HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
FIRST APPEAL FROM ORDER No. - 102 of 2024

National Insurance Co. Ltd. Faizabad Thru. Manager Legal

�..Appellant(s)

Versus

Reeta and 4 others

�..Respondent(s)

Counsel for Appellant(s)
:
Inder Preet Singh Chadha,
Counsel for Respondent(s)
:
Mukesh Singh,

Court No. - 20

HON'BLE PRASHANT KUMAR, J.

1. Heard Shri�Inder Preet Singh Chadha, learned counsel for the appellant/Insurance Company as well as Ms. Sarika Dwivedi, holding brief of Shri Mukesh Singh, learned counsel for the respondents/claimants.
2. The instant appeal under section 173 of the Motor Vehicle Act, 1988, has been preferred against the judgment and order dated 09.01.2024 passed by the Motor Accident Claims Tribunal, Faizabad (hereinafter referred to as the 'Tribunal') in M.A.C.P. No.21 of 2018, challenging the quantum of compensation.
Factual Matrix :
3. On 16.11.2017 at about 10:00p.m., one Sabhajeet Tadmali was walking back home, when he reached near Bariyawan crossing, under the jurisdiction of Police Station Kotwali Akbarpur, Ambedkar Nagar, a Scorpio vehicle (bearing registration no.UP32EK7689), which was being driven rashly and negligently, dashed into him, as a result of which, he sustained serious injuries and he was taken to the District Hospital, Ambedkar Nagar. Looking into his serious condition, he was referred to the Trauma Centre Joint Hospital, Ambedkar Nagar where during the course of treatment, he succumbed to the injuries.
4. The First Information Report (FIR) was lodged in the concerned police station and postmortem examination of the body of deceased was conducted. Thereafter, the family members of the deceased filed a claim petition before the learned Tribunal, claiming compensation of Rs.49,70,000/- stating that at the time of the alleged accident, the deceased was 50 years of age and was engaged in the business of selling �tadi� being a registered tadi seller. A written statement was filed by the appellant-Insurance Company, denying the factum of the accident as well as the involvement of the vehicle in question. Notices were issued to defendant Nos. 2 and 3, who are the owner and driver of the offending vehicle, respectively. Despite sufficient service of notice, none appeared on their behalf before the Tribunal. Consequently, the Tribunal proceeded against them ex parte and awarded the compensation to the claimants.
5. The Tribunal after perusing the pleadings framed following issues:
�1. क्या दिनांक 16.11.2017 को मृतक सभाजीत ताडमाली को शौंच करके वापस घर आते समय लगभग 10.00 बजे रात्रि बसखारी-अकबरपुर मार्ग पर थाना

कोतवाली अकबरपुर जनपद अम्बेडकरनगर सीमा में स्थित बरियावन चौराहे के पास के सामने स्कार्पियो कार संख्या यू.पी.32 ई.के-7689 के चालक ने वाहन को तेजी व लापरवाही से चलाते हुए टक्कर मारकर गम्भीर उपहति कारित किया, परिणामस्वरूप सभाजीत ताडमाली की मृत्यु हो गयी ?

2. क्या कथित दुर्घटना के दिनांक व समय पर स्कार्पियो कार संख्या यू.पी.32 ई.के-7689 के चालक के पास वैध व प्रभावी चालन अनुज्ञप्ति उपलब्ध थी ?

3. क्या कथित दुर्घटना के दिनांक व समय पर स्कार्पियो कार संख्या यू.पी.32 ई.के-7689 विपक्षी संख्या 1 बीमा कम्पनी द्वारा बीमित था तथा वाहन का संचालन वैच प्रपत्रों के साथ बीमा शर्तों के अनुरूप किया जा रहा था ?

4. क्या उपरोक्त दुर्घटना दिनांक 18.11.2017 मृतक की स्वयं की उपेक्षा/योगदायी उपेक्षा के कारण घटित हुई ?

5. क्या याचीगण याचित अनुतोष पाने का अधिकारी है, यदि हों तो कितना और किस विपक्षी सें ?�

6. After perusing documents, evidence adduced by the parties, and the arguments raised by the respective counsels, the Tribunal came to the conclusion that�the deceased had died because of the accident, which took place on 16.11.2017 by the offending vehicle, which was being driven in rash and negligent manner by its driver. The Tribunal further held that the driver of the offending vehicle had a valid driving licence and the offending vehicle was duly insured with the appellant/Insurance Company at the time of alleged accident. Looking into the age, earning capacity of the deceased and other relevant factors, the Tribunal awarded a compensation of Rs.7,20,000/- along with simple interest at the rate of 7% per annum in favour of the claimants by means of the impugned judgement and award.

7. Being aggrieved by the judgment and award passed by the Tribunal, the appellant-Insurance Company has assailed the same by filing the present appeal.

Submissions of learned counsels for the parties :

8. Learned counsel for the appellant-Insurance Company submitted that the offending vehicle had been stolen and the alleged accident occurred after that. He further submitted that, since the vehicle was stolen and was not in the possession or control of either the registered owner or the charge-sheeted driver at the time of the alleged accident, the Insurance Company cannot be held liable to pay the compensation.

