

The Divisional Controller vs Nagaraj S/O. Yallappa Habib

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Court : Karnataka Dharwad

Decided On : Feb-28-2025

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA/100004/2024

Appellant : The Divisional Controller

Respondent : Nagaraj S/O. Yallappa Habib

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE 28TH DAY OF FEBRUARY, 2025 BEFORE THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL NO.100001 OF 2024 (MV-I) C/W MISCELLANEOUS FIRST APPEAL NO.100002 OF 2024 MISCELLANEOUS FIRST APPEAL NO.100003 OF 2024 MISCELLANEOUS FIRST APPEAL NO.100004 OF 2024 MISCELLANEOUS FIRST APPEAL NO.100006 OF 2024

IN M.F.A. NO.100001 OF 2024: BETWEEN: THE DIVISIONAL CONTROLLER, K.S.R.T.C., DIVISIONAL OFFICE, DAVANAGERE, (OWNER AND SELF-INSURER OF KSRTC BUS) REP. BY CHIEF LAW OFFICER, CENTRAL OFFICES, SARIGE BHAVANA, K.H. ROAD,

SHANTHINAGARA, Digitally signed by BENGALURU-27. MALLIKARJUN APPELLANT RUDRAYYA KALMATH (BY SRI S.C.BHUTI, ADVOCATE) Location: HIGH COURT OF KARNATAKA AND: ROOPA W/O. NAGARAJ HABIB, AGE. 48 YEARS, OCC. TAILORING AND EMBROIDERY, R/O. SHAMBAJI LAYOUT, KOTILINGESHWAR NAGAR, HUBBALLI-580020, DIST. DHARWAD. RESPONDENT (BY SRI GIRISH V. BHAT, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 01.04.2023 PASSED IN MVC NO.486/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND ADDITIONAL, MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, IN THE INTEREST OF JUSTICE AND EQUITY. -2- IN M.F.A. NO.100002 OF 2024: BETWEEN: THE DIVISIONAL CONTROLLER, K.S.R.T.C., DIVISIONAL OFFICE, DAVANAGERE, (OWNER AND SELF-INSURER OF KSRTC BUS) REP. BY CHIEF LAW OFFICER, CENTRAL OFFICES, SARIGE BHAVANA, K.H.ROAD, SHANTHINAGAR, BENGALURU-27. APPELLANT (BY SRI S.C.BHUTI, ADVOCATE) AND: KMR. POOJA D/O. NAGARAJ HABIB, AGE. 20 YEARS, OCC. STUDENT, R/O. SHAMBAJI LAYOUT, KOTILINGESHWAR NAGAR, HUBBALLI-580020, DIST. DHARWAD. RESPONDENT (BY SRI GIRISH V. BHAT, ADVOCATE) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 01.04.2023 PASSED IN MVC NO.488/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND ADDITIONAL, MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, IN THE INTEREST OF JUSTICE AND EQUITY. IN M.F.A. NO.100003 OF 2024: BETWEEN: THE DIVISIONAL CONTROLLER, K.S.R.T.C., DIVISIONAL OFFICE, DAVANAGERE, (OWNER AND SELF- INSURER OF KSRTC BUS) REP. BY CHIEF LAW OFFICER, CENTRAL OFFICES, SARIGE BHAVANA, K.H. ROAD,

SHANTHINAGAR, BENGALURU-27. APPELLANT (BY SRI S.C.BHUTI, ADVOCATE) -3- AND: YALLAPPA S/O. PARUSA HABIB, SINCE DECEASED BY HIS LRS

1. NAGARAJ S/O. YALLAPPA HABIB, AGE. 57 YEARS, OCC. CONTRACTOR,

2. ARUN S/O. YALLAPPA HABIB, AGE. 44 YEARS, OCC. BUSINESS, BOTH ARE R/O GURUSIDDESHWAR NAGAR, BEHIND MOORSAVIR MATH, HUBBALLI, DHARWAD-580002.

3. RENUKA D/O. YALLAPPA HABIB, AGE. 58 YEARS, OCC. NIL, (BLIND WOMEN, SO UNMARRIED DAUGHTER) R/O. GURUSIDDESHWAR NAGAR, BEHIND MOORSAVIR MATH, HUBBALLI, DHARWAD-580002. RESPONDENTS (BY SRI GIRISH V. BHAT, ADVOCATE) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER

SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 01.04.2023 PASSED IN MVC NO.485/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND ADDITIONAL, MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, IN THE INTEREST OF JUSTICE AND EQUITY. IN M.F.A. NO.100004 OF 2024: BETWEEN: THE DIVISIONAL CONTROLLER, K.S.R.T.C., DIVISIONAL OFFICE, DAVANAGERE, (OWNER AND SELF-INSURER OF KSRTC BUS) REP. BY CHIEF LAW OFFICER, CENTRAL OFFICES, SARIGE BHAVANA, K.H.ROAD, SHANTHINAGAR, BENGALURU-27. APPELLANT (BY SRI S.C.BHUTI, ADVOCATE) -4- AND: NAGARAJ S/O. YALLAPPA HABIB, AGE. 54 YEARS, OCC. CIVIL ENGINEER, R/O. SHAMBAJI LAYOUT, KOTILINGESHWAR NAGAR, HUBBALLI-580020, DIST. DHARWAD. RESPONDENT (BY SRI GIRISH V.BHAT, ADVOCATE) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO SET ASIDE THE

JUDGMENT AND AWARD DATED 01.04.2023 PASSED IN MVC NO.489/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND ADDITIONAL, MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, IN THE INTEREST OF JUSTICE AND EQUITY. IN M.F.A. NO.100006 OF 2024: BETWEEN: THE DIVISIONAL CONTROLLER, K.S.R.T.C., DIVISIONAL OFFICE, DAVANAGERE, (OWNER AND SELF-INSURER OF KSRTC BUS) REP. BY CHIEF LAW OFFICER, CENTRAL OFFICES, SARIGE BHAVANA, K.H. ROAD, SHANTHINAGAR, BENGALURU-27.

APPELLANT (BY SRI S.C. BHUTI, ADVOCATE) AND: KMR. DATTU S/O. NAGARAJ HABIB, AGE. 19 YEARS, OCC. STUDENT, R/O. SHAMBAJI LAYOUT, KOTILINGESHWAR NAGAR, HUBBALLI-580020, DIST. DHARWAD. RESPONDENT (BY SRI GIRISH V. BHAT, ADVOCATE) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 01.04.2023 PASSED IN MVC NO.487/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL -5- JUDGE AND ADDITIONAL, MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, IN THE INTEREST OF JUSTICE AND EQUITY. THESE MISCELLANEOUS FIRST APPEALS COMING ON FOR FURTHER ARGUMENTS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR) These appeals are glaring example of pointing out how the advocate for the claimants and the Presiding Officer and of the tribunal were most insensitive towards the victims considering the manner in which the case is conducted by the counsel for the claimants and the manner in which the Presiding Officer of the tribunal has dealt with the claim petitions while awarding compensation. The whole family has severely affected by the motor vehicle accident resulting into death of a person in the car.

