the Gujarat High Court. This was answered by the Hon'ble Supreme Court by the following observations:

(8)

The amount of Rs.16,96,000/- as calculated above, under the various heads of losses, should be awarded in favour of Appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the Appellants to set aside the judgment and order passed by the High Court in the appeal filed by the Respondent. We must follow the legal principles of Nagappa Vs. Gurudayal Singh & Ors., 2003 2 SCC 274 at para 7, wherein with respect to the provisions of the M.V. Act, this Court has observed as under: "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 the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The 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 MV 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."

(9) In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. ***Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases.*** Therefore, this Court has awarded just and reasonable compensation in favour of the Appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the

Respondent, we determine just and reasonable compensation by awarding a total sum of Rs.16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the Appellants.”
(emphasis supplied)

23] In *Nagappa (supra)*, the issue was whether the claimant is entitled to amend the claim at the appellate stage. However, in this case, even though, the claimant did not appear before the court, the Appellant-State was put to notice that the compensation awarded by the MACT did not represent “just compensation”. Accordingly, learned AGP was afforded opportunity to make his submission on the aspect of just compensation, which was proposed to be determined on the basis of the material on record, without the necessity of any additional evidence. To that extent, the State was afforded full opportunity to meet with the issue of just compensation on the basis of the material on record. In *Nagappa (supra)*, the three Judges Bench of the Hon’ble Supreme Court has held that in terms of section 166 of the Motor Vehicles Act, 1988 (M.V. Act) it is the duty of the Tribunal to determine an award “just compensation”. The appeal before this court is a continuation of the original proceedings before the Tribunal. If there is a statutory duty cast upon a Tribunal to determine and award “just compensation” then there is equally a statutory duty upon the appeal court to determine and award just compensation, irrespective of whether the same has been claimed by the claimant or not. It is in these circumstances that the Hon’ble Supreme Court in *Sanobanu Mirza (supra)* has in terms held that it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held in catena of cases.

24] In *Nagappa (supra)*, the Hon'ble Supreme Court after reference to several provisions of the M.V. Act has held as follows:

25] In *Managing Director, Metropolitan Transport V. Ramarao*, learned Single Judge of the Madras High Court, after detailed consideration of the legal provisions as well as the precedents has held that it is the duty of the appeal court to award just compensation irrespective of whether or not the same may have been claimed by the claimants or not. In *Ningamma and anr. vs. United India Insurance Company Limited - (2009) 13 SCC 710*, the Hon'ble Supreme Court at paragraph 34 has held that section 166 of the MV Act deals with "just compensation" and even if in the pleadings no specific claim was made, a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the M.V. Act is beneficial and welfare legislation. In fact, the 6 (2013)5MLJ 715 court is duty bound and entitled to award "just compensation" irrespective of the fact whether any plea was raised in respect of the claimant or not. Accordingly, even the third point of determination is liable to be decided against the Appellants and in favour of the claimants."

26. MS Sonak J, therefore, held that it was within the Courts powers to award just compensation, particularly when it felt that the Tribunal had not done so.

27. The question actually is not so much of whether there is a statutory bar or not, and I cannot read MS Sonak J's decision for an absolute proposition in either direction. It is not an authority for the proposition that in every case where the insurer comes in Appeal, the original claimant is entitled as a matter of right to claim an

enhancement without filing a substantive appeal of its own. That could never have been the suggestion. It would have run directly contrary to *Ranjana Prakash* and its observations, and whether or not the observations in *Ranjana Prakash* are obiter is surely immaterial; even the obiter of the Supreme Court is binding. Therefore, that could never have been the purport or ambit of the decision in the *Kamladevi Kaushal* case before MS Sonak J.

28. In *Seema Sudam Auti*, too, Sonak J did not lay down any absolute proposition. Saying that the award was far too modest, appellate powers under Order 41 Rule 33 were specifically invoked. In fact, as paragraph 16 of that decision shows, the Court actually *reduced* the figure of annual income. The only controversy was in regard to the heads of loss of consortium (the deceased was 46 years old at the time), loss of estate, loss of love and affection and funeral expenses. Under these heads, the Tribunal awarded Rs.12,000 to loss of consortium; Rs.30,000 for loss of estate and love and affection, and Rs.2000 toward funeral expenses. Clearly, these figures were abysmally low; so low as to be entirely illusory. Sonak J in appeal stepped in, as I believe he was bound to do, and adjusted these figures towards something more 'just': Rs.1 lakh for loss of consortium, Rs. 1 lakhs to the two children for loss of love and affection, Rs.50,000 to the deceased's mother for loss of love and affection, and Rs.25,000 towards funeral expenses. Thus, the increase was from a paltry Rs.44,000 under these heads to Rs.3.75 lakhs. This intervention in appeal does not support the proposition that in every case, an Appeal Court must and can intervene irrespective of whether or not the claimant has filed an independent appeal for enhancement.

