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IN THE HIGH COURT OF BOMBAY AT GOA

**CROSS OBJECTION NO.1 OF 2026
IN
FIRST APPEAL NO.54 OF 2024
WITH
MISCELLANEOUS CIVIL APPLICATION NO.92 OF
2026
IN
FIRST APPEAL NO.54 OF 2024**

1. Yasin Arafad Naik,
Son of Mohamad Iqbal Naik,
12 years of age, student,
Residing at H. No.192, Perri bhat,
Old Goa, Goa 403 402.

 2. Aafiya Mohamad Iqbal Naik,
Daughter of Mohamad Iqbal Naik,
8 years of age, student,
Residing at H. No.192,
Perri bhat, Old Goa Goa, 403402 ..
Both represented by their Natural Guardian,
Shri. Shaikh Mohamad Salim,
Son of Shaikh Mazambi,
42 years of age, married,
Residing at H. No.192, Perri bhat,
Old Goa Goa, 403402.
- ... Appellants/Cross
Objector

Versus

1. Shri. Gosai Moda Nazari,
Son of Moda Nazari,
30 years of age, major, business,
Resident of Malaguri, Mantripukhri,
Imphal, Manipur,
Presently residing at
c/o Shushma Hari Naik,
wife of Hari Naik,
resident of H.No.217,

St. Inez Band, Panaji, Goa.

2. Mrs. Shushma Hari Naik,
Wife of Hari Naik,
Resident of H.No.217,
St. Inez Band, Panaji, Goa.

3. Oriental Insurance Company Ltd,
Through its Divisional Manager,
Having its Divisional Office at,
Goveia Chambers, Panaji, Goa.
Respondents

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Mr Joaquim Godinho, Advocate for the Appellants/Cross Objector.

Mr. Deepak Gaonkar, Advocate for Respondent No.2.

Ms. Cristabel Afonso, Advocate for Respondent No.3.

CORAM : VALMIKI MENEZES, J.

DATED : 17th FEBRUARY, 2026.

ORAL ORDER:

1. Registry to waive the office objections and register the Cross Objection and the Miscellaneous Civil Application.

2. The Cross Objection of Respondents No. 1 and 2 has been listed. The Cross Objection has been numbered XOB/1/2026.

The question before me is whether the cross objection in terms of Order 41 Rule 22 CPC is at all maintainable, in the Appeal filed by the Insurance Company against the Award in a Claim Petition.

3. In the present case, the Insurance Company has filed First Appeal No.54/2024 under Section 173 of the Act, which has been admitted. The Award has held that the Respondent No.1 and 2 have contributed to the negligence which has resulted in the accident to the extent of 60%, and has apportioned the compensation in the proportion 40% to be paid by the Insurance Company and 60% to be paid by Respondent No.1 and 2 who have filed Cross Objection.

4. The Motor Vehicles Act provides for filing of an Appeal under section 173 thereof, and does not extend the provisions of the Civil Procedure Code that deal with presenting appeals (Order 41 and Order 43 CPC), and instead empowers the State Government to enact rules to regulate the procedure to be followed by the Motor Accident Tribunal and the Appellate Court. It is a trite law that the right to file an appeal is a creature of a statute, and such right can be exercised, if the statute provides for an appeal, only in the manner stated in that statute. The Motor Vehicles Act provides for the right to file an Appeal only under Section 173 of the Act, and this right is to be exercised by any person aggrieved by the Award; such person can exercise the right of Appeal only by filing an Appeal under Section 173 and cannot

take recourse to filing an appeal, or for that matter a cross-objection in terms of Order 41 Rule 21 CPC.