2. Under these circumstances, upon considering

the judgment passed by the tribunal, the tribunal had shown utter carelessness in dealing with the claim -6- petitions. Though this Court does not have power to recommend for the advocate of the claimants be referred for training to conduct cases in this regard by judicial academy, but the learned Presiding Officer of the tribunal who delivered the judgment shall necessarily undergo training in this regard in Judicial Academy. Accordingly, it is ordered the Registrar General to assign the Presiding Officer of the tribunal for training in Karnataka Judicial Academy.

3. The KSRTC has preferred these appeals on the

ground that the driver of the Car No.KA-22/P-7079 was also rash and negligent and contributed his rashness and negligence to the accident. It is astonished that in the case of death caused in the accident, the tribunal has awarded global compensation of Rs.1,00,000/- and the compensation awarded in other cases are global in nature and when such meager amount of compensation is awarded, the KSRTC has dared to prefer appeals. -7-

4. It is the case of the claimants that on

30.12.2018 at about 12.30 p.m. the claimant Nagaraj along with his mother Sulochana, wife Roopa, son Dattu and daughter Pooja were proceeding in the car bearing No.KA-22/P-7079 from Hubballi towards Davanagere and when their car reached Ranebennur by-pass on Haveri- Davanagere NH-438, at that time the driver of KSRTC bus No.KA-17/F-1700 came from Ranebennur with a high speed and in a rash and negligent manner and suddenly took the bus in U-turn without looking the car of the claimants. Hence, accident was occurred between the bus and the car and in the said accident mother Sulochana died and other inmates in the car have sustained injuries.

5. Upon the claim petitions filed by the claimants, the tribunal has awarded a meager amount of compensation which would be described in succeeding paragraphs. -8-

6. Learned counsel for the appellant KSRTC

submitted that the claimant Nagaraj who was driving the car was also rash and negligent in driving the car has contributed his rashness and negligence to the accident. But the tribunal has held the entire rashness and negligence on the part of the KSRTC bus is not correct. Therefore, submitted, the claimant Nagaraj who was driving the car had equally contributed his rashness and negligence to the accident. Therefore, prays to make apportionment of rashness and negligence at the ratio of 50:50 between the driver of the KSRTC bus and the claimant Nagaraj.

7. On the other hand, learned counsel for

respondents/claimants submitted that the claimant Nagaraj was not at all rash and negligent in driving the car as he was coming from Hubballi to Davanagere and has crossed Haveri going towards Ranebennur. At that time the driver of KSRTC bus in a rash and negligent manner -9- coming from service road was in the process of taking U- turn crossing the National Highway without stopping the bus and without observing wait and proceed principle thus, in this way caused the accident. Therefore, he places reliance on the spot sketch and spot mahazar and other police documents and argued that from the evidence on record it is proved that the driver of the KSRTC bus alone was rash and negligent in driving the bus. Therefore, apart from praying for dismissal of the appeal filed by the KSRTC, also prays the Court to make enhancement of the compensation by exercising power of the appellate Court under Order 41 Rule 33 of the Code of Civil Procedure, 1908 (CPC), considering the insensitive observations made by the tribunal while awarding meager amount of compensation. Therefore, submitted, the claimants are very poor persons and having lost mother in the family in the said accident are under shock and agony. Therefore, they could not prefer appeal due to trauma faced by them. But just because the claimants have not filed the appeal, - 10 - in order to give substantial justice to the claimants, he prays for exercising the power under Order 41 Rule 33 of CPC and grant just and reasonable compensation.

8. Upon hearing both side counsels, the points that arise for my consideration are as follows:

i. Whether, under the facts and circumstances involved in the case, the appellant-KSRTC proves that the claimant-Nagaraj was also rash and negligent in driving the Car and contributed his rashness and negligence to the accident? ii. Whether, under the facts and circumstances, involved in the case, the claimants make out the case invoking the

power of the appellate Court under Order

41 Rule 33 of CPC for awarding just and reasonable compensation in case of death of Sulochana and injury sustained by other claimants. - 11 -

9. The undisputed facts are that on 30.12.2018 at

about 12.30 p.m., the claimant Nagaraj along with his mother Sulochana, wife Roopa, son Dattu and daughter Pooja were proceeding in the car bearing No.KA-22/P- 7079 from Hubballi towards Davangere and the claimant- Nagaraj was driving the said Car and when the said Car crossed Haveri while going towards Ranebennur, at that time, the KSRTC bus coming from Ranebennur on service road and was crossing the National Highway to enter the other side service road. In that moment, accident taken place, resulting into death of Sulochana who is mother of claimant-Nagaraj and others have severely injured in the accident. Ex.P-1 is the complaint given by the claimant- Nagaraj soon after the accident complaining against the driver of KSRTC bus. Accordingly, crime is registered in FIR as per Ex.P-2 against the driver of the KSRTC bus. It is stated that the driver of the KSRTC bus has also submitted representation to the Police Inspector, Ranebennur Town Police and to Deputy Commissioner, - 12 - Haveri makes allegation that the driver of Car was also driving in a rash and negligent manner.

10. But upon the said representation, there is no

crime registered and thus, it is remained as a representation of the driver of KSRTC bus. The appellant- KSRTC has also produced Ex.R-4 and Ex.R-4(a)- accident spot map and photographs.

11. The claimants have produced Ex.P3-spot

panchanama along with spot sketch. Upon considering these spot panchanama and spot sketch produced by both the parties, the accident occurred on the National Highway No.438 which is Pune-Bengaluru road. As per law, the permissible speed limit is 80 Km per hour on the National Highway. The bus was coming from service road from Ranebennur and was in the process of taking U-turn to go to other side service road, the accident is taken place in the mid-day at 12.30 p.m. Therefore, when the KSRTC bus was coming from service road and while entering to the - 13 - National Highway, then it is duty of driver of bus to slow down the bus and be vigilant while crossing National Highway and upon confirming in his mind that there were no vehicles moving in the said place of crossing on the National Highway, then, ought to have entered National Highway and cross Highway. But without doing so, the spot panchanama and spot sketch proves the fact that the bus has suddenly entered the National Highway causing obstruction to movement of the Car. Thus, in this way, the driver of the Car could not control the Car, resultantly, compelling the impact to the bus.