9. Secondly, he submitted that the name of the driver of the offending vehicle was recorded as Mohd. Imran, son of Munir Khan, resident of Village Abdullah Purwa, Hardoi. However, the extract of the driving licence issued by the Regional Transport Officer, Hardoi, records the name of the driver as Imran Khan, son of Munir Khan. Thus, there is a discrepancy in the name of the driver, inasmuch as the word �Mohd.� is missing from the name and the word �Khan� has been added.

10. Lastly, he submitted that as per the Aadhaar card of the deceased, he was 51 years old at the time of the alleged accident. Consequently, the multiplier and the future prospects for computing compensation would be modified.

11. Per contra, Ms. Shrddha Srivastava along with Ms. Sarika Dwivedi, holding brief for Shri Mukesh Singh, learned counsel for the respondents/claimants submitted that the technical investigation report shows that there was damage on the side mirror of the offending vehicle, which goes to show that the offending vehicle had hit the deceased. She further submitted that the evidence of P.W.-2 clearly shows that the vehicle was apprehended by the police as the police had got the information of the alleged accident. She further submits that no evidence has been brought on record to establish that the offending vehicle had been stolen on the date of the alleged accident.

12. She further submits that there is no material discrepancy in the name of the driver of the offending vehicle, as the alleged discrepancy is confined only to the prefix �Mohd.�. She submits that �Mohd.� is a commonly used prefix in the names of persons belonging to a particular community and, therefore, the omission of the said prefix does not, by itself, establish that the person named in the driving licence was different from the driver of the offending vehicle.

13. So far as the age of the deceased, she further submitted that as per family register maintained by the Secretary of the Village Panchayat, the deceased was born in 1967. She further submitted that the date of birth mentioned in the Adhaar card is not a conclusive evidence. To buttress her argument, she placed reliance upon the judgement passed by a Division Bench of this Court in the matter of Smt. Parvati Kumari & Ors. vs. State of U.P.& Ors; Misc Bench No.13419 of 2018, wherein the Division Bench held as under:

�17. From the above conclusion it stands demonstrated that in case a person relies on entries in Aadhaar Card in regard to address, date of birth etc., on the basis of the Aadhaar Card, under the Evidence Act it cannot be said that the entries in those regards are conclusive proof of those facts. If question in these regards arises, the source of giving date of birth etc., are required to be verified in the process of investigation in criminal cases.�

(emphasis supplied)

14. She also placed reliance upon a judgement passed by Hon�ble Supreme Court in the matter of Saroj & Ors. v. IFFCO-TOKIO General Insurance Co. & Ors., reported in (2024 INSC 816), wherein it has been held that an Aadhaar card is proof of identity and not valid proof of date of birth/age in motor accident compensation.

15. Learned counsel for the respondents/claimants supports the findings of the Tribunal affirming the liability of the Insurance Company and has raised an oral cross-objection to the effect that the notional income of the deceased assessed by the Tribunal at Rs.5,000/- per month is meager and wholly inadequate. It was further submitted that the learned Tribunal failed to appreciate that the deceased was an authorised licensee engaged in the extraction of �tadi� from palm trees and, at the very least, the minimum wages applicable at the relevant time ought to have been taken into consideration for determining his monthly notional income. It was further submitted that, as per the notification dated 04.01.2018 issued by the Office of the Labour Commissioner, State of Uttar Pradesh, G.T. Road, Kanpur, the minimum wages prescribed for unskilled labours were Rs.7,400.46/- per month. Therefore, the said amount ought to have been taken as the monthly income of the deceased for the purpose of computation and determination of the compensation payable to the claimants.

16. She further submitted that the compensation awarded under the conventional heads is not awarded as per the ratio laid down by Hon�ble Supreme Court in the matter of National Insurance Co. Ltd. vs. Pranay Sethi and others, reported in 2017 ACJ 2700. The said ratio was pronounced by the Hon�ble Supreme Court in the year 2017, wherein Hon'ble Supreme Court