5. The Goa Motor Vehicles Rules, 1991 provide for the procedure in filing a Claim Petition, and the procedure to be followed by the Motor Accident Claims Tribunal whilst deciding an application for compensation; the Rules also provide for the proposal in filing Appeals or Revisions, and these are specified in sub-Rule (3) of Rule 303, which reads as under:

“Rule - 303. 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 appellant or an advocate or attorney of the High Court duly authorised in that behalf by the applicant and presented to the High Court or to such officer as it appoints in this behalf. The 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 narratives and such grounds shall be numbered consecutively.
- (3) Save as provided in sub-rules (1) and (2), the provisions of order XII and XXI in the First Schedule to the Code of Civil Procedure, 1908 Central Act (V of 1908) shall mutatis mutandis apply to appeals preferred to High Court under section 173.”

Sub-rule (3) of Rule 303 specifies that it is only sub-Rules (1) and (2) of Order XII and the provisions of Order XXI of the Code of Civil Procedure that shall apply to Appeals preferred to the High Court under Section 173. The Rules do not provide for the filing of a Cross Objection in terms of Rule 22 of Order 41 CPC, which has not been extended to an appeal under Section 173 of the Motor Vehicles Act.

6. In some States, the provisions of Order 41 CPC (Form of Filing Appeals) and all its sub-Rules have been specifically extended whilst extending to Appeals filed under Section 173, and those Rules have specifically provided for the filing of cross objections in Appeals filed by other parties who have challenged the Award. In the absence of the Goa Rules extending the provisions of Rule 22 of Order 41 CPC to Appeals under Section 173, the Cross-Objection filed by Respondents 1 and 2 would not be maintainable.

7. I am fortified in taking this view by at least two Judgments, wherein the provisions of Rule 22 of Order 41 CPC have not been extended to Appeals under Section 173 of the Motor Vehicles Act in those States; the judgment of the Supreme Court in the case of

Urmila Devi And Others v/s. Branch Manager, National Insurance Company Limited And Another reported in (2020) 11 SCC 316. The relevant paragraphs of the judgment are paragraphs 9, 14, 15, 23 and 24 which read thus:

“9. The High Court of Patna in view of Rule 249 of the Bihar Motor Vehicles Rules, 1992 has held, that there is no impediment for the claimant(s) to file cross-objection in an appeal filed by the Insurance Company if the Insurance Company had challenged the quantum of compensation awarded to the claimant. It, however, held that if the appeal filed by the Insurance Company is restricted only to its liability to make the payment of compensation on the ground of breach of terms and conditions of the insurance policy by the vehicle owner and/or driver of the vehicle, then the cross-objection filed by the claimant would not be tenable. It has been held, that in such a case the claimant(s) will have a right to file an appeal as provided under Section 173 of the M.V. Act.

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14. Rule 249 of the Bihar Motor Vehicle Rules, 1992 reads thus:

“**249. Manner of appeals.** – (1) Every appeal against 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 the High Court or to such officer as it appoints in this behalf. The 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 against which the appeal is preferred 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 XLI and Order XXI in First Schedule to the Code of Civil Procedure, 1908 (V of 1908) shall mutatis mutandis apply to appeals preferred to the High Court under Section 173.”

15. In view of the aforesaid provision, the High Court has rightly come to a conclusion that the claimants would be entitled to file a cross-objection. However, it has restricted the right of the claimants to file cross-objection only when an appeal is filed by the Insurance Company challenging quantum of compensation by placing reliance on previous judgments of Patna High Court. It has been held, that when the Insurance Company has not challenged the quantum of compensation but only challenges its liability to pay compensation on the ground that there is a breach of terms and condition by the driver and/or the owner of the vehicle, the cross-objection would not be tenable at the instance of the claimants.

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23. As already discussed herein above, the learned single judge of the High Court himself has observed that in view of Rule 249 of the Bihar Motor Vehicle Rules, 1992, there cannot be any issue with regard to the tenability of the cross-objection. Sub-rule (3) of Rule 249 of the Bihar Motor Vehicle Rules, 1992 would show, that save as provided in sub-rules (1) and (2), the provisions of Order XLI and Order XXI in First Schedule to the CPC shall apply mutatis mutandis to appeals preferred to the High Court under Section 173 of the M.V. Act.