12. Therefore, upon analyzing these facts and

circumstances on the basis of evidence on record as above discussed, the driver of the KSRTC bus was completely rash and negligent in driving the bus while crossing National Highway. Though, the driver of KSRTC bus has given evidence before Tribunal but it is only in the nature of self-explanatory deposition. Quite naturally, he deposed - 14 - that he was not driving in a rash and negligent manner and his evidence is without having any corroboration.

13. But PW-1 has explained the accident in his

evidence that he was driving the Car within the permissible limit of speed on the National Highway and the KSRTC bus has suddenly entered the National Highway by coming from service road with a rash and negligent manner though the driver of KSRTC bus has seen the Car coming on the road. Thus, in this way, the accident was caused. The evidence of PW-1 and PW-2 who are eye witnesses to the accident have explained the accident. The evidence of PW-1 and PW-2 are corroborated by the documentary evidence i.e., Ex.P-1 to Ex.P-7 which are complaint, FIR, spot panchanama, inquest panchanama, P.M. report, MVI report,

final report and charge sheet. Therefore, upon considering and re-appreciating entire evidence on record, it is proved that due to the entire rash and negligent driving of the KSRTC bus only, the accident - 15 - was caused. In this regard, the finding arrived at by the Tribunal is found to be correct. Accordingly, it is held that the accident is caused entirely due to the rash and negligent driving of the KSRTC bus. Hence, I answer point No.1 in the negative.

14. Unfortunate event is that, in the accident, the

whole family has suffered seriously and entire family is ruined including death of mother-Sulochana. But, it is found that the Tribunal was insensitive while considering the case and not awarding just and reasonable compensation. Therefore, though the claimants have not preferred appeal, but upon the appeals filed by KSRTC, the claimants are entitled for benefit of invoking power under

Order 41 Rule 33 of CPC for awarding just and reasonable

compensation without remanding the case to the Tribunal for the reason that the claimants have already suffered much trauma and once again, remanding to the Tribunal is not proper. Therefore, this Court finds this case is one of - 16 - the exceptional case, where the appellate Court has to exercise power under Order 41 Rule 33 of CPC to give substantial justice to the claimants upon following principle of law laid-down by the Honble Supreme Court in various decisions. This Court in very similar facts and circumstances in the case of NEW INDIA ASSURANCE CO. LTD., HUBLI vs. BASAPPA & OTHERS reported in

ILR 2021 KAR 1101 has invoked its power under Order

41 Rule 33 of CPC and at paragraph No.24 after following the various decisions of the Honble Supreme Court under

Order 41 Rule 33 of CPC, it is observed as follows:

24. In view of the law laid down by the Honble Supreme Court and the Learned Division Bench of this Court this Court, in the decisions referred

to supra, if it is clear from the judgment of the Tribunal that the Tribunal has committed a grave error resulting in the compensation awarded being grossly inadequate having regard to the law of award of compensation, in order to do justice, this Court should exercise discretionary power under Order 41 Rule 33 C.P.C. Thus, in my considered view, this is a fit case in which the exercise of powers under

Order 41 Rule 33 C.P.C. is warranted. Hence, I

deem it appropriate to enhance the compensation in favour of the claimants notwithstanding the fact that they have not preferred any appeal against the - 17 -

judgment and award of the Tribunal seeking such

enhancement.

15. The conditions enumerated in Order 41 Rule 33

of CPC are satisfied in the present case. In the present case, mother died in the accident is not disputed but the Tribunal has granted global compensation of Rs.1,00,000/- only, i.e., globally without making discussion on it as to what would be the just and reasonable compensation for which the legal heirs of deceased are entitled, as per law.

16. Further, the claimants have sustained several

multiple fractural injuries but the tribunal has awarded meager amount of compensation globally. Though, the Tribunal has observed that the claimants have suffered comminuted fractures, but awarded global compensation in a very terrific manner just by one paragraph. Therefore, the manner in which the Tribunal has dealt with the cases makes compulsion on this Court to exercise its power - 18 - under Order 41 Rule 33 of CPC, though the claimants have not filed appeal but give substantial justice to claimants.

17. The Court is cautious while exercising Order 41

Rule 33 of CPC that if remanding the case or directing the claimant to prefer any other appeal, then, under those circumstances also the same could have been the result. If

this Court in these appeals exercises power under Order

41 Rule 33 CPC, then that would give substantial justice to the claimants without making the claimants to make roving walk once again agitating the proceedings. The whole family of claimants have already suffered trauma in the accident. Therefore, this Court inclines to exercise its power under Order 41 Rule 33 of CPC based on the principle of law laid down by the Honble Supreme Court in the case of K. MUTHUSWAMI GOUNDER Vs. N. PALANIAPPA GOUNDER¹ has observed as under: 12. Order 41 Rule 33 enables the

appellate court to pass any decree or order

which ought to have been made and to make

(1998) 7 SCC 327 - 19 -

such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree; and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the court and the question raised properly arises (sic out of) one of the judgments of the lower court and in that event, the appellate court could consider any objection to any part of the

order or decree of the court and set it right.

We are fortified in this view by the decision of

this Court in Mahant Dhangir v. Madan Mohan [1987 Supp SCC 528 : AIR 1988 SC 54]. No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order 41 Rule 33 CPC and each case must depend upon its own facts. The Rule enables the appellate court to pass any

order/decreed which ought to have been passed. The general principle is that a decree is binding on the parties to it until it is set aside in appropriate proceedings. Ordinarily the appellate court must not vary or reverse a decree/order in favour of a party who has not preferred any appeal and this Rule holds good notwithstanding Order 41 Rule 33 CPC. However, in exceptional cases, the Rule enables the appellate court to pass such decree or order as ought to have been passed even if such decree would be in favour of parties who have not filed any appeal. The power though discretionary should not be declined to be exercised merely on the ground that the party has not filed any appeals.

(Emphasis supplied) The Hon'ble Supreme Court further in case of BANARSI Vs. RAMPHAL [(2003) 9 SCC 606], interprets Order XLI Rule 33 of CPC: - 20 - 15[Ed. : Para 15 corrected as per

Official Corrigendum No. F.3/Ed.B.J./65/2003]. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The above said provisions confer power of the widest amplitude on the appellate court so as to do complete justice between the parties and such

power is unfettered by consideration of facts

like what is the subject-matter of the appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the appellate court. While allowing the appeal or

otherwise interfering with the decree or order

appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the

findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not

- 21 -

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

court exercising power under Rule 33 of Order

41.