has clearly stated that on every three years the value of compensation under the conventional head would increase by 10% on every three years.�� In this case the award was passed on�09.01.2024 and accordingly 10% increased amount ought to have awarded under each heads of amount awarded under conventional heads, after every three years from the date of pronouncement of Pranay Sethi (supra).
17. She further submitted that�each of the claimants were entitled to compensation under the head of loss of consortium. It was submitted that there were three claimants (wife, son and daughter), but the Tribunal awarded compensation towards loss of consortium to only one claimant, which is contrary to the ratio laid down by the�Hon'ble Supreme Court in the matter of Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, reported in (2018) 18 SCC 130.
18. In rejoinder, learned counsel for the appellant Insurance Company vociferously opposed the oral cross-objection with regards to the quantum of compensation and submitted that no appeal seeking enhancement of the compensation has been filed by the claimants / respondents. He further contended that the claimants / respondents cannot raise such objection at the stage of present appeal.
19. No other argument raised by the learned counsel for the parties.
Analysis :
20. Heard learned counsel for the parties and perused the record.
21. The issues involved in this appeal for adjudication are as follows:
i. Whether there is any merit in the arguments advanced by the appellant in the present case ?
ii. Whether the�compensation awarded by�the Tribunal is�just and fair ?
iii. Whether this Court, in an appeal preferred by the Appellant�Insurance Company, can enhance the compensation awarded by the Tribunal, in the absence of any appeal preferred by the claimants seeking enhancement of compensation?
22. The grounds and arguments raised by the parties are dealt in seriatim.
23. So far as the first argument advanced by learned counsel for the appellant that the offending vehicle had been stolen and was not in the possession or control of either the registered owner or the charge-sheeted driver at the time of the alleged accident and, therefore, the Insurance Company cannot be held liable to pay the compensation, is concerned, no First Information Report was lodged or complaint was filed by the owner of the vehicle and nothing was brought on record to establish that the offending vehicle had been stolen prior to the date of the alleged accident. In absence of any cogent and substantial evidence establishing the theft of the offending vehicle, the submission advanced by learned counsel for the appellant cannot be accepted.
24. So far as the second argument advanced by learned counsel for the appellant with regards to the discrepancy in the name of driver of an offending vehicle is concerned, the Tribunal has held as under:
�23- विपक्षी संख्या-2 की तरफ से कागज संख्या-22ग/1 कार्यालय सहायक सम्भागीय परिवाहन अधिकारी (प्रशासन) हरदोई द्वारा निर्गत पत्र दाखिल किया गया है, जो लाइसेंस संख्या एम1695/एचडीआई/2006 के सत्यापन हेतु जावेद वरिष्ठ सहायक को अधिकरण के समक्ष साक्ष्य प्रस्तुत करने के संबंध में है। जावेद पुत्र स्व० कल्लू निवासी लालबाग मकान नं. 119/153 खददारी लेन थाना कैसर बाग, लखनऊ डी.डब्लू.1 के रूप में परीक्षित हुए है जिसने अपनी साक्ष्य में कहा है कि वह अपने कार्यालय के डी.एल. रजिस्टर मूल लेकर जो सन 2006 का है, को लेकर न्यायालय में साक्ष्य हेतु उपस्थित हुआ है, उक्त डी.एल. रजिस्टर के मूल अभिलेख में डी.एल. नम्बर एम1695/ एचडीआई/2006 एच.डी. 1 जारी होना दर्ज है, उपरोक्त डी.एल. इमरान पुत्र मुनीर खाँ ग्राम अब्दुल्ला पुरवा हरदोई के नाम से दिनांक 14.09.2006 को मोटर साइकिल विथ गीयर व एलएमवी. वाहन चलाने हेतु जारी हुआ है। जिसकी वैधता दिनांक 14.09.2006 से 11.03.2011 तक है, उपरोक्त डी.एल. की एनओसी. लखनऊ सम्भागीय कार्यालय हेतु दिनांक 26.06.2013 को जारी हुआ है, उपर्युक्त डी.एल. पार्टीकुलर व रजिस्टर की प्रमाणित छाया प्रति आज न्यायालय में प्रस्तुत कर रहा है।
24- उक्त साक्षी से याची की तरफ से जिरह की गयी है। उक्त साक्षी ने जिरह में यह कथन किया है कि जो एन. ओ.सी. उसके कार्यालय सहायक सम्भागीय एआरटीओ हरदोई द्वारा जारी किया गया है, उसका नम्बर 013672 व लाइसेंस नं. एम-1695/एचडीआई 2006 है, यह एन.ओ.सी. सम्भागीय अधिकारी ट्रान्सपोर्ट नगर लखनऊ के लिए जारी हुआ है, पत्रावली मे दाखिल मोहम्मद इमरान कागज संख्या 5ग1/8 उपरोक्त एन.ओ.सी. के आधार पर दर्ज हुआ है।�
25. On a bare perusal of the finding recorded by the Tribunal with regard to the discrepancy in the name of the driver of the offending vehicle, this Court is of the considered view that the said finding is perfectly justified and does not warrant any interference.
26. So far as the age of the deceased is concerned, the Tribunal, relying upon the postmortem report and the family register, has held that the deceased was 50 years of age at the time of the alleged accident. So far as the postmortem report is concerned, the age mentioned therein cannot said to be a conclusive evidence of the actual age of the deceased. Although the family register has been proved, wherein the year of birth of the deceased is mentioned as 1967 but the date and month is not mentioned, no other documentary evidence has been placed on record to establish his exact date of birth. Since the alleged accident occurred on 16.11.2017, it can reasonably be presumed that the deceased was above 50 years and below 51 years of age at the time of the accident.
27. As per Pranay Sethi (supra), the principles of Sarla Verma v. DTC, reported in (2009) 6 SCC 121, would be applicable. Wherein a multiplier of 13 is provided for the age from 46 to 50 years and Multiplier of 11 is provided for the age from 51 to 55. The relevant extract of the ratio of Sarla Verma (supra) is hereinbelow:
�42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.�
(emphasis supplied)

