
(1989) 07 KL CK 0014
In the High Court Of Kerala

K. Velunni and Others

APPELLANT

Vs

Premalatha and Others

RESPONDENT

Date of Decision : 05-07-1989

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2

Citation : (1989) 2 ACC 593 : (1989) ACJ 833 : (1990) 1 ILR (Ker) 254

Hon'ble Judges : U.L. Bhat, J;P. Krishnamoorthy, J

Bench : Division Bench

Judgement

U.L. Bhat, J.—Velunni, fourth respondent in M.A.C. No. 239 of 1981 and 242 of 1981 is the appellant in M.F.A. No. 601 of 1983 which is preferred against the judgment in M.A.C. No. 242 of 1981 filed by legal representatives of Mohandas. Legal representatives of Pangunni, petitioners in M.A.C. No. 239 of 1981 are the appellants in M.F.A. No. 638 of 1983. They are not parties to M.A.C. No. 242 of 1981 and M.F.A. No. 601 of 1983.

2. On 7-6-1981 at about 515 p.m. when Pangunni was driving from south to north motorcycle KLR 1736 with Mohandas on the pillion at Cherampadam in Kinasseryamsom in Palghat Taluk, stage carriage bus KLP 7933 came from the opposite direction and bit the motorcycle which along with the driver and the pillion rider was dragged over a distance. Both of them sustained fatal injuries and died. Owner, driver and insurer of the bus were impleaded as respondent Nos. 1 to 3 respectively in both the claim petitions. Velunni, owner of the motorcycle, and the insurer of the motorcycle were impleaded in both the claim petitions as respondent Nos. 4 and S respectively. Claimants contended that the occurrence was the result of rash and negligent driving by the driver of the stage carriage bus and, therefore, the owner, driver and the insurer were liable to pay compensation.

3. The owner and driver of the bus denied that bus was driven in a rash and negligent manner. According to him, a bus by name Babitha was coming from south to north and the motorcycle was coming behind the bus and Pangunni

could not see bus KLP 7933 coming from north to south. Driver of Babitha bus took it to the extreme left side of the road, namely, western side, to allow the bus KLP 7933 to pass. Second respondent driver took his bus to his extreme left side, namely, eastern side. Pangunni, thinking that Babitha bus moved over to the western side to allow the motorcycle to overtake it, tried to overtake it at a high speed and in the process, motorcycle hit the bus coming from north to south. Rashness and negligence, if at all, was on the part of Pangunni. Insurer of the bus supported this contention and further contended that the insurer's liability was limited to Rs. 50,000/-. Insurer of the motorcycle contended that the motorcycle was insured only for third party risk and, therefore, the insurer was not liable. Velunni, owner of the motorcycle, remained ex-parte.

4. Both the petitions were tried together. The Tribunal held that Pangunni as well as the driver of the bus KLP 7933 were driving their vehicles rashly, negligently and it was a case of composite negligence, that is, contributory negligence on the part of Pangunni. The Tribunal assessed the responsibility of Pangunni at 50 per cent. Total compensation in regard to death of Pangunni was assessed at Rs. 38,550/-, though award was passed against the owner, driver and insurer of the bus only for half the amount. According to the Tribunal, Pangunni's dependants were not entitled to collect the balance 50 per cent, which is related to contributory negligence of Pangunni. The Tribunal fixed the compensation due to the widow and children of Mohandas at Rs. 41,480/- and directed payment in equal moieties on the basis of composite negligence of the drivers of the two vehicles. The Tribunal held that Mohandas was a gratuitous passenger on the motorcycle and the insurer of the motorcycle has no liability regarding his death. Half the amount due to the legal representatives of Mohandas payable on account of the negligence of Pangunni was directed to be paid by Velunni, owner of the motorcycle and the other half by the owner, driver and insurer of the bus.