16. Panna Lal v. State of Bombay [AIR 1963 SC 1516 : (1964) 1 SCR 980] so sets out the scope of

Order 41 Rule 33 in the widest terms:

The wide wording of Order 41 Rule 33 was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a 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 respondents as the case may require. If there was no impediment in law the High Court in appeal could, therefore, though allowing the appeal of the defendant-appellant by dismissing the plaintiff's suits against it, give the plaintiff-respondent a decree against any or all the other defendants who were parties to the appeal as respondents. While the very - 22 -

words of the rule make this position abundantly clear the Illustration puts the position beyond argument. The suit was filed by the plaintiff impleading the State Government and the Deputy

Commissioner seeking recovery of compensation for the work done under a contract and the price of the goods supplied. The trial court held that the State was liable as it had beyond doubt benefited by the performance of the plaintiff. The suit was decreed against the State. The State preferred an appeal in the High Court. The plaintiff and

other defendants including the Deputy Commissioner were impleaded as respondents. Disagreeing with the trial court, the High Court

held that the contract entered into by the

Deputy Commissioner was not binding on the

State Government; that the Deputy Commissioner signed the contract at his own discretion; and further, that the contract not having been entered into in the form as required under Section 175(3) of the Government of India Act, 1935, was not enforceable against the State Government. The High Court also held that the Government could not be held to have ratified the action of the contract entered

into by the Deputy Commissioner. The State was held also not to have benefited by the performance of the plaintiff. On this finding, the High Court set aside the trial court's decree passed against the State Government. In an appeal to this Court, the Constitution Bench held that it was a fit case for the exercise of jurisdiction under

Order 41 Rule 33 CPC. On the findings arrived

at by the High Court, while setting aside the decree against the State, the High Court should have passed a decree against the Deputy Commissioner. It was not necessary for the plaintiff to have filed any cross-objection and the Illustration appended to Order 41 Rule 33 was enough to find solution. - 23 -

17. In *Rameshwar Prasad v. Shambehari Lal Jagannath* [AIR 1963 SC 1901 : (1964) 3 SCR 549] the three-Judge Bench speaking through Raghubar Dayal, J. observed that: Rule 33 really provides as to what the appellate court can find the appellant entitled to. It empowers the appellate court to pass any decree and make any

order which ought to have been passed or

made in the proceedings before it and thus could have reference only to the nature of the decree or order insofar as it affects the rights of the appellant. It further empowers the appellate court to pass or make such further or other decree or order as the case may require. The court is thus given a wide discretion to pass such decrees and orders as the interests of justice demand. Such a power is to be exercised in exceptional cases when its non-exercise will lead to difficulties in the adjustment of rights of the various parties.

(emphasis supplied)

18. In *Harihar Prasad Singh v. Balmiki Prasad*

Singh [(1975) 1 SCC 212] the following statement of law made by Venkatarama Aiyar, J. (as His Lordship then was) in the Division Bench decision in *Venukuri Krishna Reddi v. Kota Ramireddi* [AIR 1954 Mad 848 :

(1954) 2 MLJ 559] was cited with approval

which clearly brings out the wide scope of power contained in Rule 33 and the Illustration appended thereto, as also the limitations on such power : (SCC p. 236, para 36). Though Order 41 Rule 33 confers wide and unlimited jurisdiction on courts to pass a decree in favour of a party who has not preferred any appeal, there are, however, certain well- defined principles in accordance with which that jurisdiction should be exercised. Normally, a party who is aggrieved - 24 - by a decree should, if he seeks to escape from its operation, appeal against it within the time allowed after complying with the requirements of law. Where he fails to do so, no relief should ordinarily be given to him under Order 41 Rule 33.

But there are well-recognised exceptions to this rule. One is where as a result of interference in favour of the appellant it becomes necessary to readjust the rights of other parties. A second class of cases based on the same principle is where the question is one of settling mutual rights and obligations between the same parties. A third class of cases is when the relief prayed for is single and indivisible but is claimed against a number of defendants. In such cases, if the suit is decreed and there is an appeal only by some of the defendants and if the relief is granted only to the appellants there is the possibility that there might come into operation at the same time and with reference to the same subject-matter two decrees which are inconsistent and contradictory. This, however, is not an exhaustive enumeration of the class of cases in which courts could interfere under

Order 41 Rule 33. Such an enumeration would

neither be possible nor even desirable.

19. In the words of J.C. Shah, J. speaking for a three-Judge Bench of this Court in *Nirmala Bala Ghose v. Balai Chand Ghose* [AIR 1965 SC 1874 :

(1965) 3 SCR 550] the limitation on discretion operating as bounds of the width of power conferred by Rule 33 can be so formulated : (AIR p. 1884, para 22)

The rule is undoubtedly expressed in terms 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 - 25 - 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 reopen decrees which have become final merely because the appellate court does not agree with the opinion of the court appealed from.

20. A Division Bench decision of the Calcutta High Court in *Jadunath Basak v. Mritunjoy Sett* [AIR 1986 Cal 416 :

(1986) 2 CHN 44] may be cited as an

illustration. The plaintiff filed a suit for declaration that the defendant had no right or authority to run the workshop with machines in the suit premises and for permanent injunction restraining the defendant from running the workshop. The trial court granted a decree consisting of two reliefs : (i) the declaration as prayed for, and (ii) an injunction permanently restraining the defendant from running the workshop except with the terms of a valid permission and licence under Sections 436 and 437 of the Calcutta Municipal Act, 1951 from the Municipal Corporation. The defendant filed an appeal. The Division Bench held that in an appeal filed by the defendant, the plaintiff cannot challenge that part of the decree which granted conditional injunction without filing the cross-objection. The Division Bench drew a distinction between the respondent's right to challenge an adverse finding without filing any appeal or cross-objection and the respondent seeking to challenge a part of the decree itself without filing the cross-objection. The Division bench held that the latter was not permissible. We find ourselves in agreement with the view taken by the High Court of Calcutta.

- 26 - In a later judgment, the Hon'ble Supreme Court in case of PRALHAD vs. STATE OF MAHARASHTRA³, has held as follows: 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.

22. In terms of the statute and the

judgments of the Apex Court as extracted hereinabove, this Court, in appropriate cases, can exercise its power and grant the relief that ought to have been granted by the Tribunal.