28. The above ratio clearly creates a lacuna, as to what will be the multiplier when the age is between 50 years to 51 years. The Hon'ble Supreme Court in case of Shashikala Vs. Gangalashmamma and another (Civil Appeal No.2836 of 2015) (Arising out of SLP (Civil) No.6061 of 2014), while deciding appeal regarding MACT case, has held as under:
"17. Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs.16,82,310/- (Rs.1,20,165/- x 14)."
(emphasis added)
29. In the matter of Shubhankit Singh and 2 Others v. Jem Pack Enterprises through Vaqeel Ahmad, Unnao and 2 Others; reported in 2026 AHC-LKO 51053 : FAFO No. 194 of 2025, wherein, the deceased was aged 50 years and 9 months at the time of the accident, this court has considered the completed age of the deceased to be just and appropriate for determining the multiplier in a claim for compensation under the Motor Vehicles Act. The same principle was also reiterated by this court in the matter of Smt. Sabbo and Ors. v. Bharti Axa General Insurance Co. Ltd., Lko. and Ors.; reported in 2026 AHC-LKO 49365 : FAFO No. 491 of 2018.
30. In the absence of precise and exact age, it would be just and apt to take the lower age of 50 years as the completed age of the deceased. The object of the Motor Vehicles Act is intended to the "just compensation" to the victims and their dependents rather than to defeat legitimate claims on technicalities.
31. In view of the above discussion, this Court has no hesitation in holding that, for the purpose of applying the appropriate multiplier, the completed age of the deceased has to be taken into consideration. Accordingly, this Court is of the considered view that the Tribunal has rightly taken the age of the deceased as falling within the age bracket of 45�50 years for determining the applicable multiplier and the corresponding addition towards future prospects. Since the deceased had completed 50 years of age at the time of the accident, the appropriate multiplier applicable to the present case would be 13. Consequently, the Tribunal has rightly adopted the multiplier of 13, and no interference on this count is warranted.
32. Thus, there being no merit in the arguments advanced by the appellant-Insurance Company, Issue No. (i) is answered in negative.
33. Since Issue Nos.(ii) and (iii) are interrelated and dependent upon each other, they are being considered and decided together.
34. With regard to the quantum of compensation awarded by the Tribunal, it is evident that the Tribunal has assessed the monthly income of the deceased at Rs.5,000/-, which appears to be inadequate in view of the notification relied upon by learned counsel for the respondents/claimants. The amount awarded under the conventional heads also appears to be contrary to the principles laid down by the Hon�ble Supreme Court in Pranay Sethi (supra).
35. It is well settled that the Courts are bound to award just and reasonable compensation. Therefore, this Court cannot turn a blind eye to the objection raised by the respondents/claimants, particularly when the grounds raised by them for enhancement of compensation have sufficient merit.
36. Now a question arises for consideration before this court as to whether, in absence of any appeal seeking enhancement of compensation, can this Court enhance the amount of compensation awarded by the Tribunal.
37. Since it is the statutory obligation of the Tribunal and also the Court to do complete justice to the parties and award �just compensation�, there is no restriction to enhance the compensation in appropriate case even in absence of any cross-appeal or an appeal seeking enhancement of compensation.
38. The provisions of the Motor Vehicles Act, 1988 gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. It is also essential to note that in the scheme of the Motor Vehicle Act, 1988, the burden of awarding the compensation is imposed upon the Tribunal in terms of the mandate of Section 168, which reads as under:
�168. Award of the Claims Tribunal. - (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of [section 163] may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:
(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.
(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.�
39. Although the determination of compensation can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the claimants. In the matter of Sarla Verma (supra), the Hon�ble Supreme Court has held as under:
�"Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.�
(emphasis added)

40. It is also essential to note the procedure and powers of the claims tribunal, which are enumerated in Section 169 of the Motor Vehicle Act reads as under:
�169. Procedure and powers of Claims Tribunals. - (1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.
(4) For the purpose of enforcement of its award, the Claims Tribunal shall also have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit.�
41. It is also essential to note that the appeals are prescribed against the award of a Claims Tribunal to the High Court under section 173 of the Motor Vehicle Act, 1988. Although the nature and procedure to be followed in exercise of jurisdiction to be exercised by the Claims Tribunal is prescribed under Section 169, the procedure to be followed by the High Court in appeals is silent in the Act and even in the Rules framed by the State of Uttar Pradesh, namely, The Uttrar Pradesh Motor Vehicles Rules, 1998.
42. Order XLI of the Code of Civil Procedure, 1908 (hereinafter referred as �CPC�), lays down the general provisions governing appeals before the High Court. Order XLI Rule 33 of the CPC confers wide powers upon the appellate court to pass such decree or order as the case may require. Before proceeding further, this Court deems it appropriate to look into the provisions of Order XLI Rule 33 of the CPC, which is reproduced herein-under:
"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]1:
[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.]2"
43. From bare perusal of�Order 41, Rule 33 of CPC, it is clear that the appellate courts are empowered to make whatever order it thinks fit and proper to do complete justice, not only between the appellant and the respondent but also between one respondent and another respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal, but also to give such other relief to any of the respondent as the case may require.
44. The Hon�ble Supreme Court in the matter of Mahant Dhangir v. Madan Mohan, reported in 1987 Supp SCC 528, has explained the provisions of Order XLI Rule 33 C.P.C. in following words :
�The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words �as the case may require� used in Rule 33 of Order 41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see, may be these: That the parties before the lower court should be there before the appellate court. The question raised must properly arise out of the judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It may be urged by any party to the appeal. It is true that the power of the appellate court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities.�
(emphasis added)
45. In the matter of Pralhad v. State of Maharashtra, reported in (2010) 10 SCC 458, the Hon�ble Supreme Court has held as under :
"18.�The provision of Order 41 Rule 33 CPC is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or 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. Therefore, the power is very wide and in this enabling provision, the crucial words are that the appellate court is empowered to pass any order which�ought�to have been made as the�case�may require. The expression �order ought to have been made� would obviously mean an order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying �the court may pass such further or other order as the�case�may require�. This expression �case� would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law."
(emphasis added)
46. In fact, the ambit of this provision has come up for consideration in several decisions of the Hon'ble Supreme Court as well as various High Courts. Commenting on this power, Mulla (Civil Procedure Code, 15th Edn., p. 2647) observed that this Rule is modeled on Order 59 Rule 10(4) of the Supreme Court of Judicature of England, and Mulla further opined that this rule