5. Velunni, owner of the motorcycle, has filed M.F.A. No. 601 of 1983 against the award in favour of legal representatives of Mohandas challenging the finding regarding composite negligence and 50 percent liability fixed on him. He further contends that if he is found liable, it must be discharged by his insurer. Legal representatives of Pangunni have filed M.F.A. No. 638 of 1983 challenging the quantification made in their case, the finding regarding contributory negligence and praying that the entire compensation amount may be directed to be paid by the driver and owner and insurer of the stage carriage bus.

6. On the basis of the arguments advanced at the Bar, the following points arise for consideration:

(1) Whether the accident arose on account of negligence of the drivers of both the vehicles or any of the two vehicles and whether there was contributory negligence on the part of Pangunni?

(2) Whether the compensation awarded to the heirs of Pangunni is liable to be enhanced?

(3) Is the insurer of the motorcycle liable to pay any part of the compensation payable to the dependants of Mohandas?

(4) Was the Tribunal justified in apportioning the liability in regard to claim of dependants of Mohandas? If not, can the entire liability be cast on the driver, owner and insurer of the bus?

(5) Is the owner of the motorcycle to be exonerated from liability in regard to claim of dependants of Mohandas on account of non-impalement of legal representatives of Pangunni? Can he be allowed to raise this plea?

(6) What is the limit of liability of the insurer of the bus?

Point No. (1)

7. The motorcycle belonging to Velunni was proceeding from south to north on the road at Cherampadam. The bus involved in this case was proceeding from north to south. It was while so that the collision took place. According to the claimants the accident took place only on account of the rash and negligent driving of the bus since the bus came along the wrong side in violation of traffic Rules. Owner and driver of the bus disclaimed any rashness or negligence on the part of the driver of the bus. They contended that bus named Babitha was proceeding from south to north and motorcycle was behind that bus. Babitha bus was taken to the extreme western side of the road to allow sufficient space for the bus involved in the accident, driver of which also took his vehicle to his extreme left, that is eastern side. The motorcyclist attempted to overtake and took the motorcycle behind that bus. Babitha bus was overtaken by the motorcycle in the middle of the road at high speed and the motorcycle collided with the bus. The only evidence in this behalf is that provided by PWs 3 and 7 and RWs 1 and 2. PW 3 is a local agriculturist. He was standing on the eastern side of the road watching the labourers working in his field on the western side of the road. It is doubtful if he could clearly watch the accident. PW 7 was a passenger in the bus involved in the accident. In examination-in-chief he stated that the bus, proceeding on the wrong side at a high speed hit the motorcycle. In cross-examination he stated that he heard a sound and then looked out. It is in evidence that when he was examined in the criminal case arising out of the accident he had to be cross-examined by the prosecution treating him hostile. In these circumstances, much store cannot be set on his evidence. The driver of the bus, examined as RW 1, deposed to his version. RW 2, a passenger in the bus, supported RW 1.

8. Exhs. A-2 and A-4 are copies of FIR, inquest report and M.V.I.'s report prepared in connection with the criminal case. Inquest report describes the scene of occurrence giving relevant particulars Tarred road has a width of five metres. Mud parts of the road on the east and west are respectively one and-half metres and two metres wide. The scene is stated to be 2.32 metres to the west of the western edge of the tarred road. In other words, the scene is more or less in the middle of the tarred road slightly to the western side. After the impact,

