

(2012) 04 DEL CK 0061

In the Delhi High Court

Case No : Mac. App. No. 595 of 2007

National Insurance Co. Ltd.

APPELLANT

Vs

Komal and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 41 Rule 14, Order 41 Rule 22, Order 41 Rule 23, Order 41 Rule 33
Constitution of India, 1950 — Article 141
Interest Act, 1978 — Section 3
Motor Vehicles Act, 1988 — Section 166, 168, 171, 173

Citation : (2012) 04 DEL CK 0061

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Pradeep Gaur, Mr. Amit Gaur and Mr. Shashank Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs. 5,84,000/- has been awarded to claimants/respondents No.1 to 4. The appellant seeks reduction of the award amount. The accident dated 4th July, 2005 resulted in the death of Amit Dhingra. The deceased was survived by his widow, two minor children and father who filed the claim petition before the Claims Tribunal. The deceased was aged 23 years at the time of the accident and was running a tent house business. In the absence of documentary proof of income, the Claims Tribunal assumed the income of the deceased to be Rs. 5,000/- per month, deducted 1/3rd towards his personal expenses and applied the multiplier of 17 to compute the loss of dependency at Rs. 6,80,000/-. The Claims Tribunal deducted 20% towards the contributory negligence. The Claims Tribunal further awarded Rs. 10,000/- towards the funeral expenses, Rs. 10,000/- towards transportation of dead body, Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards loss of consortium. The total compensation

awarded is Rs. 5,84,000/-.

2. The learned counsel for the appellant has urged following grounds at the time of hearing of this appeal:-

(i) There is no basis for assuming the income of the deceased to be Rs. 5,000/- per month and the Claims Tribunal should have taken the minimum wages of Rs. 3,468/- per month into consideration. The increase in minimum wages cannot be taken into consideration.

(ii) The multiplier be reduced from 17 to 13.

3. In *Association of Victims of Uphaar Tragedy v. UOI* 104 (2003) DLT 234 (DB), the Division Bench of this Court applied the multiplier method and the Second Schedule of the Motor Vehicles Act, 1988 to compute the compensation payable to the victims of the Uphaar Tragedy. The Division Bench held that the victims of the fire incident belonged to reasonably well-placed families and presumed that the average income of the victims above age of 20 years to be not less than Rs. 15,000/- per month, 1/3rd was deducted towards the personal expenses and the multiplier of 15 was applied to compute the compensation as Rs. 18,00,000/-. With respect to the children, the Division Bench awarded compensation of Rs. 15,00,000/-. The Division Bench also awarded interest @ 9% per annum. The findings of the Division Bench of this Court are reproduced hereunder :-

109. The Supreme Court in *G.M. Kerala State Road Transport Corporation Trivandrum v. Susamma Thomas (Mrs) and Ors.* (supra), has held that the multiplier method of compensation was the logically sound and well established method for determining the compensation. It was held that a departure might be justified only in rare and extra ordinary circumstances and very exceptional cases. It has also been held by the Supreme Court in *Sarla Dixit v. Balwant Yadav*, etc. that unless there were special reasons, the Court should not deviate from the schedule of the Motor Vehicles Act in arriving at just compensation payable to the victims of the road accident. The principles laid down in the said judgment can also be applied in the present case. Though the actual income of none of the deceased is on record but having regard to the fact that all those persons who had either died or were injured were sitting in the balcony where the rate of admission was Rs.50/- per seat, it can safely be concluded that the victims of the fire incident belong to reasonably well placed families and this Court will, therefore, not be in error in holding that the average income of each one of the victims above the age of 20 years was not less than Rs.15,000/- per month. Deducting 1/3rd for the personal expenses of the deceased, the dependency would not be less than Rs.10,000/- per month or say Rs.1,20,000/- per annum. Applying the multiplier 15 prescribed in the second schedule to the Motor Vehicles Act, in our view, relatives of each one of the victims would be entitled to compensation of Rs.18,00,000/- (Rupees Eighteen Lacs only). Insofar as the children mentioned in Annexure-B are concerned, in our view, the relatives of each one of the said child would be entitled to a lumpsum

compensation of Rs.15,00,000/- (Rupees Fifteen Lacs only). We also direct that the relatives of the deceased as well as the persons injured in fire will also be entitled to interest at the rate of 9% per annum from the date of filing of the petition on the amount of compensation assessed by us. The respondents, above-named, are granted two months time to pay compensation with interest and till such time the compensation is paid, respondents 11 and 12 will have no right to transfer, assign or create third party rights in the cinema building. In case of non-payment of compensation within the period fixed by us, the amount can be recovered by execution as a decree by sale of the cinema building or in any other manner in accordance with law.