gives the court ample power to make the order appropriate with a purpose to do complete justice between the parties.
47. Apart from the above, there can be situation from the other side of lens, where the Insurance Company files an appeal challenging the award granted by the Tribunal, the Claimant without filing a cross appeal or cross objection possesses the right to defend the amount which has been granted by the Tribunal. The two Judges Bench of the Hon�ble Supreme Court has considered this aspect in the matter of Ranjana Prakash v. Divl. Manager, reported in (2011) 14 SCC 639, wherein it was held as under :
�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)
48. While addressing a case where the bench of Bombay High Court has declined to grant enhancement of compensation on the ground that the claimants fail to file cross appeal, the Three-Judge Bench of Hon'ble Supreme Court in the matter of Surekha v. Santosh, reported in (2021) 16 SCC 467 ; Civil Appeal No. 476 of 2020, set aside the High Court�s refusal to enhance the compensation and awarded enhanced and just compensation to the claimants. The Hon�ble Supreme Court clearly observed that it is a well-settled principle of law that, while dealing with claims for compensation arising out of motor accidents, the Court should not adopt a hyper-technical approach. The primary duty of the Court is to ensure "just compensation" which is to be awarded to the affected person or claimants. The relevant para is extracted as under :
�Leave granted. This appeal takes exception to the judgment and order dated 4-1-2019 [Shriram General Insurance Co. Ltd.�v.�Surekha, 2019 SCC OnLine Bom 12] passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016, whereby�the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs 49,85,376 (Rupees forty-nine lakhs eighty-five thousand three hundred seventy-six only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.
2.�By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hypertechnical approach and ensure that just compensation is awarded to the affected person or the claimants.
3.�As a result, we modify the order passed by the High Court to the effect that the compensation amount payable to the appellants is determined at Rs 49,85,376 (Rupees forty-nine lakhs eighty-five thousand three hundred seventy-six only), with interest thereon as awarded by the High Court."
(emphasis added)
49. Also, in the matter of The Oriental Insurance Co. Ltd. V. Sardar Singh & Ors., (SLP (C) No(s). 14319 of 2020), the Hon�ble Supreme Court recently affirmed the judgment passed by the Delhi High Court, wherein the High Court enhanced the award in an appeal filed by the Insurance Company, despite there being no cross-appeal or cross-objection filed by the claimants/family members. The Hon'ble Supreme Court while affirming the decision of the High Court has opined as under :
"�..payment is under a beneficial legislation and thus, the court should not test it from a purely technical point of view but rather, from a human angle for determining the quantum of compensation which ultimately, the court grants to the family of the victim."
(emphasis added)
50. A similar issue was raised before this court in the matter of New India Assurane Co. Ltd. v. Neelam Jaiswal, reported in 2020 SCC OnLine All 85, wherein the issue before the Court was whether, in an appeal preferred by the Insurance Company on a ground other than the quantum of compensation, and in the absence of any cross-appeal or cross-objection by the claimants, the Court would be justified in enhancing the amount of compensation in exercise of the powers conferred under Order XLI Rule 22 of the Code of Civil Procedure, 1908. The said issue was considered in detail by this Court with reference to the decisions of the Hon�ble Supreme Court, and, upon such consideration, the Court ultimately held as under:
�28.�There is another angle to look at the aforesaid situation. In the decision relied upon by the learned counsel for the respondents in the case of�Resha Devi�(supra) it would be seen that the appeal had been preferred by the Insurance Company. The submission of the learned counsel for the Insurance Company is noted in paragraph-4 of the judgment of the Division Bench and from the perusal whereof, it would indicate that the question before Hon'ble the Division Bench as raised by the Insurance Company was on quantum; inasmuch as it had been contended that the multiplier as adopted by the tribunal was on the higher side and the compensation accordingly was excessive.