motorcycle and the two persons thereon were under the bus and the motorcycle was dragged southwards to a distance of two metres. This is obvious from the inquest report, which refers to a mark along a distance of two metres. It also shows that the right hind wheel of the bus was 2.32 metres east of the western side of the tarred road and right front wheel of the bus was 4.10 metres from the western edge of the tarred road. This would show that the bus stopped with its front part slightly towards the east. RW 1 stated that the bus stopped after proceeding six metres south of the scene of occurrence and to try to save the motorcyclist he moved the bus leftwards and stopped. RW 2 deposed that the motorcycle was behind Babitha bus and both buses moved towards their left sides to give space to each other and the motorcycle attempted to overtake Babitha bus and hit the other bus. The evidence and circumstances would clearly show that the impact or collision took place almost in the middle of the road. Width of the bus is 2.37 metres. Considering the width of the tarred road it cannot be said that the bus was proceeding on its wrong side. But the bus could certainly have been moved still further to the eastern side so as to avoid the motorcycle. The evidence would suggest that the bus was travelling at a considerable speed. Motorcyclist was behind Babitha bus He must certainly have been in a position to see the bus coming from the opposite direction unless he was so close to Babitha bus that he could not see it. That certainly shows lack of care and caution on his part. The position of the scene would indicate that the motorcyclist was almost in the middle of the road which shows absence of care and caution on his part. In these circumstances, we agree with the Tribunal in its finding that the accident was the result of rashness and negligence on the part of the drivers of both the vehicles. The drivers of both the vehicles are liable; so also the owner and insurer of the bus. We will deal separately with the liability of the owner and insurer of the motorcycle. Point No. (2)

9. There is no dispute about the quantum of compensation fixed in favour of the dependants of Mohandas. According to the heirs of Pangunni, compensation in regard to his death is wholly inadequate. Their claim for Rs. 100/- towards transport expenses and Rs. 50/- towards damage to clothing of the deceased was allowed. claim of Rs. 700/- for damage to Pangunni's wrist watch, Rs. 1,000/- towards mental pain and suffering of heirs and Rs. 2,000/- towards loss of consortium was disallowed. As against the claim of Rs. 96,000/- towards future economic loss, the Tribunal awarded Rs. 38,400/-. Learned Counsel for the appellant in M.F.A. No. 638 of 1983 confined his arguments to the claim in regard to loss of consortium and the claim for future economic loss.

10. It has to be noticed that while in the case of Mohandas, the Tribunal awarded Rs. 2,000/- to the widow for loss of consortium, the Tribunal declined to do so in the case of Pangunni. Learned Counsel representing the person liable to pay compensation relied on the decision in C.K. Subramonia Iyer v. T. Kunhi Kuttan Nair 1970 ACJ 110 ,to contend that no compensation can be paid for loss of consortium. In the above decision, the Supreme Court considered the principles governing assessment of damages under Sections 1A and 2 of the Fatal

Accidents Act, 1855. In paragraph 6, it is observed that in ascertaining pecuniary loss caused to the relations mentioned in Section 1A, it must be borne in mind that these damages are not to be given as solatium but are to be given with reference to a pecuniary loss. In paragraph 8, the court quoted the observations of Lord Haldane in *Taff Vale Rly. Co. v. Jenkins* (1913) AC 1, to the effect that the basis is not what has been called solatium, that is to say, damages given for injured feelings or on the ground of sentiment, but damages based on compensation for a pecuniary loss. In paragraph 13, the court observed that damages u/s 1A of the Act must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. The court was dealing with the case of parents who lost a son and, therefore, had no occasion to consider whether compensation for loss of consortium on account of injury or death to a wife is admissible in law. The above decision cannot be an authority for holding that compensation for loss of consortium is inadmissible.