23. It is apposite to refer to a judgment of a Learned Division Bench of this Court, wherein this Court exercising power under

Order XLI Rule 33 has enhanced the

compensation in an appeal filed by the Insurance Company, in the absence of an appeal by the claimant, in the case of ORIENTAL INSURANCE CO. LTD. v. AKKAYAMMA .

9. The Learned Counsel appearing for the respondent Nos. 1 to 6 who are the claimants - 27 -

in the court below contended that though the claimants have not filed any cross objections or independent appeal, since the tribunal has committed serious error

of law and procedure, while computing the loss of dependency by not taking the gross salary as reflected in the salary certificate at Ex.P-8, and has erroneously, applied split multiplier method,

this Court in exercise of its power under order

41 Rule 33 CPC should grant the relief which ought to have been granted by the tribunal, as in a claim arising under Motor Vehicles Act, the Tribunal is required to award just and reasonable compensation.

10. Order 41 Rules 33 of CPC reads as under: Order XLI Rule 33. Power of court of Appeal.

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or

order as the case may require, and this power

may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross suite or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order. - 28 -

11. The question as to what is the power of Appellants Court under Order 41 Rule 33 of CPC and as to under what circumstances, the Appellant Court should exercise this discretionary power have come up for consideration both before the Apex Court and before this Court in several cases.

12. The leading case on this question is the

decision of the Hon'ble Supreme Court in the case of Panna Lal v. State of Bombay [1963 SC 1516]. In this reported decision the Hon'ble Supreme Court, after referring to Rule 33 of

Order 41 has stated thus in paras 12 and 14;

12. Even a bare reading of O. 41 R. 33 is

sufficient to convince any one that the wide wording, was intended to empower the appellate Court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a 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 respondents as the case may require. In the present case, if there was no impediment in law the High Court could therefore, though allowing the appeal of the State by dismissing the plaintiffs suits against it, give the plaintiff a decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the section make this position abundantly clear the illustration puts the position beyond argument.

14. The whole argument is based on the

assumption that the plaintiff could by filing a cross-objection under O.41 R.22, C.P.C., have challenged the Trial Courts decree in so far as it dismissed the suit against the defendants other than the State. We are not, at present advised, prepared to agree that if a party who could have filed a cross-objection under O.41

- 29 -

R.22 of the Code of Civil Procedure has not done so, the Appeal Court can under no circumstance give him relief under the provisions of O.41 R.33 of the Code. It is, however, not necessary for us to discuss the question further as, in our opinion, the assumption made by the High Court that the plaintiff could have filed a cross-objection is not justified.

In the case of *Giani Ram v. Ramlal* [(1969) 1 SCC 813 : AIR 1969 SC 1144.], the Supreme Court while explaining the meaning of expression which ought to have been passed

occurring in Order 41 Rule 33 of CPC has held

that the said expression mean what ought in law to have been passed. Following this observation, again the Apex Court in the case of *Kosingh v. Smt. Deokabai* [(1976) 1 SCC 383 : AIR 1976 SC 634.] in paras 6 and 7 has observed thus:

6. In *Giani Ram v. Rami Lal* (1969) 3 SCR 944+ ((1969) 1 SCC 813 : AIR 1969 SC 1144) the court said that in O.41 R.33 the expression which ought to have been passed means what ought in law to have been passed and if an appellate Court is of the view that any decree which ought in law to have been passed was in fact not passed by the Court below, it may pass or make such further or other decree or order as the justice of the case may require.

7. Therefore, we hold that even if the

respondent did not file any appeal from the decree of the Trial Court, that was no bar to the High Court passing a decree in favour of the respondent for the enforcement of the charge.

13. A Learned Single Judge of this Court in the case of *Smt. Kanthamma v. Nanjunda Devaru* [AIR 1998 Kar 4271.] has followed the principles laid down by the Apex Court in the - 30 - aforesaid cases. A division bench of this Court

in the case of *Patel Chandrappa v. Hanumanthappa* [(1990) (3) KLJ 264.] has granted reliefs to certain parties who have not come up in appeal against the judgment of the Trial Court. The Division Bench in this reported decision has observed that having regard to the provisions contained in Rule 33 of Order 41 of CPC, it is the duty of the Court to grant relief to them if in law they are entitled to a share in the suit schedule property.

14. Again the Hon'ble Supreme Court

in Delhi Electric Supply Undertaking v. Basanti Devi [(1999) 8 SCC 229 : AIR 2000 SC 43.] has considered the powers of Appellants Court under Order 41 Rule 33 of CPC. Relevant observations are found in para 18 and 19 which read thus: 18. This provision was explained by this Court in Mahant Dhangir v. Madan Mohan, 1987 Supp SCC 528 : (1987 Supp SCC 528 : AIR 1988 SC 54) in the following words (at P. 58 of AIR):

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 correspondents. 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 required 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 constrain? 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

- 31 - be there before the appellate court. The question raised must properly arise out of the

Judgment of the lower court. I these two

requirements are there, the appellate court could considered 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.

19. Conditions as laid in provision of

Order 41, Rule 33 are satisfied in the

present case. When circumstances exist which necessitate the exercise of discretion conferred by Rule 33, the Court cannot be found wanting when it comes to exercise its powers. (emphasis supplied)

18. Therefore, in view of the above, it is necessary

to exercise power under Order 41 Rule 33 and this Court inclines to grant just and reasonable compensation as under. Accordingly, I answer point No.2 in the affirmative. MFA No.100003/2024-MVC No.485/2019:

19. It is the case of death of mother-Sulochana, the

Tribunal has granted compensation only Rs.1,00,000/- in - 32 - global. The Tribunal has observed that the claimants are entitled for compensation on the ground of loss of earning capacity. The Tribunal has committed error that if a person above the age of 70 years died in accident, then, there would not be application of multiplier and not awarded compensation towards loss of earning capacity. This is the observation made by the Tribunal which is wholly unsustainable in the eye of law. Therefore, the claimants are entitled for just and reasonable compensation as per law laid-down by the Honble Supreme Court.

20. Here, the deceased was 81 years as per Ex.P-5-

post-mortem report. The loss of dependency always cannot be decided that a member in the family is earning in a pecuniary terms. What a women in the family gives contribution for home making and maintaining the family that services also should be considered by the Tribunal while awarding compensation. The deceased may be old - 33 - aged women but in her own way, she was contributing service to the family in the process of home making.