29.�It is in the aforesaid circumstance, where the question of quantum was before the Division Bench and in such circumstance considering the fact that the Division Bench found that the award was on the lower side had applied the power under Order 41 Rule 33 CPC and has enhanced the award by adding non-pecuniary damages. Thus, it would be seen that the facts before the Division Bench were completely different; inasmuch as the issue of quantum was before the High Court specifically raised by the Insurance Company and as an appeal is a continuation of the proceedings and the tribunal is required to hold an inquiry to ascertain the compensation which is just and fair, hence in the aforesaid circumstances where the Division Bench came to be conclusion that the Insurance Company was contending that the award was excessive, but it found that it was on the lower side, hence in order to do substantial justice despite the claimants did not file a cross appeal the Division Bench exercised its power under Order 41 Rule 33 CPC and enhance the same.�
(emphasis added)
51. Even in the matter of New India Assurance Co. Ltd. v. Anil Kumar, reported in 2023 SCC OnLine All 3226, this court has held as under :
�22.�The complexion would change where a party (other than the claimant) assails the award solely on the ground of quantum of compensation before the Appellate Court and the claimant who has a right of filing a cross objection but he does not file any cross-objection or cross appeal. In such a situation whether the Appellate Court is only required to assess and examine the appeal within the limited parameters as urged by the appellants assailing the award on quantum or is it open for the Appellate Court, if during hearing of the appeal. It finds that the compensation has not been appropriately granted by the Tribunal then whether it can grant such higher compensation than the one which has been granted by the Tribunal and which is already assailed and under challenge before it in appeal.
* * *
25.�This Court would be failing in its duty if it did not notice a recent decision of the Apex Court in context with the powers conferred on the Appellate Court under Order�41 Rule 22�CPC�and Order�41 Rule 33�CPC�in�Saurabh Jain�v.�A.B.P. Design,�2021 SCC OnLine SC 552�wherein the issue was whether the superior Court could consider an adverse finding even where a cross objection has not been filed and it was held as under:�
�27. On a perusal of the above authorities, it is evident that the principle stipulated in Order�XLI Rule 22�of�CPC�can be applied to petitions under Article�136�of the�Constitution�because of this Court's wide powers to do justice under Article�142�of the�Constitution. Since the principle in Order�XLI Rule 22�of the�CPC�furthers the cause of justice by providing the party other than the �aggrieved party� to raise any adverse findings against them, this Court can draw colour from Order�XLI Rule 22�CPC�and permit objections to findings.
28. From the above it has been established that it not necessary that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection. In the present case, we note that the appellant had raised an objection to the jurisdiction of the Trial Court for entertaining the suit on the ground that an injunction and declaratory relief could not have been given. Although the Trial Court passed a decree in favour of the appellant, it had decided against the appellant on the question of jurisdiction. This finding was not challenged by the appellant before the High Court in the form of a memorandum of cross-objection. The judgment of the High Court makes no mention that a plea of lack of jurisdiction was taken by either the appellant or the MDA. Before this Court, the appellant has not filed the counter-affidavit it had filed before the High Court. Thus, the conclusion that emanates from the record before us is that the ground of jurisdiction was only raised by the appellant before the Trial Court and not before the High Court. In effect then, this Court would have to adjudicate on a plea, which did not form a part of the decision of the High Court in challenge before us.
29. With regard to�new�grounds being raised before this Court in a special leave petition under Article 136, we note that under Order 21 Rule 3(c) of the�Supreme Court Rules, 2013, SLPs are to be confined to the pleadings before the court whose order is challenged. However, with the leave of the Court, additional grounds can be urged at the time of the hearing.
*******����*******������****�����***
32. In�Most Rev. P.M.A. Metropolitan�v.�Moran Mar Marthoma�17 as well, a three Judge bench of this Court entertained an objection as to maintainability of the suit under Section�9�of the�CPC, despite the plea not having been raised before the courts below. The Court observed that the plea of a bar or lack of jurisdiction can be entertained at any stage, since an order or decree passed without jurisdiction is nonest in law.
*******�����*******�����****�����***
�..34. Based on the position of law, we find it just to allow the appellant to raise the ground of jurisdiction before us. Allowing the ground to be raised would not require the submission of additional evidence since it is a pure question of law and strikes at the heart of the matter. We shall now turn to the merits of this argument.�
26.�From a gainful reading of the propositions as has been noticed in the decisions considered hereinabove, apparently, what can be culled out is the fact that once the issue of compensation/quantum has been raised by any party before the Appellate Court, then the Appellate Court becomes duty bound to ascertain as to whether the compensation has been adequately and justly awarded or not. The entire ethos behind consideration of a claim petition under the Motor Vehicles Act is grant of just and fair compensation. This is to be seen in the context that in the given facts and circumstance, the compensation should not be meager but at the same time it should not also be a bonanza for the claimants. Within these two outer perimeter, it is the duty of the Tribunal and so also for the Appellate Court to adjudge the issue of quantum with a correct lens and perspective so that the claimants are awarded just and fair compensation which is pragmatic and close to reality.
27.�In the spotlight of the above considered decisions, this Court is of the clear opinion that where an appeal is preferred by any party, other than the claimants, assailing the quantum on whatever ground, in such a case, even though, the claimant may not have filed a cross objection or a separate appeal for enhancement, yet, it is the duty of the Appellate Court to see that the compensation as awarded by the Tribunal is just and fair. While determining the same, even if, the Appellate Court comes to the conclusion that the amount granted by the Tribunal is less, it has all the jurisdiction to grant fair and just compensation by