29. I also do not believe that Sonak J intended to suggest that the view in *Ranjana Prakash* is so rigid or inflexible that an Appeal Court cannot do what is just, that it cannot render that which courts are supposed to do in the first place — render justice. A reading of the judgments as a whole makes it clear that this power, even if utilized, is not in derogation of statutory restrictions; certainly not by throwing statutory provisions to the wind; but is a jurisdiction and a discretion to be exercised with circumspection and in exceptional and rare cases only when the circumstances do warrant. It would be altogether too harsh, Sonak J said, and I agree entirely, to hold that even when it was found that the compensation awarded was negligible, an appellate court could not step in to set the balance right. Very often, claimants might be indigent and might not be able to afford the costs of an appeal including initial fees, legal fees and so on. That should not mean that a court find itself helpless and is bound then only to either reduce an already low amount or to leave that low amount untouched. The facts in the cases before MS Sonak J make clear that both were indeed exceptional cases, the kind that lie at the far end of the spectrum before us. It is certainly not the kind of case that is to be taken as a template in the median range. There the observations in *Ranjana Prakash* will undoubtedly bind and the provisions of Order 41 Rule 33 and Order 41 Rule 22 undoubtedly will come into play.

30. The submission, therefore, that Order 41 Rule 33 confers unbridled power on an appeal court is not one that can be accepted. That power is intended to do complete justice between the parties, and to enable it to pass the order that *ought* to have been passed, even in the absence of cross-objection or a separate appeal. In *State*

of *Punjab v Bakshish Singh*,⁴ the Supreme Court said that discretion must be exercised with care and caution, and rarely — where there are inconsistent findings, or whether the order or decree under appeal is wholly uncalled for in the circumstances of the case. The appellate court cannot, the Supreme Court said, in the garb of exercising power under Order 41 Rule 33 enlarge the scope of the appeal. Whether or not to exercise the power is case-dependent.

31. *Nagappa v Gurudayal Singh & Ors*⁵ is actually not an authority in regard to appellate power under Order 41 Rule 33 at all. The question there was what constitutes ‘just compensation’; specifically, whether a court is constrained by the amount of the claim and whether it can award a higher amount than claimed. *Nagappa* did not examine the question of Order 41 Rules 22 and 33 at all. This is also true of *Sanobanu Nazirbhai Mirza & Ors v Ahmedabad Municipal Transport Service*.⁶ In fact, in *Nagappa*, the original claimants were the appellants before the High Court, where they succeeded in their case for enhancement. There was no opposing claim for reduction. The appellant then sought further enhancement, and sought leave to enhance their compensation claim. In *Sanobanu Mirza*, the claim opponent was the appellant before the High Court seeking reduction. The claimant did not seek enhancement. Both those cases therefore stand on a different footing.

4 (1998) 8 SCC 222.

5 (2003) 2 SCC 274.

6 (2013) 16 SCC 719.

32. The question of Order 41 Rule 22 arose directly in *Ranjana Prakash & Ors v Divisional Manager & Anr.*⁷ The original claimants were the widow, two sons and mother of one Arun Prakash, who died at the age of 46 in a motor accident. The MACT, Muzzafarnagar awarded 24,12,936 and interest. The insurer appealed. Deducting income tax, the High Court reduced the compensation to Rs.16,89,055. The claimants went up in a Special Leave Petition to the Supreme Court. They sought restoration of the original award of compensation. They argued that the High Court had not taken cognizance of the claimants' submission that 30% of the income should have been *added* as future prospects; and the High Court did not countenance this apparently because the claimants had filed no appeal of their own against the Tribunal's award. The High Court therefore did not address that error in not accounting for future prospects, but only considered the insurer's case that 30% ought to have been deducted towards income tax. Of course, had the High Court considered both, the effect would have been to neutralize one against the other, leaving the original award unaffected. This is how the rival contentions were poised before the Supreme Court. Clearly, this was a direct confrontation between Order 41 Rule 33 and Order 41 Rule 22. This is what the Supreme Court said in *Ranjana Prakash*:

6. **We are of the view that the High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal** on the ground that the Tribunal had failed to take note of the future prospects and add 30% to the annual income of the deceased. **But the claimants were not aggrieved by Rs 23,134 being taken as the monthly**

7 (2011) 14 SCC 639.

income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that the claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher

relief. For example, where the claimants seek compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. **If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.**

(Emphasis added)

33. *Ranjana Prakash* therefore was *not* a case where the claimants sought an overall increase in the compensation without filing an independent appeal. It was a case where the claimants sought to *defend* the original award, and to do that, the Supreme Court said, they did not need to appeal. In fact, they had no quarrel with the

award, and had no cause to appeal. In opposing the insurer's appeal for reduction, the claimants were certainly entitled to defend the original award, and for this no independent appeal was necessary. This is altogether different from saying that where an insurer appeals and says the award should be reduced, the original claimant pleads that it should not merely be retained untouched, but should be increased. To seek an increase in the insurer's appeal would require an independent appeal or cross-objections. *Ranjana Prakash* therefore provided a balance between Order 41 Rule 22 and Order 41 Rule 33. It was therefore, and consequently, not a case that fell within the framework of either *Nagappa* or *Sanobanu Mirza*, both cases where the principle of just compensation was not applied in the first instance. For this reason, too, Sonak J's decisions in *Kamladevi Kaushal* and *Seema Auti* were correctly placed in the frame of *Nagappa* and *Sanobanu Mirza* and not within the framework of *Ranjana Prakash*.

34. There is another reason to take this view as well, and it is supported by an observation in a decision cited by Mr DS Joshi in *Banarasi & Ors v Ram Phal*.⁸ In this decision, the Supreme Court squarely considered Order 41 Rule 22 and Order 41 Rules 33 and 34 though in the case of a specific performance action. In paragraph 15, the Supreme Court said:

"15.... ..Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left

8 (2003) 9 SCC 606.

untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. **The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party.** A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the Respondent of the appellate court exercising power under Rule 33 of Order 41."

(Emphasis added)

35. The emphasized portion above clearly indicates the same approach we find in *Ranjana Prakash*.

36. As Mr DS Joshi points out, approaching the issue in any other way might indeed yield an unintended reverse consequence. It is equally possible that in a claim for enhancement, an insurer could without itself filing a substantive appeal simply argue that the amount should be reduced. If the submission of an overall enhancement bereft of a substantive appeal is to be accepted for a claimant, it must tomorrow be accepted for an insurer seeking an overall reduction. This points to the real danger of accepting as a rule or even as a practice that Courts can entirely bypass the restrictions and rigours of Order 41 Rule 22 entirely. What applies

to a claimant must also apply to an insurer in appeal. The identity of the party can make no difference. The law, both substantive and procedural, is party-agnostic: it is blind to their identities. In an endeavour to interpret a statute, particularly a procedural one, in favour of an individual claimant, we should be cautious not to establish a principle that might yield a 'boomerang effect'. The best should not be allowed to become the enemy of the good.

37. I believe that following *Ranjana Prakash* introduces the necessary level of caution and circumspection into the exercise of discretion while awarding just compensation. There is a powerful and compelling commercial reason for this as well. Insurance companies assess and quote their premiums on the basis of their actuarial assessments. They have analyses and statistics divided into age groups, demographics and so on. The calculation of a premium is not a random figure but is a well-considered commercial decision that is a combination of several factors. If compensation was to be entirely fanciful under the guise of being "just", and elements of randomness were introduced into the award-making process at any level or stage, insurers would not only be unable to accurately compute premiums but would probably raise premiums across the board. A contract of insurance is a contract of indemnity. An insurer which damnifies a potential claim does so on the basis of its estimation of the likely extent of liability. That is the reason why such contracts are said to be contracts of utmost good faith, contracts *uberrimae fidei*: they require complete and accurate disclosure, and they closely specify the limits of liability. If, in the name of 'just compensation', the result was to be something wholly unknown and unanticipated, the entire contract, with all its

stipulations, limitations, extensions and coverage should be rendered otiose. The Supreme Court itself has noted that insurance itself is a form of welfare in a country like ours, and high premiums does not serve that public interest. Courts do bear this in mind. If a claimant wants a substantive increase, and it is not shown that the award is less than just, then an appeal is required. The court and the opposing insurer must know the grounds on which enhancement is sought. It is not to be left to sheer guesswork, leave alone to whim and caprice. After all, the concept of 'just' includes the concept of moderation and of balance.