21. The process of home making is not to be

construed in monetary terms. But home making is a continuous process even serving within the family. Even, on pecuniary terms it is considered that if in place of that woman, any other person is appointed, then what would have been to be payable that would be saved for the family in pecuniary terms. Therefore, the

Tribunal while determining compensation in case of death of mother or any women-homemaker dies, then it is not proper to hold that they are not earning members. This tendency is diminishing the role of women in the family that cannot be permitted. Therefore, this Court is of the opinion that though the deceased is old aged women, if she is alive, then she would have contributed her own service to the family. Under these circumstances, compensation would be granted under the head loss of dependency as loss of - 34 - dependency always cannot be in pecuniary terms by earning some money to family.

22. The accident is caused in the year 2018.

Therefore, notional income would be Rs.11,750/- as per notional monthly income chart prepared by Karnataka State Legal Services Authority. Obviously, the mother is old age women, then there could not be occasion for adding income towards loss of future prospects in life. The Tribunal committed error that multiplication could not be applied since the deceased is 81 years old. But there is a cap fixed by the Honble Supreme Court according to the age of the deceased and therefore, the least multiplier is 5 for the age group of 66-70, the same multiplier 5 is to be taken into consideration for the age of 81 years old. Since, the children are major and could not be turned out depending on income of the deceased, but deceased in her own way is contributing to the family in home making. Therefore, it is just and proper to deduct 1/3rd of the - 35 - income towards personal and living expenses for the purpose of making calculation of assessment of compensation. Therefore, loss of dependency is assessed as under: $\text{Rs.}11,750 \times \frac{2}{3} \times 5 \times 12 = 4,70,000/-$

23. The Tribunal has committed error in awarding

compensation under the head loss of consortium at Rs.77,000/-, which is on the lower side. Therefore, as per the judgment of the Honble Apex Court in the cases of Magma General Insurance Co. Limited v. Nanu Ram & Others² and in the case of National Insurance Company Limited Vs. Pranay Sethi and others³, the claimants are entitled to Rs.40,000/- each under the head loss of consortium, along with 10% escalation. There are totally three dependents. Accordingly, Rs.1,32,000/- ($\text{Rs.}40,000 \times 3 + 10\%$) is awarded under the head loss of

consortium. 2 2018 ACJ 2782 3 (2017) 16 SCC 680 - 36 -

24. Further, a compensation of Rs.15,000/- each is

awarded under the head loss of estate and funeral expenses respectively, along with 10% escalation. Therefore under these heads Rs.33,000/- (Rs.15,000 x 2 + 10%) is awarded.

25. Thus, in all the appellants/claimants are entitled for enhanced compensation as follows: Sl. Heads. Amount in No. (Rs.)

1. Towards loss of dependency. 4,70,000

2. Towards loss of consortium. 1,32,000

3. Towards loss of estate and 33,000 transportation of dead body and funeral expenses. Total: 6,35,000

26. Therefore, the appellants-claimants are entitled

for total compensation of Rs.6,35,000/- along with interest at 6% per annum from the date of filing of the petition till realization, as against Rs.1,00,000/- awarded by the Tribunal. - 37 - MFA No.100001/2024-MVC No.486/2019:

27. In the present case, the claimant-Roopa W/o.

Nagaraj Habib has sustained injuries in the accident. From the medical evidence on record (Ex.P-21), it is proved that the claimant had suffered the following injuries. i. Tenderness of left hip and thigh. ii. Abrasion on left forehead 1 x 0.2 c.m. iii. Comminuted fractured head of left femur with posterior superior fracture dislocation of proximal segment. iv. Part of fractured head is seen within the acetabular cavity.

28. The Tribunal has awarded a global

compensation of Rs.86,000/- including medical expenses of Rs.36,538/- along with interest at the rate of 6% p.a. from the date of petition till deposit of the award amount.

29. When the medical evidence on record proved

the fact that the claimant has suffered comminuted fracture to the left side of the head with posterior superior fracture dislocation of proximal segment and also part of - 38 - fractured head is seen within the acetabular cavity and etc., The Tribunal has awarded a global compensation of Rs.50,000/- along with medical expenses of Rs.36,358/- and made round figure of Rs.86,000/- and accordingly awarded is not correct approach. The claimant has not adduced evidence of the doctor and has not produced disability certificate. The claimant is claiming to be a tailor and earning sum of Rs.2,50,000/- p.a., though non production of medical evidence causes hindrance to the claimant, but judicial notice of fact can be taken into consideration.

30. Considering the nature of injuries sustained by

the claimant though there is no disability certificate produced and no evidence regarding proof of income that the claimant is claiming to be doing tailoring work, therefore, considering the principle of law laid down by the Honble Supreme Court in the case of RAJKUMAR VS. - 39 - AJAY KUMAR AND ANOTHER⁴ (Rajkumar Case), it is just and proper to take 10% as functional disability as the claimant has suffered injuries such as comminuted fracture to the left side of the head and left femur with posterior superior fracture dislocation of proximal segment and part of fractured head is seen within the acetabular cavity and etc., which affect the claimant to work as tailor or to do any other work.

31. Considering the nature of injuries sustained, the compensation awarded by Tribunal is lesser side. Therefore, the same is required to be enhanced by modifying the judgment and award.

32. The accident is caused in the year 2018.

Therefore, notional income of Rs.11,750/- per month is to be taken into consideration, which is recognized by the Karnataka State Legal Service Authority for the year 2018. The claimant was aged 44 years at the time of accident.

(2011) 1 SCC 343

- 40 - Therefore, appropriate applicable multiplier is 14. Hence, loss of future income due to disability is hereby assessed and quantified as follows: Rs.11,750/- x 10% x 14 x 12 = Rs.1,97,400/-

33. Considering the injuries sustained, a

compensation of Rs.25,000/- towards pain and suffering, Rs.30,000/- towards loss of amenities are awarded. The compensation awarded towards medical expenses of Rs.36,568/- is as per the actual bills and receipts produced; therefore, the same is kept intact. Further, Rs.15,000/- towards incidental expenses like food, nourishment, traveling, attendant charges, etc., and Rs.23,500/- towards loss of income during laid up period for a period of 2 months, is awarded.

34. Thus, the claimant-Roopa is entitled for total compensation under various heads as under: Sl. Heads. Amount in No. (Rs.)