11. The leading English case is the one reported in *Best v. Samuel Fox & Co. Ltd.* (1952) AC 716. The House of Lords held that a married woman whose husband is injured by negligent act or omission of the defendant has no right of action against the negligent person in respect of impairment or loss of consortium. Their Lordships were unanimous in the view that while a husband is entitled to compensation for loss of consortium on account of the injury to his wife, wife will not be so entitled in the case of injury to the husband. Lord Goddard indicated that the action which law gives to the husband for the loss of consortium to his wife is founded on the proprietary right which the husband has in the person of his wife similar to master's right regarding servant and it is an action based on proprietary right arising from the status of the husband. Lord Goddard also noticed the anomaly in the law, but took comfort in the fact that the anomaly existed for hundreds of years. According to Lord Norton of Henryton, husband's right over the person of his wife can only be abolished by statute and wife was never regarded as having any proprietary right over the husband. Same view was taken by Lord Reid. Lord Reid indicated that the husband's right included the right to wife's society as well as wife's assistance and there is no difference in quality between right to society and right to assistance and it is difficult to say where society ends and assistance begins. According to His Lordship, consortium is the name for what husband enjoys by virtue of a bundle of rights hardly capable of precise definition. Berwick, C.J. of the High Court of Australia in *Curran v. Young* 1966 ACJ 331 Australia, indicated that the supposed proprietary right of the husband in the person of the wife as a basis for the action is an anachronism and now vestigial, but for that reason right of the husband to be compensated for his loss by the tortious conduct of another is not anomalous and should not be denied or curtailed. His Lordship further observed that it is sufficient to state that the husband's claim might be regarded simply as an action in negligence, of breach of duty towards the husband since most, if not all, of the substantial damages which the husband can recover might well be

regarded as foreseeable. Our attention is also invited to a decision of the Court of Appeal in *Lawrence v. Biddle* 1967 ACJ 386 England, where it was held that the damages for loss of consortium are based on loss of servitium in the main. But even this decision does not indicate that loss of consortium cannot include any other loss.

12. It is difficult in modern times to rest any principle of law on the supposed proprietary right of the husband over the person of the wife. If the alleged right of a husband is to be conceded the court should also be prepared to concede a similar right in the wife. Fatal Accidents Act does not make any distinction between rights of husband and wife. Under the ancient common law of England, no civil action lay against a person for causing death of another though it lay for causing injuries, an anomaly which was abolished by statute. The Indian Fatal Accidents Act is almost a replica of the English statute known as Lord Campbell's Act. According to Section 1A of the Act, whenever death of a person is caused by wrongful act, neglect or default, the party who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the injured and such action shall be for the benefit of the wife, husband, parent and child, if any, of the deceased person. Death can only be caused by an injury, whatever be the nature of the injury. The word "injury" is a word of much import. Consortium is perhaps one of the most valuable rights of spouses and when such right is destroyed or impaired, ordinarily it does cause serious and substantial loss to the other spouse. In recognising this principle no distinction can be made between injury to the wife causing loss of consortium to the husband and injury to the husband causing loss of consortium to the wife. Consortium suggests partnership, association, companionship or togetherness and takes in mutual assistances also. Injury to or death of a spouse must provide cause of action to the other spouse to claim compensation for loss of consortium. We are fortified in this view by a long line of decisions of various High Courts in India *Abdulkadar Ebrahim Sura v. Kashinath Moreshwar Chandani* 1968 ACJ 78 ; *Oriental Fire and General Insurance Co. v. Chuni Lal* 1969 ACJ 237 , *State Government Insurance Office, Queens land v. Crittenden* 1970 ACJ 303 Australia; *Pijush Kanti Ghosh v. Maya Rani Chatterjee* 1971 ACJ 267 ; *Kailashwati v. Haryana State* 1974 ACJ 514 ; *K. Narayana Reddiar v. P. Venugopala Reddiar* 1976 ACJ 474 ; *C Venkatesham v. General Manager A.P.S.R.T. Corporation* 1977 ACJ 536 ; *Khodabhai Bhagwanbhai and Others Vs. Hirji Tapu and Another* ; *Harl Mohan Matadin v. Jagannath Prasad Sharma* 1982 ACJ 40 ; *Srisailam Devastanam v. Bhavani Pramamma* 1983 ACJ 580 ; *U.P. State Road, Transport Corporation v. Deepti* 1985 ACJ 691 : 1985 ACC 298; *Minor Farooque and Others Vs. Municipal Corporation of the City of Ahmedabad and Others*, *National Insurance Co. Ltd. v. Tulsi Devi* 1988 ACJ 962 : 1988 ACC 173; *Kaja Trisula Devi v. Naragani Nageswar Rao* 1988 ACJ 974 : 1987 ACC 569; *Latabai v. Rajenira* 1988 ACJ 787 ; *D. Vinoda v. B. Baswa Raju* 1988 ACJ 1072 : 1988 ACC 405; *Pandu-rang Chimaji Agale v. New India Life Insurance Co. Ltd.* 1988 ACJ 674 : 1986 ACC 75; *Sic. Naugapu Chinsya v. Bhagaban Sahoo* 1988 685 : 1988 ACC

