



CMA.Nos.2843 of 2022 etc batches

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2025

PRONOUNCED ON :02.06.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.Nos.2843, 2826, 2824, 2825, 2828, 2840, 2842, 2844, 2852, 2853, 2859, 2861, 2864, 2865, 2874, 2881, 2882, 2893 and 2750 of 2022 and CMP.Nos.22133, 22052, 22049, 22050, 22062, 22124, 22129, 22134, 22191, 22192, 22214, 22216, 22227, 22231, 22287, 22322, 22325, 22375, 21511 of 2022

CMA.No.2843 of 2022:

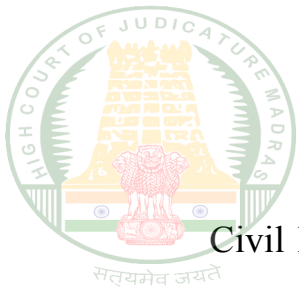
The Branch Manager,
United India Insurance Company Limited,
No.50A, Pallivasal Street,
Perambalur Taluk and District.

... Appellant

Vs.

1.Sundarambal
2.Karthik
3.Minor.Karthika
4.Minor.Uthayan
(Minor claimants are rep by their natural guardian next friend/mother 1st respondent Sundarambal)
5.Sumathi

... Respondents



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 27.09.2021 made in MCOP.No.503 of 2017 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Perambalur.

For Appellant
in all CMAs

:Mr.D.Baskaran

For 1st Respondent in
CMA.Nos.2826, 2824, 2825, 2828
2840, 2842, 2852, 2853, 2859
2861,2864, 2750, 2865, 2874, 2881
2882, 2893 and 2750 of 2022

:Mr.S.P.Yuvaraj

For Respondents 1,3 and 4 in
CMA No.2843 of 2022

:Mr.S.P.Yuvaraj

Respondents 1 and 2
in CMA.No.2844 of 2022

:unserved

2nd Respondent in
CMA.No.2750 of 2022

:No appearance

COMMON JUDGMENT

These appeals are filed challenging the order passed by the Motor Accident Claims Tribunal (Principal District Judge), Perambalur in MCOP.Nos.503, 540, 513, 541, 514, 506, 510, 546, 543, 549, 511, 512, 504, 507, 542, 545, 508, 544, 509 of 2017 respectively.



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2. CMA.No.2843 of 2022 is arising out of fatal accident and

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3. The claimants in CMA.No.2843 of 2022 are the wife and children of the deceased Ganesan, who travelled in a Maxi Cab Van bearing Registration No.TN-63M-9628. The claimants in other appeals are injured passengers who travelled in very same Maxi Cab Van.

4. According to the claimants, the deceased Ganesan and other injured claimants travelled in the above mentioned Maxi Cab Van from Chennai to Trichy on 20.07.2017. On that day at about 04.30 a.m., when the Maxi Cab Van came near Roever College Bus Stop, Perambalur District, a lorry bearing Registration No.TN-61-3898 belonged to the first respondent and insured with the second respondent in the claim petition was parked on the left hand side of the road without any signal and hence the Maxi Cab Van dashed against the first respondent's lorry. As a result of the accident, the husband of the first claimant and father of the claimants 2 to 4 namely Ganesan sustained grievous injuries and died. The claimants in other appeals sustained simple and grievous injuries. Therefore, totally 22



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claim petitions were filed seeking compensation. These appeals are filed challenging the award passed by the Motor Accidents Claims Tribunal in respect of 19 claim petitions.

5. The first respondent owner of the lorry remained ex-parte and the claim petitions were resisted by the insurer of the lorry, the second respondent in the original petitions and the appellant herein. It was the case of the appellant/insurer of the lorry that more than 27 persons travelled in the Maxi Cab Van, over and above the permitted number of passengers and hence it caused inconvenience to the driver, which resulted in the accident. It was stated that only 13 passengers (12+1) are permitted to travel in the Maxi Cab Van and at the time of accident more than 27 persons travelled in the said vehicle and it would amount to violation of permit conditions. It was also stated that the driver of the lorry had parked the vehicle on the extreme left side of the road leading to Trichy, with the rear parking lamps switched on and the Maxi Cab van driver, without noticing the parked vehicle, dashed into it from the rear side. Therefore, according to the appellant/insurer of the lorry, the accident had occurred solely due to the negligence on the part of the driver of the Maxi Cab Van. Therefore, it sought for the dismissal of the claim petitions.