1. Towards injuries, pain and 25,000/- - 41 - suffering.

2. Towards medical expenses. 36,568/-

3. Towards loss of amenities. 30,000/-

4. Towards loss of income during laid 23,500/- up period and medical treatment period.

5. Towards incidental charges like 15,000/- attendant charges, food, nourishment, conveyance, etc.,

6. Towards loss of future earning 1,97,400 capacity. Total: 3,27,468

35. Therefore, the claimant-Roopa is entitled for

total compensation of Rs.3,27,468/- along with interest at the rate of 6% per annum from the date of filing of the petition till realization, as against Rs.86,000/- awarded by the Tribunal. MFA No.100002/2024-MVC No.488/2019:

36. In the present case, the claimant-Pooja (minor

girl) has sustained injuries in the accident. From the medical evidence on record (Ex.P-13), it is proved that the claimant-Pooja had suffered the following injuries. i. Injury to left hand with abrasion over dorsum 1 x 1 c.m. - 42 - ii. Abrasion over scalp 0.5 x 0.5 c.m. iii. Abrasion over left elbow 1 x 1 c.m. iv. 4 c.m. scabbed abrasion over left parietal region. v. 1 x 1 c.m. scabbed abrasion over right forehead. vi. Puncture wound over the dorsum of left hand with swelling of the dorsum part of the hand.

37. The Tribunal has awarded a global

compensation of Rs.50,000/- including medical expenses of Rs.14,736/- along with interest at the rate of 6% p.a. from the date of petition till deposit of the award amount.

38. The claimant-Pooja is a minor girl of 16 years

old at the time of accident has sustained injuries like abrasion over dorsum 1 x 1 c.m., abrasion over scalp 0.5 x 0.5 c.m., abrasion over left elbow 1 x 1 c.m., and etc., which affect her to participate in activities in future. Therefore, considering the principle of law laid down by the Honble Supreme Court in the case of MASTER MALLIKARJUN VS. DIVISIONAL MANAGER, - 43 - NATIONAL INSURANCE COMPANY AND ANOTHER5 (Master Mallikarjun Case) that how to make assessment for grant of compensation in case of minor children.

39. Considering the nature of injuries sustained, the compensation awarded by Tribunal is lesser side. Therefore, the same is required to be enhanced by modifying the judgment and award.

40. In the present case, the claimant-Pooja has

suffered injuries like abrasion over dorsum 1 x 1 c.m., abrasion over scalp 0.5 x 0.5 c.m., abrasion over left elbow 1 x 1 c.m., and etc.,. Therefore, in absence of proof of disability, the percentage of permanent physical disability at less than 10% is to be taken into consideration by considering the principle of law laid down by the Honble in the case of Master Mallikarjun (supra) and also held that in case of minors who have sustained injuries and whatever disability suffered is less than

10%,

(2014) 14 SCC 396 - 44 - an amount of Rs.1,00,000/- is awarded under the head pain and suffering, mental and physical shock, hardship, inconvenience, discomforts etc.,

41. Therefore, by following the above stated dicta

here in the present case, the permanent physical disability is considered less than 10%. Hence, minimum compensation of Rs.1,00,000/- is awarded towards pain, injuries and suffering, hardship and inconvenience etc., Accordingly, the compensation awarded under the heads as follows: Head Compensation amount Pain and suffering already Rs.1,00,000/- undergone and to be suffered in

future, mental and physical shock, hardship, inconvenience, and discomforts, etc. and loss of amenities in life on account of permanent disability Discomfort, inconvenience and Rs.25,000/- loss of earnings to the parents during the period of hospitalization. Medical and incidental expenses Rs.14,736/- during the period of hospitalization. Total Rs.1,39,736/- - 45 -

42. Therefore, the respondent-claimant is entitled

for total compensation of Rs.1,39,736/- along with interest at the rate of 6% per annum from the date of filing of the petition till realization, as against Rs.50,000/- awarded by the Tribunal. MFA No.100004/2024-MVC No.489/2019:

43. In the present case, the claimant-Nagaraj S/o

Yallappa Habib has sustained injuries in the accident. From the medical evidence on record (Ex.P-17), it is proved that the claimant had suffered the following injuries.

- i. Head injury. ii. 3 x 2 c.m. abrasion over left proximal forearm. iii. Dry scabbed abrasion 4 x 2 c.m. over the posterior aspect of left arm. iv. Minimal hemothorax noted on the left side with collapse consolidation of underlying basal lung segment. v. Mild pneumothorax on the right side.

vi. Fracture of entero-inferior portion of manubrium sterni. - 46 -

vii. Fracture of entero-lateral aspect of 3rd to 8th ribs on the right side.

44. The Tribunal has awarded a global

compensation of Rs.1,00,000/- including medical expenses of Rs.33,426/- along with interest at the rate of 6% p.a. from the date of petition till deposit of the award amount. The claimant is claiming to be Civil Engineer, but there is no proof in this regard that he has employed or he is working as a Civil Engineer also there is no proof regarding income of the claimant. Though the claimant has not adduced evidence of the doctor, but considering the fact that the claimant has suffered fracture of entero-inferior portion of manubrium sterni and fracture of entero-lateral aspect of 3rd to 8th ribs on the right side, which are grievous in nature. Therefore, the judicial notice of facts to be taken into consideration by following the principle of law laid down by the Honble Supreme Court in the case of Rajkumar (supra) that at least a minimum of 10% of functional disability has been suffered by the claimant. - 47 -

45. Considering the nature of injuries sustained, compensation awarded by Tribunal is lesser side. Therefore, the same is required to be enhanced by modifying the judgment and award.

46. The accident is caused in the year 2018.

Therefore, notional income of Rs.11,750/- per month is taken into consideration, which is recognized by the Karnataka State Legal Service Authority for the year 2018. The claimant was aged 54 years at the time of accident. Therefore, appropriate applicable multiplier is 13. Hence, loss of future income due to disability is hereby assessed and quantified as follows: $\text{Rs.11,750/-} \times 10\% \times 13 \times 12 = \text{Rs.1,83,300/-}$

47. Considering the injuries sustained, a

compensation of Rs.25,000/- towards pain and suffering, Rs.30,000/- towards loss of amenities are awarded. The compensation awarded towards medical expenses

and - 48 - hospital charges of Rs.33,426/- is as per the actual bills and receipts produced; therefore, the same is kept intact. Further, Rs.10,000/- towards incidental expenses like food, nourishment, traveling, attendant charges, etc., and Rs.23,500/- towards loss of income during laid up period for a period of 2 months, is awarded.