110. We have arrived at the compensation on the basis of our estimation of the income of the victims of the unfortunate incident as we had no means to know their exact income. We, therefore, leave it open to the injured as well as relatives of the deceased to claim compensation based on the exact income of the victims by filing a suit or any other proceeding as may be permissible in law and if a suit or any other proceedings claiming such compensation are initiated within one year of this judgment, the same shall not be dismissed only on the ground of limitation. The amount directed by us to be payable under this judgment shall be adjusted against the amount which may ultimately be granted in favor of such persons in the proceedings mentioned above.

(Emphasis Supplied)

4. The Municipal Corporation of Delhi challenged the aforesaid judgment of the Division Bench before the Supreme Court. The Supreme Court in *Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others*, , reduced the compensation from Rs. 18 lakhs to Rs. 10 lakhs in respect of victims aged more than 20 years and from Rs. 15 lakhs to Rs. 7.5 lakhs in respect of the victims aged less than 20 years. The findings of the Supreme Court are reproduced hereunder :-

38. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs. 15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs. 15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs. 18 lakhs in the case of persons above the age of 20 years and Rs. 15 lakhs for persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as

the determinative factor. The reliance upon Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others,) in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs. 1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively.

39. Normally we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice. The calamity resulted in the death of 59 persons and injury to 103 persons. The matter related to a ghastly fire incident of 1997. The victims association has been fighting the cause of victims for more than 14 years. If at this stage, we require the victims to individually approach the civil court and claim compensation, it will cause hardship, apart from involving huge delay, as the matter will be fought in a hierarchy of courts. The incident is not disputed. The names and identity of the 59 persons who died and 103 persons who were injured are available and is not disputed. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore, just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-third of which becomes the annual loss of dependency the age of the deceased which will furnish the multiplier in terms of Sarla Verma. The annual loss of dependency multiplied by the multiplier will give the compensation.

Conclusions

46. In view of the foregoing, we dispose of the appeals as follows:

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(v) CA No. 6748 of 2004 is allowed in part and the judgment of the High Court is modified as under:

(a) The compensation awarded by the High Court in the case of death is reduced from Rs. 18 lacs to Rs. 10 lacs (in the case of those aged more than 20 years) and Rs. 15 lacs to Rs. 7.5 lacs (in the case of those aged 20 years and less). The said sum is payable to legal representatives of the deceased to be determined by a brief and summary enquiry by the Registrar General (or nominee of learned Chief Justice/Acting Chief Justice of the Delhi High Court).

(b) The compensation of Rs. One lakh awarded by the High Court in the case of each of the 103 injured persons is affirmed.

(c) The interest awarded from the date of the writ petition on the aforesaid sums at the rate of 9% per annum is affirmed.

(d) If the legal representatives of any deceased victim are not satisfied with the compensation awarded, they are permitted to file an application for compensation with supporting documentary proof (to show the age and the income), before the Registrar General, Delhi High Court. If such an application is filed within three months, it shall not be rejected on the ground of delay. The Registrar General or such other Member of Higher Judiciary nominated by the learned Chief Justice/Acting Chief Justice of the High Court shall decide those applications in accordance with paras above and place the matter before the Division Bench of the Delhi High Court for consequential formal orders determining the final compensation payable to them.

(Emphasis Supplied)

5. In *MCD v. Association of Victims of Uphaar Tragedy* (supra), the Supreme Court has awarded Rs. 10 lakhs to the victims aged more than 20 years and Rs. 7.5 lakhs to the victims aged less than 20 years. In that case, the multiplier of 15 was applied and 1/3rd was deducted towards the personal expenses which means that the Court has assumed the income of the victims aged more than 20 years to be Rs. 8,333/- per month and that of victims aged less than 20 years to be Rs. 6,249/- per month. The calculation of the compensation would be as under :-

For victims aged more than 20 years:-

(Rs. 8,333/- less 1/3rd) x 12 x 15 = Rs. 10 lakhs.

For victims aged less than 20 years:-

(Rs. 6249/- less 1/3rd) x 15 = Rs. 7.5 lakhs.