38. Finally, there is some emphasis and meaning required to be given to the words in the Maharashtra Motor Vehicle Rules. These provide important clue as to the correct interpretation to be adopted. Motor Accident Claims are made under a special social welfare statute that is a complete code in itself. Unless the Act and the Rules made under it make applicable other procedural Rules, no other Rule or procedure could apply. So far I have addressed this issue on the basis that the provisions of Code of Civil Procedure 1908 do in fact apply. They are made to apply by virtue of specific rules, including Rules 275, 276 and 279:

"275. Power vested in Civil Court which may be exercised by Claims Tribunal.

(1) Without prejudice to the provisions of Section 169.—

(a) Every Claims Tribunal, may exercise all or any of the powers vested in a Civil Court under the following provisions of the Code of Civil Procedure, 1908, **in so far as they may be applicable** namely—

Sections 30, 32, 34, 35, 35(a), 75(a) and (c), 76, 77, 89, 94, 95, 132, 133, 134, 145, 147, 148, 149, 151, 152 and 153;

(b) In addition to the provisions of Section 174,—

(i) Any Claims Tribunal constituted for Greater Bombay where the amount of compensation awarded by it does not exceed twenty-five thousand rupees, shall have all the powers of the City Civil Court, and where such amount exceeds the said sum, shall have all the powers of the High Court, for the purpose of execution of the award, as if the award is a decree for the payment of money made in Suit by City Civil Court or High Court, as the case may be, and the Claims Tribunal shall execute the same through the Sheriff of Greater Bombay as if the same has been executed by the City Civil Court or High Court, as the case may be.

(ii) any Claims Tribunal constituted for in or outside Greater Bombay, shall have all the powers of the Court of Civil Judge Senior Division for the purpose of execution of any award for compensation made by it, as if the award is a decree for the payment of money made in a suit by such Court.

(2) For the purposes other than those specified in sub-rule (1), the Claims Tribunal may exercise all or any of the powers of a Civil Court as may be, necessary in any case for discharging its functions under the Act and made there under rules.

276. Procedure to be followed by Claims Tribunal in holding enquiries.- (1) The following provisions of the

Code of Civil Procedure, 1908 shall, so far as may be, applied to the proceedings before every Claims Tribunal , namely:-

(a) Sections 28, 79, 82 and 89

(b) in the First Schedule, Order V, Rules 9 to 13 (both inclusive) and 15 to 30 (both inclusive), Order VI, Rules 4, 5, 7, 10, 11, 16, 17 and 18 and Order VII, Rule 19, Order Rules 2 to 5 (both inclusive) and 23, Order XII, Rules I, 2, 3A, 4, 7 and 9, Order XIII, Rules 3 to 10 (both inclusive), Order XIV, Rules 2 and 5, Order XVI, Order XVII, Order XVIII, Rules 1 to 34 (both inclusive), 10 to 12 (both inclusive) and 15 to 18 (both inclusive), Order XIX, Order XX, Rules 1 to 3 (both inclusive), 8, 11 and 20, Order XXI, Order XXII, Rules I to 7 (both inclusive) and 9, Order XXIII, Rules I to 3 (both inclusive), Order XXVII, Order XXVIII, Order XXVIII, Order XXIX, Order XXX, Rules 1, 3 to 8 (both inclusive) and Rule 10, Order XXXIII, Rules 1 to 15 (both inclusive), Order XXXVII, Rules 1 to 10 (both inclusive), and Order XXXIX, Rules 1 to 5 (both inclusive). In so far as the Act and these rules make no provision or make sufficient provision, the relevant provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to the proceedings before the Claims Tribunal.

279. Form of appeal and contents of memorandum.-

(1) Every appeal against the award of the Claims Tribunal shall be preferred in the form of a memorandum signed by the Appellant or an Advocate or Attorney of the High Court duly authorised in that behalf by the Applicant and presented to High Court or to such officer as it appoints in this behalf. This memorandum shall be accompanied by a copy of the award.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the award

appealed from without any argument or narrative, and such grounds shall be numbered consecutively.