6. Before the Tribunal, the claimants examined eighteen

witnesses as PW.1 to PW.18 and marked sixty nine documents as Ex.P1 to P69. On behalf of the second respondent in Original Petitions/insurer of the lorry, two witnesses were examined as RW.1 and R.W2. Three documents were marked as Ex.R1 to R3. The disability certificate issued in favour of two victims in MCOP.Nos.508 and 541 of 2017 were marked as Exs.C1 and C2.

7. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred primarily due to the negligence on the part of the driver of the lorry. The Tribunal also found that the driver of the Maxi Cab Van also contributed to the accident and in the absence of owner and insurance company of the Maxi Cab Van, the apportionment of composite negligence could not be fixed by the Tribunal. Therefore, the Tribunal by following the law laid down by the Apex Court in *Khenyei Vs. New India Assurance Company Limited and others* reported in *AIR 2015 SC 2261* held that the respondents 1 and 2 in the original petitions namely the owner and insurer of the lorry were liable to pay the award amount to the claimants.



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8. The Tribunal passed the award directing the appellant herein

to pay the entire compensation amount in its capacity as insurer of the lorry.

The quantum of compensation awarded by the Tribunal is as follows:

S.No	CMA.Nos	MCOP.Nos	Amount awarded by the Tribunal
1.	2843 of 2022	503 of 2017	Rs. 9,06,550/-
2.	2826 of 2022	540 of 2017	Rs. 25,000/-
3.	2824 of 2022	513 of 2017	Rs. 25,000/-
4.	2825 of 2022	541 of 2017	Rs. 3,73,284/-
5.	2828 of 2022	514 of 2017	Rs. 25,000/-
6.	2840 of 2022	506 of 2017	Rs. 25,000/-
7.	2842 of 2022	510 of 2017	Rs. 25,000/-
8.	2844 of 2022	546 of 2017	Rs. 25,000/-
9.	2852 of 2022	543 of 2017	Rs. 25,000/-
10.	2853 of 2022	549 of 2017	Rs. 39,436/-
11.	2859 of 2022	511 of 2017	Rs. 25,710/-
12.	2861 of 2022	512 of 2017	Rs. 27,333/-
13.	2864 of 2022	504 of 2017	Rs. 25,000/-
14.	2865 of 2022	507 of 2017	Rs. 25,000/-
15.	2874 of 2022	542 of 2017	Rs. 25,000/-
16.	2881 of 2022	545 of 2017	Rs. 26,117/-
17.	2882 of 2022	508 of 2017	Rs. 4,58,608/-
18.	2893 of 2022	544 of 2017	Rs. 25,000/-
19.	2750 of 2022	509 of 2017	Rs. 26,171/-

9. Aggrieved by the above said award passed by the Tribunal,

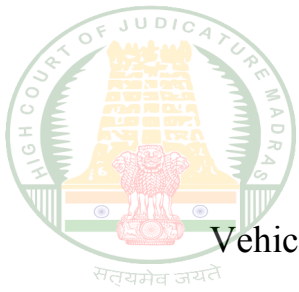
these appeals are filed by the insurer of the lorry.



10. The learned counsel appearing for the appellant

vehemently contended that the evidence on record clearly established that the driver of the Maxi Cab Van had been driving his vehicle continuously for more than 24 hours and therefore, the accident had occurred only due to the fatigue created by continuous driving. It is also contended by the learned counsel that the Maxi Cab Van dashed against the parked lorry from behind. Therefore, the driver of the motor vehicle had last opportunity to avoid accident and therefore, the Tribunal committed error in fixing primary negligence on the part of the driver of the lorry. The learned counsel also submitted that the claim petitions deserved to be dismissed due to non-impleadment of owner and insurer of the Maxi Cab Van.