24. A conjoint reading of the provisions of Section 173 of the M.V. Act; Rule 249 of the Bihar Motor Vehicle Rules, 1992; and Order XLI rule 22 of the CPC would reveal, that there is no restriction on the right to appeal of any of the parties. It is clear, that any party aggrieved by any part of the Award would be entitled to prefer an appeal. It is also clear, that any respondent, though he may not have appealed from any part

of the decree, apart from supporting the finding in his favour, is also entitled to take any cross-objection to the decree which he could have taken by way of appeal.”

The other judgment is of the Himachal High Court in ***Lata v/s United India Insurance Co. Ltd*** reported in **2004 SCC OnLine HP 30**. The relevant paragraphs of the judgment are quoted below:

“17. In Motor Vehicles Act, 1988, there is no provision corresponding to Section 41 of the Arbitration Act, 1940 whereby the provisions of the Civil Procedure Code have been made applicable to appeals filed under this Act. The ratio, therefore, in International Security and Intelligence Agency Ltd., (2004) 3 SCC 250, in a way lays down the law, in the manner of conversely speaking, that the right to file cross-objections partakes of the right to prefer the appeal and since the filing of the cross-objections is an exercise of a substantive right of appeal, such a substantive right can be availed of only if the statute specifically provides for and creates such a right because undoubtedly right of appeal being the creation of a statute in the absence of such a right, the filing of cross-objections is not legally permissible.

18. Whether, therefore, an appeal is filed by an insurance company within the confines of Section 149 (2) of the Motor Vehicles Act, 1988, or otherwise, or an appeal is filed by any one else, against a judgment and award of the Tribunal, since the Motor Vehicles Act, 1988 does not lay down, provide for, or say that the provisions of the Civil Procedure Code shall be applicable to appeals filed under the Act, even though there is a right of appeal against the judgment and award passed by a Tribunal as prescribed in Section 173 of the Motor Vehicles Act, 1988, in the absence of any stipulation in the Act of the applicability of the provisions of the Civil Procedure Code to appeals filed under Section 173 of the Act, the substantive right of filing cross-objections cannot be availed of by any one as such a right does not exist in the statute. The right of appeal is a creature of statute and that right has been conferred upon a person aggrieved of an award in Section 173 of the Act. Neither in Section 173 of the Act nor elsewhere in the Act has it been

provided that there shall be a right of filing cross-objections. In other words, Motor Vehicles Act, 1988 does not by itself, under its scheme, in its own body, contain any provision similar or identical to Rule 22 or Rule 33 of Order 41 of the Civil Procedure Code, nor does the Act anywhere provide that Order 41, Rule 22 or Rule 33 of the Civil Procedure Code or the principles flowing therefrom, shall apply to appeals filed under the Act nor does the Act provide that the provisions of Civil Procedure Code shall apply to appeals filed under the Act.

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21. Section 176 of the Act empowers the State Government to make Rules for the purpose of carrying into effect the provisions of Sections 165 to 174 of the Act and in particular with respect to the form and the manner in which and fees (if any) on payment of which, an appeal may be preferred against an award of a Claims Tribunal. For ready reference, Section 176 may be quoted which reads thus:

"176. Power of State Government to make rules.--A State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:

(a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such application;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a civil court which may be exercised by a Claims Tribunal;

(d) the form and the manner in which and the fees (if any) on the payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed."