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

(Emphasis added)

39. Of these three, Rules 276 and 279 yield the clue. Rule 276 makes it clear that certain provisions of the Code of Civil Procedure 1908 apply virtually as-is to claims made under this Act. Rule 279 deals with Appeals and here it says that the provisions of Order 41 Rule 21 shall "*mutatis mutandis*" apply to Appeals preferred to the High Court under Section 173.

40. The expression *mutatis mutandis* is well known and has been interpreted in several decisions. It is not necessary to repeat this. It simply means with the necessary changes having been made as the context demands. In the context, therefore, of Appeals under Section 173 of the Motor Vehicles Act, the Application of Order 41 Rules 22 and 33 is not overly rigid but is guided by the principles contained in the Motor Vehicles Act itself. Indeed it is this that gives courts that very discretion that *Nagappa*, *Sanobanu Mirza* and the two decisions of Sonak J all invoked. The fact that Order 41 is mentioned in Rule 279 makes it clear that no part of it can be altogether ignored or written off the statute book, or even said to be inapplicable to the Appeals under the Motor Vehicles Act.

41. The result of this discussion is that the application in this particular case made orally across the bar is one that I need not consider. There is always a power to correct an obvious arithmetical or typographical error and it is nobody's case that the multiplier of 16 is correct. The insurer's Appeal is not on the multiplier used but on the notional income taken. The argument against the notional income taken does not have much merit. When, therefore, in a case such as this the claimant says the wrong multiplier was used, it is not raising a contentious substantive ground since this is commonly accepted to be a mistake. In any case, the overall impact in this case is neutralize as we have seen and there is no reason not to apply the correct multiplier since this has no impact at all on the overall outcome. The submission that the compensation is too low and must be enhanced must, for the reasons discussed earlier, be rejected.

42. The following principles therefore emerge:

- (a) The compensation awarded must be just compensation, neither excessive nor illusory, viz., compensation that is moderate, reasonable and appropriate.
- (b) Where it is not, a court in appeal can set it right, irrespective of whether or not a substantive appeal has been filed.
- (c) An appeal court can always step in to correct a computational error or one that is facially incorrect, such as the adoption of an incorrect multiplier. No

separate or independent appeal or cross-objections are needed for this. The present case is an example.

- (d) Where there is need for an adjustment of distribution of the award under various heads with no impact on the overall award, this can always be done by an appeal court without need for a separate appeal (as in the present case).
- (e) Where an appeal is filed seeking reduction, an original claimant can, without filing an independent appeal, submit that the original award should be retained without interference.
- (f) Where an appeal is filed seeking reduction, a claim for enhancement (i.e., not on maintenance of the original award, nor for correction of an obvious error), or vice versa, cannot be entertained without a substantive appeal or cross-objections as contemplated by Order 41 Rule 22.

43. Having regard to this discussion, the present case falls under clause (c) above. The decree is upheld in its overall award and terms, but partly modified in the distribution of the amount under different heads, as shown below:

Continued/-

Sr No	Amount	Head of award
I]	Rs.10,80,000	Future loss of income (Rs.5000 × 12 × 18)
II]	Rs.6,39,000	Medical expenses (Rs.8,79,000 minus Rs.2,40,000)
III]	Rs.50,000	Travelling expenses
IV]	Rs.30,000	Expenses towards special diet (original Rs.10,000 plus Rs.20,000)
V]	Rs.25,000	Expenses towards attendant
VI]	Rs.3,00,000	For pain and suffering
VII]	Rs.1,00,000	For loss of marriage prospects
VIII]	Rs.1,00,000	For loss of amenities (added)
	Rs.23,24,000	Total amount of compensation
	Rs.23,25,000	Rounded off compensation

44. The decree is modified accordingly. The Appeal is disposed of in these terms. There will be no order as to costs.

45. It only remains for me to thank Mr Ketan Joshi for the Appellant, Mr Waradkar for the 1st Respondent, and Mr DS Joshi as *amicus* for their invaluable assistance in the matter. Mr Ketan Joshi and Mr Waradkar have each been exemplary in their conduct of their respective cases, presenting them with restraint and circumspection. Mr DS Joshi's assistance has been invaluable in analysing the judgments and providing the necessary balance.

(G.S. PATEL, J.)