11. The learned counsel appearing for the contesting respondents/claimants by relying on ***Khenyei Vs. New India Assurance Company Limited and others*** (cited supra) submitted that in case of composite negligence, the claimant is entitled to seek compensation from any one of the tort-feasor and it is not necessary for him to implead all the tort-feasors. The learned counsel by relying on Rule 22(2) (b) of Motor Vehicles (Driving) Regulations 2017 submitted that parking of Motor



Vehicle on a road portion is prohibited and therefore, the driver of the lorry by parking the vehicle on the road portion primarily contributed to the accident.

12. It is seen from the records that FIR has been filed against the driver of the lorry and the same is marked as Ex.P1. There is nothing on record to suggest that any complaint was made against the driver of the Maxi Cab Van. The witnesses examined by claimants namely PW.1 to PW.18 talk about the negligence on the part of the driver of the lorry in parking a vehicle on road.

13. PW.1 is the wife of the deceased passenger and other claimants witnesses PW.2 to PW.18 are injured claimants. Therefore, PW.2 to PW.18 are eye witnesses to the accident. They have clearly spoken about the negligence on the part of the driver of the lorry.

14. Rule 22(2) (b) of Motor Vehicle's (Driving) Regulations, 2017 reads as follows:

(2) A vehicle shall not be parked-

“ (a) at a place where stopping a vehicle is prohibited under sub-regulation (1);



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(b) on a main road or at a stretch of a road where the notified maximum speed limit is fifty kilometres per hour or more;”

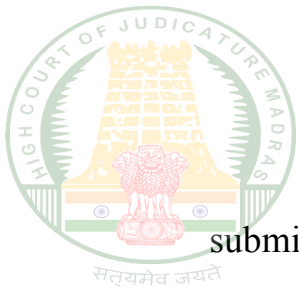
15. A reading of the above rule would make it clear that parking of Motor vehicle on main road or at a stretch of the road where notified maximum speed limit is 50 km is prohibited. In the case on hand, admittedly, the accident had occurred in Chennai to Trichy National Highways and the lorry was parked by the first respondent's driver on the left hand side of the road portion. Hence, it is clear that by parking the vehicle on the road portion, the driver of the lorry committed violation of Motor Vehicles (Driving) Regulations, 2017 framed under Motor Vehicles Act. It is a matter of common knowledge that on National Highways, specific parking bays are earmarked for the parking of motor vehicles and users of motor vehicles are expected to park only in those designated bays and not on any other portion of the road. Therefore, it is clear, the first respondent's driver by parking the vehicle on the road portion, that too in the early morning time without proper precautions primarily contributed to the accident. The said findings made by the Tribunal is based on proper



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appreciation of evidence available on record and therefore, it requires no interference.

16. It was contended by the learned counsel appearing for the appellant that on the facts of the case, it was established that the driver of the Maxi Cab Van was continuously driving the vehicle for more than 24 hours and therefore, the accident had occurred due to the fatigue created by continuous driving. It is noted by the Tribunal that the deceased Ganesan and other injured claimants started from their native place in Valavanthan Kottai to Chennai on 19.07.2017 for getting birth certificate and residence certificate at Chennai. After finishing their work they started at Chennai on 19.07.2017 during night time and the accident had occurred on 20.07.2017 at 04.30 a.m. So it is clear that all 22 victims travelled from the native place to Chennai and after finishing their official work at Chennai on 19th during day time, they returned to native place by night. Therefore, the submission made by the learned counsel for the appellant, as if the driver had driven the vehicle continuously for more than 24 hours is not acceptable to this Court. After reaching Chennai during day time, the driver certainly would have got sufficient rest. They started return journey only in the night. Therefore, the



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submission made by the learned counsel for the appellant that the accident had occurred only due to the fatigue of continuous driving is not acceptable to this Court. It is true that the driver of the Maxi Cab Van dashed against the parked lorry, therefore, he also contributed to the accident. The percentage of negligence on the driver of the Maxi Cab Van cannot be fixed in the absence of owner and driver of said vehicle. The Apex Court in ***Khenyei Vs. New India Assurance Company Limited and others*** reported in ***CDJ 2015 SC 428 : AIR 2015 SC 2261*** while considering the maintainability of the claim petition by the victim against any one of the tort-feasors observed as follows:

“18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and



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several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the driver of the vehicle-trailor-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law. What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, Plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the Plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.