6. It is relevant to note that the Uphaar Tragedy took place on 13th June, 1997 and the minimum wages at the relevant time ranged from Rs. 1677/- for unskilled workers to Rs. 2437/- for graduates. It is thus clear that although there

was no proof of the income of the victims, the Supreme Court did not find it proper to apply the minimum wages.

7. The deceased was engaged in the tent house business and, therefore, the income assumed of Rs. 5,000/- by the Claims Tribunal does not warrant any interference in view of the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy* (supra). The minimum wages cannot be taken into consideration in respect of self-employed persons.

8. The Claims Tribunal has applied the multiplier of 17 and deducted 1/3rd towards the personal expenses of the deceased. However, the appropriate multiplier at the age of 23 is 18 and appropriate deduction towards personal expenses of the deceased is 1/4th in terms of the judgment of the Supreme Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, . Following the aforesaid judgment, the multiplier is enhanced from 17 to 18 and the personal expenses are reduced from 1/3rd to 1/4th.

9. Taking the income of the deceased as Rs. 5,000/- per month, deducting 1/4th towards the personal expenses of the deceased and applying the multiplier of 18, the loss of dependency is computed to be Rs. 8,10,000/- (Rs. 5,000 x 12 x 3/4 x 18). The legal heirs of the deceased are entitled to total compensation of Rs. 6,88,000/- as per the break-up given hereinbelow:-

(i)

Loss of dependency

Rs. 8,10,000/-

(Less):

Contributory negligence (20%)

Rs. 1,62,000/-

(ii)

Transportation of dead body

Rs. 10,000/-

(iii)

Loss of estate

Rs. 10,000/-

(iv)

Funeral Expenses

Rs. 10,000/-

(v)

Loss of consortium

Rs. 10,000/-

Total

Rs. 6,88,000/-

10. The learned counsel for the appellant has submitted that the award amount cannot be enhanced as the claimants have not filed the cross-objections. The submission of the learned counsel for the appellant is contrary to the law. It is well settled that Order XLI Rule 33 of the CPC empowers the Appellate Court to grant relief to a person who has neither appealed nor filed any cross-objections. The object of this provision is to do complete justice between the parties. Order XLI Rule 33 of the CPC has been discussed time and again by the Supreme Court in the following cases:-

(i) Pannalal Vs. State Bombay and Others, .

(ii) Rameshwar Prasad v. M/s Shyam Beharilal Jagannath, (1964) 3 SCR 549.

(iii) Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others,

(iv) Giasi Ram and Others Vs. Ramjilal and Others,

(v) Harihar Prasad Singh v. Balmiki Prasad Singh, (1975) 2 SCR 932. (vi) Mahant Dhangir v. Madan Mohan, (1988) 1 SCR 679.

(vii) State of Punjab v. Bakshish Singh, (1999) 8 SCC 222.

11. Section 168 of the Motor Vehicles Act, 1988 empowers the Court to award such compensation as appears to be just which has been interpreted to mean just in accordance with law and it can be more than the amount claimed by the claimants. The provisions of the Motor Vehicles Act, 1988 are clearly a beneficial legislation and hence should be interpreted in a way to enable the Court to assess just compensation. The scope of Order XLI Rule 33 of the CPC and the power of the High Court to enhance the award amount in accident cases in the absence of cross-objections has been discussed by the Supreme Court in Nagappa Vs. Gurudayal Singh and Others, where the Apex Court has held that the Court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases wherefrom the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the Court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections.

12. The scope of Order XLI Rule 33 of the CPC in motor accident cases has been exhaustively discussed in the following three High Court judgments:-

(i) In National Insurance Company v. Rani, 2006 ACJ 1224, the Division Bench of Madras High Court held as under:-

15. What remains to be considered is, whether the Claimants are entitled for more compensation and if the answer is in the affirmative, whether enhancement can be ordered invoking Order XLI Rule 33, since the Claimants have not filed any appeal or Cross Objection.

16. At the risk of repetition it may be stated that the contention put forward is that the Court is duty bound to fix the just compensation. The fact that the Claimants have not filed any cross objection would not stand in the way and further the Court can by invoking the powers conferred under Order XLI Rule 33 of CPC, if satisfied, can enhance the compensation and call upon the Claimants to pay necessary Court fee. In that context, the learned counsel also submitted, when the Supreme Court has ruled that even at the appellate Stage original petition can be amended claiming enhanced compensation, the Court enhancing compensation in the instant case, if satisfied, invoking powers under Order XLI, Rule 33 will certainly be in order.