362; and *Christian Welfare Centre v. Sebastian* 1988 ACJ 1058 : 1988 ACC 363. By and large compensation is determined by the extent of loss of services though the spouse is also entitled to compensation for loss of consortium as such. There is no precise or definite basis to estimate the compensation referable to loss of consortium. It can be fixed only at a modest amount. The claim by dependants of Pangunni is of a sum of Rs. 2,000/-. In the case of Mohandas, Tribunal awarded Rs. 2,000/-. Hence, a similar sum is awarded to dependants of Pangunni.

13. It is contended that the compensation on account of loss of economic support granted by the Tribunal is wholly inadequate. The claimants put forward a claim of Rs. 96,000/-. The Tribunal fixed the compensation due as Rs. 38,400/-. According to the claimants, Pangunni was earning Rs. 4,000/- per month and spending Rs. 500/- per month on his wife and children and adopting multiplier of 16, Rs. 96,000/- should be awarded. The Tribunal fixed the monthly contribution at Rs. 200/- per month and adopting 16 as multiplier, arrived at the figure of Rs. 38,400/-. The evidence shows that for the year 1981-82, Pangunni was the successful bidder of a toddy shop, the bid amount being Rs. 56,000/-. This is seen from Exh. A-3 and the evidence of the Excise Inspector, PW 5. Pangunni's wife examined as PW 1 deposed that after her husband's death, she conducted the shop till the end of the term with the help of a relation, PW 6. PW 6 supported her evidence and stated that there was daily profit of Rs. 130/- and he was being paid Rs. 600/- per month. As rightly pointed out by the Tribunal, claim of such a high profit is not supported by documentary or other reliable evidence. There is no evidence to show that Pangunni had any other regular income. The contract was only for one year. Taking all the facts and circumstances into consideration, we agree with the Tribunal that the monthly contribution by the deceased to his dependants should be estimated at Rs. 200/-. The multiplier adopted also appears to be reasonable. On the whole, we agree with the quantum of compensation fixed by the Tribunal. On the finding that Pangunni was guilty of contributory negligence to the extent of 50 per cent, his legal representatives were awarded only half the amount. We have sustained the finding of the Tribunal regarding contributory negligence. M.F.A. 638 of 1983 has to be allowed to the extent of increasing the compensation determined from Rs. 38,550/- to Rs. 40,550/- and the compensation payable to the dependants of Pangunni by the driver, owner and insurer of the bus from Rs. 19,275/- to Rs. 20,275/-.

Point No (5).

14. We now turn to M.F.A. No. 601 of 1983, filed by Velunni, owner of the motorcycle. We have already sustained the finding of the Tribunal that the driver of the motorcycle was guilty of contributory negligence. This means that so far as third party is concerned it was a case of composite negligence by the drivers of the two vehicles. The Tribunal fixed the compensation payable to dependants of Mohandas at Rs. 41,480/- and directed the owner of the motorcycle to pay half the amount. Learned Counsel appearing for the owner of the motorcycle