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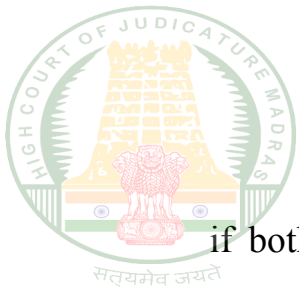


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(iii) *In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the Plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.*

(iv) *It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”*

17. Therefore, it is clear that in case of composite negligence,

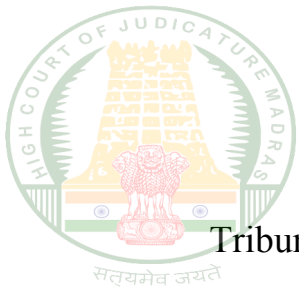


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if both tort-feasors are impleaded and sufficient evidence is available on record, the Tribunal can determine the extent of composite negligence.

However, if claim petitions are filed only against one of the tort-feasors, it would not be appropriate for the Tribunal to determine the extent of composite negligence in the absence of impleadment of the other joint tort-feasor.

18. It is also clear that the victim at his option can recover the whole damage from one of the tort-feasors and it is always open to the impleaded tort-feasor to initiate appropriate proceedings against the other tort-feasor who has not been impleaded for determination of extent of negligence on the part of the other tort-feasor. In that case, it is also open to the impleaded tort-feasor to seek contribution from the other tort-feasor after determination of extent of his negligence. The Tribunal rightly appreciated the law laid down by the Apex Court in the above mentioned case and refrained from fixing the extent of negligence on the part of the driver of the Maxi Cab van in his absence and also in the absence of his owner and proceeded to pass award by directing the owner and insurer of the lorry to honour the entire award amount. The award passed by the



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Tribunal is in accordance with the law laid down by the Apex Court. It is always open to the appellant as well as the 5th respondent/owner of the lorry to initiate appropriate proceedings against the owner and insurer of the Maxi Cab Van for determination of extent of their negligence and obtain decree for contribution against them.

19. The learned counsel appearing for the appellant relied on the judgment of the Division Bench of this Court in ***United India Insurance Company Limited Vs. Suseela Jothi Mary and another reported in 2020 (2) TANMAC 455 (DB)*** for the proposition that non-impleadment of joint tort-feasor is fatal to the claim petitions.

20. A close scrutiny of the above judgment makes it clear that, on the facts of the case, the Division Bench came to a factual conclusion that there was no evidence on record to suggest that negligence was attributable to the drivers of both vehicles involved in the accident, and hence, there was no composite negligence. The Division Bench categorically held that in that case, the accident had occurred only due to the rash and negligent driving of the two wheeler whose owner and insurer



were not impleaded. It was also held that the impleaded owner of the vehicle was not a joint tort-feasor. The relevant observation of the Division

Bench reads as follows:

“13. Admittedly, there was a collision between two motor-cycles, one driven by the first respondent/husband of the claimant and another being a rider of the motorcycle bearing Registration No. TN 20 AS 7110. In order to arrive at a factual finding as to, who had caused the accident or who had contributed largely for the accident, it is just and necessary that the riders of both the vehicle and their insurer must be arrayed as parties to the Claim Petition. In their absence, the Claim Petition cannot be adjudicated to fix the liability of the person who is required to compensate the victim. In spite of the non-joinder of the driver of the vehicle bearing Registration No. TN 20 AQ 7110 and the insurer of the said vehicle, the Tribunal had rendered a finding that both the riders of the two wheeler have contributed for the accident and therefore they must be regarded as joint tort-feasors and applied the principle of composite negligence. After arriving at such a finding, the Tribunal held that in such event, impleading any one of the insurers is sufficient to maintain the claim petition and mulcted the appellant/Insurance Company, the lone Insurance Company impleaded in the Claim Petition, with the liability to pay compensation. As mentioned above,