enhancing the award even in absence of any cross objection for the reason that the appellant who is before the Court has already raised the issue of quantum and considering the arguments/contentions of the appellant, the Appellate Court is to arrive at its own independent finding regarding quantum which may then even grant a higher sum than granted by the Tribunal. In such situation, it is not open for the appellant to state that the amount cannot be enhanced as no challenge has been made to the award. What needs to be seen is the fact that it is the quantum of award which is under challenge and that has to be decided and in a befitting case, the Appellate Court can invoke the powers in its repository to pass such orders to grant just and fair compensation.�
(emphasis added)
52. This court also in the matter of United India Insurance Co. Ltd. v. Smt. Sunita Devi; reported in 2026 AHC 103621 ; (FAFO No.2223 of 2016), has taken the same view with regard to awarding �just compensation� to the claimants, even in the absence of a cross-appeal or cross-objection. The relevant para is extracted as under :
�19. Thus for all the reasons recorded above, I am inclined to follow the judgment of this Court in the case of New India Assurance Company Limted vs Anil Kumar (Supra) and thus, I have no hesitation in rejecting the contention of the Counsel for the appellant that in absence of a cross appeal, this Court cannot enhance compensation as essentially the appellate court is also bound to exercise its powers in a summary manner to award �just compensation� which is the mandate of Section 168 of the Motor Vehicle Act.�
(emphasis added)
53. In view of the foregoing discussion, this Court is of the considered view that there is no legal embargo against enhancement of compensation by the Court. Rather, the mandate of law is to ensure that the claimants are awarded �just compensation� in accordance with the applicable statutory provisions and settled principles of law. In discharge of such mandate, the Court is empowered to enhance the compensation awarded where the amount determined by the Tribunal is found to be inadequate or not in accordance with law, and also not in sync with the ratio laid down by the Hon�ble Supreme Court in its various judgements. Such exercise of jurisdiction is legally permissible even in the absence of an appeal or cross-objection preferred by the claimants, particularly in view of the law laid down by the Hon�ble Supreme Court in Surekha (supra).
54. Therefore, it is clear that where an appeal is preferred by the Insurance Company challenging the award, the claimants are not precluded from contending that the compensation awarded by the Tribunal does not constitute �just compensation� as per law. The mere absence of an appeal or cross-objection on the part of the claimants cannot operate as a legal impediment to the Court determining and awarding just compensation in accordance with law. Once the correctness and adequacy of the award are brought under consideration in the appeal and even if the claimants have not specifically raised the issue with regards to enhancement of compensation, the Court is duty-bound to examine whether the compensation awarded conforms to the statutory mandate and, if found deficient, the Court is duty-bound to enhance the same so as to ensure that the claimants receive �just compensation� as per law.
55. Thus, there being no merit in the arguments advanced by the appellant-Insurance Company, Issue No.(ii) and (iii) are also answered in negative and in favour of the Claimants/respondents.
56. In view of the aforesaid legal position, this Court proceeds to determine the just and reasonable compensation payable to the claimants.
57. The Tribunal has assessed the monthly income of the deceased at Rs.5,000/-, as no evidence has been brought on record to prove his income.
58. The Hon�ble Supreme Court in the matter of Chandra @ Chanda @ Chandraram & Anr. v. Mukesh Kumar Yadav & Ors., reported in (2022) 1 SCC 198, has clearly held that the notional income ought to be determined by the yardstick of Minimum Wages applicable in the respective area at the relevant point of time, in absence of any documentary evidence, but at the same time it cannot be treated as the absolute basis for determining the income. The relevant para is extracted as under :
�In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month�
(emphasis supplied)
59. In the present case, the deceased was engaged in the job of extracting �tadi� from the palm trees and was an authorized licensee. In a worst scenario, even if assuming that he was working as unskilled labour at the time of alleged accident, the awarded notional income seems to be inadequate. As per the�Notification dated 04.01.2018, issued by the Office of Labour Commission Uttar Pradesh, the minimum wages for an unskilled labour was�Rs.7400.46/- per month, on the date of the accident. Thus, treating the deceased as an unskilled worker, it would be appropriate to determine the compensation payable to the claimants by taking the notional monthly income of the deceased at Rs.7,400.46/- per month.
60. As far as the compensation awarded under the conventional head i.e. Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium are concerned, the same are already awarded by the Tribunal in accordance with the ratio laid down by the Hon�ble Supreme Court in the matter of National Insurance Co. Ltd. vs. Pranay Sethi and others, reported in 2017 ACJ 2700. However, as per the ratio of Pranay Sethi (supra), the amount awarded under the conventional heads is to be enhanced by 10% every three years from the date of the judgment. The relevant para is extracted as under :
�52. � Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads,

namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be @ 10% in a span of three years.�
(emphasis added)
61. The said ratio laid down by the Hon'ble Supreme Court was delivered on 31.10.2017. In the present case, the award of the Tribunal was passed on 09.01.2024, i.e., after more than 6 years from the date of the said ratio. Therefore, the amount awarded under the conventional heads has to be enhanced by 10% in a span of every three years from the date of judgement passed by the Hon�ble Supreme Court in Pranay Sethi (supra). Accordingly, the loss of consortium amounts to Rs.44,000/- (Rs.40,000/- + 10% of Rs.40,000/-) after first three years and thereafter to Rs.48,400/- (Rs.44,000/- + 10% of Rs.44,000/-). Similarly, the amount towards funeral expenses comes to Rs.18,150/-, and the loss of estate amounts to Rs.18,150/-.
62. It is now well settled by the The Hon'ble Supreme Court in the matter of New India Assurance Co. Ltd. v. Somwati, reported in (2020) 9 SCC 644, that the loss of love and affection as well as loss of consortium are not two different heads. The relevant extract of Somwati (supra) is hereinbelow:
"39. We, thus, found the impugned judgments [Somwati v. Dharmendra Kumar, 2019 SCC OnLine All 3897],[Sangita Devi v. New India Assurance Ltd., 2019 SCC OnLine Del 10877] , [New India Assurance Co. Ltd. v. Azmati Khatoon, 2019 SCC OnLine Del 10530] , [Cholamandalam MS General Insurance Co. Ltd. v. Umarani, 2019 SCC OnLine Mad 29630] , [Pinki v. Rajeev, 2019 SCC OnLine Del 11882] , [Nanak Chand v. New India Assurance Co. Ltd., 2020 SCC OnLine Del 62] , [Oriental Insurance Co. Ltd. v. Rinku Devi, 2019 SCC OnLine Del 10493] of the High Court awarding consortium to each of the claimants in accordance with law which does not warrant any interference in this appeal. We, however, accept the submissions of the learned counsel for the appellant that there is no justification for award of compensation under separate head �loss of love and affection�. The appeal filed by the appellant deserves to be allowed insofar as the award of compensation under the head �loss of love and affection�."
(emphasis added)
63. In the present case, a sum of Rs. 40,000/- has been awarded under the head of �loss of love and affection�. However, in view of the ratio laid down in Somwati (supra), �loss of love and affection� is no longer a separate head of compensation and is subsumed within the head of �loss of consortium�.
64. Further, even awarding a sum of Rs. 40,000/- towards consortium is also contrary to the ratio laid down by the Hon�ble Supreme Court in Pranay Sethi (supra) and Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, reported in (2018) 18 SCC 130.
65. With regard to the award of separate consortium to each of the claimants, the same ought to have been awarded at the rate of Rs. 48,400/- to each claimant. The relevant para of Nanu Ram (supra) is extracted as under :
�24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under �loss of consortium� as laid down in Pranay Sethi. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium."
(emphasis added)
66. In view of the aforesaid settled legal position, and since in the present case, there are three claimants (wife and two children), wife is entitled to get loss of spousal consortium of Rs.48,400/- and children is entitled to get loss of parental consortium of Rs.48,400/- each. Thus, this court has to award enhanced amount of Rs.48,400/- under the head of loss of consortium separately to all three claimants who had preferred the claim before the Tribunal.
Conclusion :
67. In view of the aforesaid discussion and observation, the impugned judgment and order dated 09.01.2024 passed by the Tribunal in M.A.C.P. No.21 of 2018 is modified to the following extent:
Head
Amount Awarded by the Tribunal
Amount Modified by this Court
In accordance with
Annual Income(A)
= 5000 x 12
=Rs.60,000/-
=Rs.7,400.5 x 12
= Rs.88,806/-
As per minimum wages applicable at the time of accident.
Future Prospect (%) (B)
25 % of A
=Rs.15,000/-
25% of A
Rs.22,201.5/-

Deduction towards personal & living expenses (C = 1/3 of (A + B)
Rs.25,000/-
Rs.37,002.5/-

Annual loss of dependency (D=A+B-C)

Rs.50,000/-
Rs.74,005/-

Multiplier applied (E)
13
13

Total loss of dependency (F=DxE)
Rs.6,50,000/-
Rs.9,62,065/-

Conventional Heads
Funeral Expenses (G)
Rs.15,000/-
Rs.18,150/-
As per Pranay Sethi (supra)
Loss of Estate (H)
Rs.15,000/-
Rs.18,150/-
As per Pranay Sethi (supra)
Loss of Consortium (I)
/
Loss of love and affection
Rs.40,000/-
Rs.48,400 x 3= Rs.1,45,200/-

As per Pranay Sethi (supra), Nanu Ram (supra) and Somwati (supra)
Total Compensation
Rs.7,20,000/-
Rs.11,43,565/-

Interest
7%
7%

68. The Tribunal while providing the amount in terms of this judgment shall adjust the amount, if any, already paid/ provided to the appellants.
69. With the above modification, the instant appeal is disposed of.
70. Let lower court record be immediately returned to Court concerned along with a certified copy of this judgment for necessary compliance.

(Prashant Kumar,J.)
September 23, 2026
Anupam S/-