contended that the liability of the owner is vicarious depending entirely on the driver's liability, driver's legal representatives should have been impleaded and in their absence the liability of the driver cannot be determined and the vicarious liability of the owner cannot be found. Hence, it is argued that the liability fixed on the owner should be set aside. Learned Counsel representing the legal representatives of Mohandas rebutted this contention and argued that the driver or his legal representatives are not necessary parties as the liability under the relevant provisions of the Motor Vehicles Act is basically that of the owner, placing reliance on the decisions in *K. Gopalakrishnan v. Sankara Narayanan* 1969 ACJ 34 ; *Bakshi Amrik Singh v. Union of India* 1974 ACJ 105 and *State of Tamil Nadu v. P.K. Anandan* 1982 ACJ 358 . However, we do not think it necessary to express our views on this controversy. The owner of the motorcycle who was party in both the cases before the Tribunal remained absent and *ex parte*. He did not raise a contention that he had no liability either on account of the non-impleadment of the legal representatives of the driver or for any other reason. If he had raised a plea of non-joinder, claimants would have had an opportunity to cure the defect, if any, of non-joinder. The plea is not taken in the appeal memorandum either. We do not think at this distance of time and at this stage the owner of the motorcycle should be permitted to raise this plea.

Point No. (3)

15. The Tribunal held that the insurer of the motorcycle is not liable since Mohandas was a gratuitous passenger inasmuch as he was riding on the pillion of the motorcycle. Correctness of this finding is canvassed by learned Counsel representing the legal representatives of Mohandas and the appellant. The insurance policy is Exh. B-3. It shows that the policy was strictly an Act policy. The requirements of policies and limits of liability are laid down in Section 95 of the Motor Vehicles Act. Liability which is to be insured against is indicated in Section 95 (1)(b)(i) and (ii). Clause (i) relates to death or bodily injury to any person or damage to any property of a third party and clause (ii) relates to death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. The proviso indicates the cases, which are not required to be covered statutorily by the policy. Proviso (i) relates to death of an employee and that is not attracted in this case. Proviso (ii) takes in liability in respect of death or bodily injury to passengers except where the vehicle is one in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. It is nobody's case that this motorcycle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Hence proviso (ii) is attracted to the motorcycle involved in this case and it must follow that the Act policy in this case is not required to cover liability in respect of the pillion rider. Exh. B-3 policy is only an Act policy and hence insurer of the motorcycle has no liability in regard to the death of Mohandas. We are fortified in this view by the decisions in *Emjay Insurance Co. Ltd. v. PS. William Sic. Unique Motor & Genl. Ins. Co. Ltd. v. Krishna Kishori* 1968 ACJ 318 ; *K. Gopalakrishnan v. Sankara*

Point No. (4)

16. Learned Counsel representing the legal representative of Mohardas has arised a new contention, namely, the Tribunal was in error in apportioning the liability in regard to his clients as between the owner of the motorcycle on the one hand and the driver, owner and insurer of the stage carriage bus on the other, and that the Tribunal should have held all of them jointly and severally liable. The finding is that the accident took place on account of the negligence of the drivers of both the vehicles. In regard to the driver of the motorcycle, it was a case of contributory negligence. In regard to others, it was a case of composite negligence. In Law of Torts by Ratanlal and Dhirajlal, 21st edition at page 171, it is stated:

Joint tortfeasors are jointly and severally liable for the damages caused from the tort. They may be sued jointly or separately. If sued jointly damages may be levied from all or either. Each is responsible for the injury sustained by his common act.

In a suit for composite negligence plaintiff is not entitled to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damages, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover full amount of damages from any of the defendants.

17. In the case of composite negligence there is joint and separate liability and it is open to the claimants to claim damages from any or all of the joint tortfeasors. In such a case the Tribunal has no authority to apportion the compensation between the tortfeasors though in the case of contributory negligence Tribunal has to apportion the same to determine to what extent the person who contributed has to bear the burden.

18. It is contended by learned Counsel appearing for the insurer of the stage carriage bus that legal representatives of Mohandas have not filed any appeal or cross-objection against the apportionment made by the Tribunal. In M.F.A. No. 601 of 1983, the owner of the motorcycle has raised a contention that the Tribunal ought to have held the driver, owner and the insurer of the stage carriage bus liable for the entire compensation. Therefore, there should be no difficulty in correcting the error committed by the Tribunal.