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there is nothing on record to show the negligence attributable on the part of two riders of the vehicle involved in the accident. Unless the negligence of two or more persons is brought on record to show that some damage has been caused to a person by them, jointly, the question of composite negligence will not arise. For invoking the principle of composite negligence, there must be evidence to show that the damage or injury has been jointly caused to a person by reason of joint contribution by one or more person. Unless the negligence caused by one or more persons, jointly, is brought on record, invocation of the principle of composite negligence cannot be sustained. The word "composite" itself would denote a combination of more than one person, meaning thereby, the negligence must be attributable against more than one driver of the vehicle. Only in such event, the principle of "composite negligence" can be pressed into service. In the present case, as mentioned above, there is nothing on record to show that the riders of the two-wheeler bearing Registration Nos.TN 20 AQ 8409 and TN 20 AQ 7110 have jointly contributed for the accident, in some form or the other, warranting the Tribunal to invoke the principle of composite negligence and consequently mulcting the appellant/Insurance Company to pay the compensation to the claimant. Unless and until the rider of the two wheeler bearing Registration No. TN 20 AS 3409 is a joint tort-feasor, the question of application of



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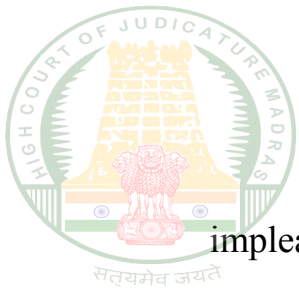


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composite negligence will not arise in this case. In the instant case, the evidence on record shows that the accident was solely due to the rash and negligent driving of the two-wheeler bearing Registration No.TN 20 AS 7110. When a rider of the two-wheeler bearing Registration No.TN 20 AS 3409 is not a joint tort-feasor, the question of awarding compensation by fixing composite negligence, does not arise, as observed above. In such circumstances, the award passed by the Tribunal is wholly unsustainable and it is liable to be set aside.”

21. Since, in the above said case, the Division Bench categorically held that the impleaded owner of the vehicle was not the joint tort-feasor and the real tort-feasor was not impleaded, the reliance on the said case law by the learned counsel for the appellant is misconceived and the same is not helpful to him.

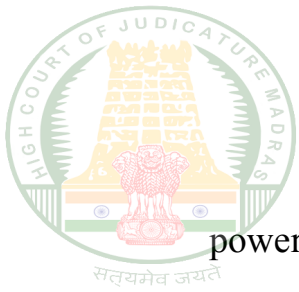
22. In view of the law laid down by the Apex Court in ***Khenyei Vs. New India Assurance Company Limited and others*** cited supra, I hold that the claim petitions filed against the owner and insurer of the lorry involved in the accident are maintainable notwithstanding the non-



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impleadment of the owner and insurer of the Maxi Cab Van. The claimants are entitled to recover the entire award amount from any one of the joint tort-feasors namely the owner and insurer of the lorry. It is also made clear that the owner and insurer of the lorry are at liberty to initiate appropriate proceedings against the owner and insurer of the Maxi Cab Van for fixation of extent of *inter se* negligence among them and for contribution.

23. It is contended by the learned counsel for the claimants in CMA.No.2843 of 2022 that the Tribunal fixed very meagre notional income of Rs.6,500/- and therefore, the same requires enhancement. It is pertinent to note that the claimants who are arrayed as the respondents 1 to 4 in CMA.No.2843 of 2022 have not filed any Cross Appeal seeking enhancement. This Court agrees with the findings of the Tribunal and dismisses the appeal filed by the Insurance Company. Therefore, in the appeal filed by the Insurance Company, this Court has not interfered with any of the findings of the Tribunal. Only in cases where the Appellate Court interferes with the findings of the lower Court in an appeal and the new findings arrived at by the Appellate Court are inconsistent with the unchallenged portion of the decree, the Appellate Court can invoke its



power under Order XLI Rule 33 of the CPC to modify the unchallenged portion of the decree, so as to bring it in tune with its new findings.