48. Thus, the claimant is entitled for total compensation under various heads as under:

Sl.	Heads.	Amount in	No.
	suffering.		
2.	Towards medical expenses.	33,426/-	
3.	Towards loss of amenities.	30,000/-	
4.	Towards loss of income during 23,500/- laid up period and medical treatment period.		
5.	Towards incidental charges like 10,000/- attendant charges, food, nourishment, conveyance, etc.,		
6.	Towards loss of future earning 1,83,300/- capacity. Total:	3,05,226/-	

49. Therefore, the claimant-Nagaraja is entitled for total compensation of Rs.3,05,226/- along with interest at - 49 - the rate of 6% per annum from the date of filing of the petition till realization, as against Rs.1,00,000/- awarded by the Tribunal. MFA No.100006/2024-MVC No.487/2019:

50. In the present case, the claimant-Dattu S/o Nagaraj Habib has sustained injuries in the accident. From the medical evidence on record (Ex.P-9), it is proved that the claimant had suffered the following injuries. i. Multiple facial injuries. ii. Comminuted displaced fracture of lateral wall of right orbit. iii. Comminuted fracture of lateral, medial and exterior walls of bilateral maxillary sinuses with resultant haemo sinus. iv. Fractured right nasal bone. v. Un-

displaced medical fracture of right zygomatic arch.

51. The Tribunal has awarded a global

compensation of Rs.2,36,850/- including medical expenses of Rs.1,36,850/- along with interest at the rate of 6% p.a. - 50 - from the date of petition till the deposit of the award amount.

52. Considering the nature of injuries sustained, the compensation awarded by Tribunal is lesser side. Therefore, the same is required to be enhanced by modifying the judgment and award.

53. The claimant-Dattu is a minor boy of 15 years

old at the time of accident. The claimant has suffered comminuted displaced fracture of lateral wall of right orbit, comminuted fracture of lateral, medial and outer walls of bilateral maxillary sinuses with resultant haemo sinus, Un-displaced medical fracture of right zygomatic arch and fractured right nasal bone and etc.,. The claimant being minor boy has suffered such four fractured injuries. Though the doctor is not examined and the claimant has not produced disability certificate for having suffered injuries. But, considering the fractured injuries suffered by the claimant at the age of 15 years, then the claimant has - 51 - suffered disfigurement between fractured injuries to the facial bones above described. Therefore, definitely the percentage of disability to be assessed more than 10% as the nature of injuries considered, by applying principle of law laid down by the Honble Supreme Court in the case of Master Mallikarjun (supra).

54. In the present case, the claimant being minor

boy of 15 years old has suffered four fractured injuries and other injuries. Therefore, considering the principle of law laid down by the Honble Supreme Court in the case of Master Mallikarjun (supra), the percentage of permanent physical disability more than 10% is to be taken into consideration.

55. Therefore, by following the above stated dicta

here in the present case, the permanent physical disability is considered more than 10%. Hence, compensation of Rs.3,00,000/- is awarded towards pain, injuries and - 52 - suffering, hardship and inconvenience etc., Accordingly, the compensation awarded under the heads as follows: Head Compensation amount

Pain and suffering already Rs.3,00,000/- undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc. and loss of amenities in life on account of permanent disability Discomfort, inconvenience Rs.25,000/- and loss of earnings to the parents during the period of hospitalization. Medical and incidental Rs.1,36,850/- expenses during the period of hospitalization. Total Rs.4,61,850/-

56. Therefore, the claimant-Dattu is entitled for

total compensation of Rs.4,61,850/- along with interest at 6% per annum from the date of filing of the petition till realization, as against Rs.2,36,850/- awarded by the Tribunal. - 53 -

57. Therefore, the respondents-claimants in all the

cases are entitled compensation as determined above with interest at the rate of 6% from the date of petition till realization. The appellant/KSRTC in all the cases is directed to deposit the compensation within eight weeks from the date of receipt of copy of this judgment. Accordingly, I answer point No.2 in the affirmative.

58. In the result, I proceed to pass the following:

ORDER

(i) The appeals filed by the appellant/KSRTC are dismissed.

(ii) The impugned judgment and award dated

01.04.2023 passed in MVC No.485/2019 (MFA No.100003/2024) by the Principal Senior Civil Judge and Additional MACT, Hubballi, stands modified holding that the claimants-respondents are entitled to total compensation Rs.6,35,000/- along with interest at the rate of 6% p.a. from the date - 54 - of petition till its realization

as against Rs.1,00,000/- awarded by the Tribunal.

(iii) The impugned judgment and award dated

01.04.2023 passed in MVC No.486/2019 (MFA No.100001/2024) by the Principal Senior Civil Judge and Additional MACT, Hubballi, stands modified holding that the claimant-Roopu is entitled to total compensation Rs.3,27,468/- along with interest at the rate of 6% p.a. from the date of petition till its realization as against Rs.86,000/- awarded by the Tribunal.

(iv) The impugned judgment and award dated

01.04.2023 passed in MVC No.488/2019 (MFA No.100002/2024) by the Principal Senior Civil Judge and Additional MACT, Hubballi, stands modified holding that the claimant-Pooja is entitled to total compensation Rs.1,39,736/- along with interest at the rate of 6% p.a. from the date of petition till its realization as against Rs.50,000/- awarded by the Tribunal.

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(v) The impugned judgment and award dated

01.04.2023 passed in MVC No.489/2019 (MFA No.100004/2024) by the Principal Senior Civil Judge and Additional MACT, Hubballi, stands modified holding that the claimant-Nagaraja is entitled to total compensation Rs.3,05,226/- along with interest at the rate of 6% p.a. from the date of petition till its realization as against Rs.1,00,000/- awarded by the Tribunal.

(vi) The impugned judgment and award dated

01.04.2023 passed in MVC No.487/2019 (MFA No.100006/2024) by the Principal Senior Civil Judge and Additional MACT, Hubballi, stands modified holding that the claimant-Dattu is entitled to total compensation

Rs.4,61,850/- along with interest at the rate of 6% p.a. from the date of petition till its realization as against Rs.2,36,850/- awarded by the Tribunal.

(vii) The appellant/KSRTC in all the appeals is

directed to deposit the compensation amount - 56 - within eight weeks from the date of receipt of copy of this judgment. (viii) Send back the Trial Court Records to the Tribunal along with copy of this judgment.

(ix) Amount in deposit made by the appellant/KSRTC in all the cases shall be transmitted to the Tribunal.

(x) After the amount deposited by the KSRTC

the Tribunal shall make recourse to disburse the amount to claimants to transfer the amount to the bank account of claimants through online/RTGS with prior identification as per judgment of this Court rendered in MFA No.2509/2019 (ECA) decided on 19.07.2019 as per Circular No.02/2019 dated 19.08.2019.

(xi) Draw award accordingly.

(xii) No order as to costs.

- 57 - (xiii) Pending IAs if any, shall stand disposed of in view of disposal of the appeals. Sd/- (HANCHATE SANJEEVKUMAR) JUDGE MRK-para 1 to 7. RKM-para 8 to 26 SRA-para 27 to end. CT: UMD. List No.: 1 SI No.: 43

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