19. The Motor Vehicles Act does not prescribe the procedure to be followed by the Tribunal. Section 110 indicates that the purpose of constituting Tribunal is to adjudicate upon the claims for compensation. Section 110-B states that the Tribunal shall give the parties an opportunity of being heard, hold an enquiry into the claim or each of the claims and may make an award. Sub-section (1) of

Section 110-C states that in holding any inquiry the Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Sub-section (2) indicates the areas in which the Tribunal shall have powers of a civil Court. The Tribunal is governed by the Kerala Motor Accidents claims Tribunal Rules, 1977. The Rules provide guidelines for the procedure to be adopted by the Tribunal. Rule 21 states that the provisions of the CPC enumerated therein shall apply, so far as may be to the proceedings before the Tribunal. The Tribunal is not a court though it performs function similar to a court. The Tribunal is free to follow any procedure which it considers expedient in the interest of justice so long as the procedure is not inconsistent with the rules of natural justice and does not contravene the provisions of the Act or the Rules, In order to do justice for which it has been constituted, the Tribunal would have power to apply the principles underlined in the provisions of the Code of Civil Procedure, even though not rendered specifically applicable. See *Jai Singh v. N.A. Subramaniam* 1983 ACJ 1 .

20. Section 110-D provides that any person aggrieved by an award of the Tribunal may prefer an appeal to the High Court subject to the provisions of Sub-section (2). Powers of the High Court in dealing with the appeal are not enumerated or restricted in any manner. Power is given to the High Court as such which has its own rules of procedure. The High Court when dealing with a regular appeal against a decree of a civil court can exercise the powers dealt with in the Code of Civil Procedure. The law is that where a statute provides right of appeal to an established court without anything indicating the manner in which appeal is to be disposed of, the right of appeal will carry with it the applicability of the rules of practice and procedure of that court with regard to its power to entertain an appeal filed, and its disposal, manner of exercise of that jurisdiction and the incidents thereof. See *Srisailam Devastanam v. Bhavani Pramtamma* 1983 ACJ 580 and *Sudhakaran v. Varghese* 1983 ACJ 395 . In *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, , the court observed that where a statute gives a right of appeal from an award of the Tribunal or a court to the High Court without any limitation thereof, the appeal will be regulated by the provisions and procedures obtaining in the High Court. Therefore, the High Court in exercising its appellate power can certainly invoke the principles in the provisions in Order XL1 of the Code of Civil Procedure.

21. Rule 33 of Order XLI, CPC confers a special power on the appellate court. The appellate court shall have the 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. This provision has been interpreted by the Supreme Court in *Pannalal Vs. State Bombay and Others*, . The Supreme Court observed:

Even a bare reading of Order XLI, Rule 33 is sufficient to convince anyone 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.

22. The court further said that it was not prepared to agree that if a party who could have filed a cross-objection under Order XLI, Rule 22 of the CPC has not done so, the appellate court can under no circumstance give him relief under the provisions of the Code. Of course, the appellate court, as pointed out in *State of Kerala v. K.K. Padmavathi* 1983 ACJ 707, should be cautious in the exercise of power. See also *V.M. Mathew v. Elisa* 1988 (1) KLT 310.

23. The apportionment of the compensation in the case of legal representatives of Mohandas is clearly contrary to law. The Tribunal should have held that it is a case of joint and several liability. We are of opinion that in the interest of justice we should rectify the error committed even without an appeal or cross-objection. We have already indicated that a contention that driver, owner and the insurer of the stage carriage bus are liable for the entire compensation has been taken in M.F.A. No. 601 of 1983. We, therefore, set aside the direction of the Tribunal that the compensation due to the legal representatives of Mohandas is payable in moieties by the owner of the motorcycle on the one hand and by the driver, owner and insurer of the stage carriage bus on the other. There shall be a decree jointly and severally against all these persons. Point No. (6)