24. In this regard, reference may be had to ***Choudhary Sahu and Ors Vs. State of Bihar and Ors*** reported in (1982) 1 SCC 232. The relevant observation of Apex Court reads as follows:

“9. Reliance has been placed on Nirmala Balai Ghosh and Anr. v. Balai Chand Ghose and Ors. MANU/SC/0346/1965 : [1965]3SCR550 This Court dealing with the scope of Order 41, Rule 33, observed as follows:

The rule is undoubtedly expressed in terras which are wide, but it has to be applied with discretion, and to cases where interference in favour of the appellant necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties. Where in an appeal the Court reaches a conclusion which is inconsistent with the opinion of the Court appealed from and in adjusting the right claimed by the appellant it is necessary to grant relief to a person who has not appealed, the power conferred by Order 41, Rule 33 may properly be invoked. The rule, however, does not confer an unrestricted right to re-open decrees which have



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become final merely because the appellate Court does not agree with the opinion of the Court appealed from.

10. In the case cited above, there were two sets of defendants in the suit and in substance two decrees, though co-related, were passed. One of the decrees could stand apart from the other. One set of defendants were two deities. The suit was decreed against them. They did not go up in appeal nor did they take part in the proceedings either before the High Court or before the Supreme Court, although they were impleaded as respondents. The other set of defendants, Nirmala, sought to invoke the powers of the Appellate Court under Order 41, Rule 33 to pass a decree in favour of a party not appealing so as to give the latter a benefit which she had not claimed. In such a situation this Court observed:

When a party allows a decree of the Court of First Instance to become final, by not appealing against the decree, it would not be open to another party to the litigation, whose rights are otherwise not affected by the decree, to invoke the powers of the appellate court under Order 41, Rule 33, to pass a decree in favour of the party not appealing so as to give the latter a benefit which he has not claimed. Order 41, Rule 33 is primarily intended to confer power upon the appellate court to do justice by granting relief to a party who has not



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appealed, when refusing to do so, would result in making inconsistent, contradictory or unworkable orders."

11. Counsel for the State of Bihar, on the other hand, referred to Giani Ram and Ors. v. Ramiji Lal and Ors. MANU/SC/0286/1969 : [1969]3SCR944 While construing the provisions of Order 41, Rule 33, this Court observed:

...the expression 'which ought to have been passed' means 'what ought in law to have been passed'. If the Appellate Court is of the view that any decree which ought in law to have been passed was in fact not passed by the subordinate court, it may pass or make such further or other decree or order as the justice of the case may require.

12. The object of this rule is to avoid contradictory and inconsistent decisions on the same questions in the same suit. As the power under this rule is in derogation of the general principle that a party cannot avoid a decree against him without filing an appeal or cross-objection, it must be exercised with care and caution. The rule does not confer an unrestricted right to re-open decrees which have become final merely because the Appellate Court does not agree with the opinion of the court appealed from.

13. Ordinarily, the power conferred by this rule will be confined to those cases where as a result of



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interference in favour of the appellant further interference with the decree of the lower court is rendered necessary in order to adjust the rights of the parties according to justice, equity and good conscience. While exercising the power under this rule the Court should not lose sight of the other provisions of the Code itself nor the provisions of other laws, viz., the Law of the Limitation or the Law of Court Fees etc.”

25. Further in the case on hand, the Tribunal relied on the judgment of the Apex Court in ***Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited***, reported in ***AIR 2014 SC 1052*** and fixed the notional income. The claimants have not preferred any appeal challenging the same. In these circumstances, this Court feels that this is not a fit case to invoke its discretionary power under Order XLI Rule 33 of CPC. No arguments have been advanced with regard to quantum of compensation fixed by Tribunal in other appeals.

26. In view of the discussions made earlier, I do not find anything to interfere with the findings of the Tribunal and all the appeals are dismissed by confirming the award passed by the Tribunal. Consequently,



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connected miscellaneous petitions are closed. No costs.

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02.06.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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CMA.Nos.2843 of 2022 etc batches

To

1. Motor Accident Claims Tribunal,
(Principal District Judge), Perambalur.
2. The Section Officer
VR Section, High Court, Madras.

S.SOUNTHAR, J.

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**Pre-Deliver common Judgments made in
CMA.Nos.2843, 2826, 2824, 2825, 2828, 2840, 2842, 2844, 2852, 2853,
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