22. As is apparently seen, Clause (d) of Section 176 of the Act clearly empowers the State Government to make rules with respect to the form and the manner in which an appeal may be preferred against an award of a Claims Tribunal. The expressions 'form' and 'manner' are wide enough to include a possible stipulation about the applicability of the provisions of Order 41, Rules 22 and 33 of the Civil Procedure Code to appeals filed under Section 173 of the Act. In exercise of this power, amongst various other powers, the State Government did frame Rules called "Himachal Pradesh Motor Vehicles Rules, 1999". Rules 232 and 233 of these Rules are relevant for our purposes and these read thus:

"232. The Code of Civil Procedure to apply in certain cases.-
-The following provisions of the First Schedule of the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; and Order IX; Order XIII; Rules 3 to 10; Order XVI; Rules 2 to 21; Order XVII, Order XXI and Order XXIII, Rules 1 to 3.

Sections 169 and 176 (b)

233. Form and manner of appeals against the award of Claims Tribunal.--An appeal against award of a Claims Tribunal shall be preferred in the form of a memorandum stating concisely the ground on which the appeal is preferred, it shall be accompanied by a copy of the judgment and the award appealed against.

Sections 173 and 176 (c)"

23. As is seen, whereas under Rule 232 certain provisions of the Civil Procedure Code have been made applicable to the proceedings before the Tribunal, under Rule 233 it has only been laid down as to how the appeals are to be filed against the awards of the Claims Tribunal. Rule 232, of course, does not relate to appeals, as it refers only to the proceedings before the Tribunal. In Rule 233, of course, the State Government could have incorporated a provision about the applicability of Order 41, Rules 22 and 33 of the Civil Procedure Code to the appeals under the Act but this not having been done, we cannot import either into the Act or into the aforesaid 1999 Rules any provision with respect to the aforesaid applicability of Order 41 of the Civil Procedure Code to the appeals filed under the Act with the result that we have to hold and declare that there

is no right of filing cross-objections, same not having been created by any statute and hence it not being in existence. It shall, however, be open to the State Government to consider effectively the desirability of suitably amending 1999 Rules to incorporate appropriately in these Rules, for example, in Rule 233 by way of its own amendment, or otherwise by introducing a new rule, that Order 41 of the Civil Procedure Code shall apply to the appeals filed under the Act, as it applies to appeals filed under the Civil Procedure Code. We accordingly direct the State Government to consider this issue, in its true perspective and in best public interest and, if it at all decides to carry out the above indicated amendment in 1999 Rules, to do the needful in that direction within two months from today. The decision has to be of the State Government in the exercise of its rule making power and we have no intention of issuing any direction, much less a binding direction as to how and in what manner this decision should be taken. Only that the decision, one way or the other, has to be taken in a time bound manner. We, therefore, direct Law Secretary, Government of Himachal Pradesh to inform the Registrar General of this court about the action taken, one way or the other, before 31.12.2004. A copy of this judgment shall accordingly be sent to the Law Secretary, Government of Himachal Pradesh for his information and compliance.

24. Based on the aforesaid reasoning and in the light of the aforesaid observations accordingly, in this reference we lay down, hold and declare that in no appeal filed under Section 173 of the Act by any appellant, can cross-objections be permitted to be filed/entertained since the cross-objections, under the scheme of the Act read with the aforesaid 1999 Rules as these presently exist, are not maintainable.”

8. In this view of the matter, I hold that the provisions of Rule 22 of Order 41 CPC will not be applicable to Appeals filed under Section 173 for the State of Goa and consequent cross objections which have been filed by Respondent No.1 and would not be maintainable. Consequently, the Cross Objection stands dismissed as being not maintainable. The Respondents No.1 and 2 have chosen not to

challenge the Award by filing an Appeal under Section 173 of the Motor Vehicles Act, and have instead filed a Cross Objection in terms of Order 41 Rule 22 CPC. This would, however, not preclude the Respondent Nos. 1 and 2, if so advised, to file an Appeal with an application for condonation of delay to challenge the Award or part of the Award with which they are aggrieved.

9. In view of the above discussions, the Cross Objection of the Respondent No.1 and 2 not being maintainable, the Miscellaneous Civil Application also stands disposed of.

VALMIKI MENEZES, J.