24. The last point for consideration relates to the limit of the liability of the insurer of the stage carriage bus. This naturally turns on the provisions of Section 95 read with Section 94 of the Motor Vehicles Act. Sub-section (1) of Section 94 states that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter. The requirements of the Chapter are laid down in Sub-section (1) of Section 95. There is no controversy that in regard to a stage carriage bus it is necessary to insure against any liability which may be incurred by the owner in respect of the death of or bodily injury to any person or damage to any property of a third party or death of or bodily injury to any passenger who is carried for hire or reward. Limits of liability were laid down in Sub-section (2) of Section 95. For the purpose of this case it is Clause (b) of Sub-section (2.) of Section 95, which is relevant. The provision reads thus:

Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely

(a) xx xx xx (b) Where the vehicle is a vehicle in which passengers are carried

for hire or reward or by reason of or in pursuance of a contract of employment.

(i) In respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) In respect of passengers, a limit of fifteen thousand rupees for each individual passenger.

(Emphasis added)

25. In the case of a stage carriage bus involved in a motor vehicle accident there could be liability in regard to passengers carried for hire or third parties. We are concerned in this case with the liability to third parties. Sub-section (2) indicates the liability incurred in respect of any one accident. In the case of persons other than passengers carried for hire or reward, namely, third parties, the limit is fifty thousand rupees in all. In respect of passengers the limit is rupees fifteen thousand for each individual passenger. It is argued that in regard to third parties the total liability of the insurer cannot exceed Rs. 50,000/- in view of the words "in all" used while mentioning Rs. 50,000/-. But this contention ignores the earlier provision in Sub-section (2) relating to the liability incurred in respect of any one accident. There is a similar provision in Clause (a) of Sub-section (2) regarding goods vehicle. It prescribes limit of Rs. 50,000/- "in all". The limit has undergone changes by amendments. The Supreme Court had occasion to consider the words used, namely, "any one accident" in the main provision of Sub-section (1) and the monetary limit expressed as "in all" in Clause (a) in the decision in *Motor owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi* 1981 ACJ 507. The Supreme Court considered the legislative history of the provisions and reconciling the apparently contradictory expressions "any one accident" and "in all", held that the limit prescribed in Clause (a) is the limit in regard to each person. That is because from the point of view of the injured any one accident means accident to any one. The court, therefore, held that the limit prescribed in Clause (a) is the limit in regard to each injured person. The provision in Sub-clause (i) of Clause (b) of Sub-section (2) of Section 95 is in pari materia with the clause in Sub-clause (a) of Sub-section (2) since both the provisions use the words "in all" after stipulating the maximum limit in terms of rupees. The principle laid down by the Supreme Court in the above case will squarely apply to Clause (b)(i) of Sub-section (2). We, therefore, hold that in regard to a stage carriage bus and in respect of persons other than persons carried for hire or reward the limit of insurance is of Rs. 50,000/- for each injured person. Of course, in regard to passengers it is Sub-clause (ii), which applies, and that Sub-clause prescribes limit of Rs. 15,000/- for each individual passenger and the principle we have indicated cannot apply to Sub-clause (ii).

26. In the result, we allow both the appeals in part. We modify the judgment and awards of the Tribunal in the following manner:

(i) The compensation in regard to death of Pangunni is fixed at Rs. 40,550/-. The driver, owner and insurer of the stage carriage bus KLP 7933 shall pay half this

amount, Rs. 20,275/- to the petitioners in MAC. No 239 of 1981. The direction of the Tribunal regarding interest and costs shall stand.

(ii) The compensation of Rs. 41,480/- with interest and costs due to the legal representatives of Mohandas in M.A.C. No. 242 of 1981 is not to be apportioned and shall be paid jointly and severally by Velunni, the owner of the motorcycle KLR 1736 and the driver, owner and insurer of the stage carriage bus KLP 7933 jointly and severally.

(iii) Since in regard to each of the deceased persons compensation payable is less than Rs. 50,000/-, compensation awarded in both the cases shall be paid by the insurer of the stage carriage bus.

27. Parties shall bear their costs in the appeal.