17. Per contra, the learned counsel appearing for the Insurance Company so also the owner of the lorry contended that the powers conferred under Order XLI, Rule 33 can be invoked only in exceptional circumstances and the Claimants having not filed any cross objection for several years, which would only show that they are satisfied with the award, cannot request the Court to invoke its powers, which has to be done only in rare cases and subject to certain limitations.

18. Section 168 of the Motor Vehicles Act, 1988 is to the effect that on receipt of application for compensation made u/s 166, the Tribunal shall after giving notice and hearing all the parties, hold an enquiry and make an award, which appears to it to be just. This section corresponds to Section 110-B of the Motor Vehicles Act, 1939. The Tribunal while computing compensation u/s 168 of 1988 Act, has a wide discretion than what it had under the Fatal Accidents Act of 1855. The provisions of 1988 Act are clearly beneficiary legislation and hence to be interpreted in a way which confers benefit or usurp benefits.

23. With reference to C.M.A.150 of 1997, the Claimants are wife and two minor children. The deceased was at the relevant time aged about 27 years old and he was getting an income of Rs.1,200/- per month. After deducting 1/3rd, if the remaining amount of Rs.800/- is multiplied by 12, the yearly contribution comes to Rs.9,600/-. If this is multiplied by 18, a figure of Rs.1,72,800/- can be arrived. With this, if a sum of Rs.20,000/- towards love and affection, another sum of Rs.10,000/- towards loss of consortium and Rs.5,000/- for funeral expenses are added we can arrive at a figure of Rs.2,07,800/-, which in our opinion is the just compensation payable to the Claimants. Whereas, the Tribunal has fixed only a sum of Rs.1,32,200/-.

24. In C.M.A.No.151 of 1997, the first respondent/Claimant has sustained two fractures on both the legs and the extent of disability has been fixed at 25%. The

Doctor, who treated the Claimant has also deposed before the Court that the length of the left leg is shortened by 2 Cms. and there is also restriction in the movement of both the ankles and it would not be possible for him to sit on the floor. He has also testified before the Court that the victim would not be able to stand for a long. In these peculiar facts and circumstances, we are of the view that the victim must be awarded at least Rs.35,000/- towards permanent partial disability. Apart from this, he must be given another Rs.10,000/- towards pain and sufferings since he has undergone surgery and another Rs.10,000/- towards medical expenses, extra nourishment and transportation charges. Thus in all, Rs.55,000/- would be the just and proper compensation for the claimant Shanmugasundaram in C.M.A.No.151 of 1997, whereas the Tribunal has awarded only a sum of Rs.41,800/-.

25. But the question arises whether in the absence of cross objection, this Court can invoke Order XLI, Rule 33 of CPC and enhance the compensation and call upon the Claimants to pay necessary Court fee.

26. Order XLI, Rule 33 of CPC reads as under:-

O.XLI, R.33 - Power of Court of Appeal- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross suits or where two or more decrees are, passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order u/s 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.

27. (a) In (1964) 3 SCR 549, Rameshwar Prasad and others v. M/s Shyam Beharilal Jagannath and others, a bench consisting of three judges of Supreme Court, pointed out the scope of Order XLI, Rule 33, in the following terms:

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 in so far 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 wide discretion to pass such decrees and Orders as the interest 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)

(b) The next ruling that can be referred to is reported in (1965) 3 SCR 550 (Nirmala Bdlā Ghose and another v. Balai Chand Ghose and another). Here again, a Bench consisting of three Judges of Supreme Court pointed out that though the terms employed are wide, the same have to be applied with discretion and to cases where interference in favour of the appellant necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties. The Court in that case observed as under,

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 O.41, Rule 33 may properly be invoked. The rule however does not confer an unrestricted right to re-open decrees which have become final merely because the appellate Court does not agree with the opinion of the Court appealed from.

(emphasis supplied)

What has to be noted is that the Supreme Court made it clear that the rule does not confer an unrestricted right to re-open decrees, which have become final.

(c) Then we have the ruling reported in Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, where the Court pointed out that a party who is aggrieved by a decree, to escape from its operation, file an appeal and where he fails to do so, no relief should ordinarily be given under O.XLI, Rule 33. Of course, the Court pointed out three exceptions by way of illustrations. Let us proceed to quote the relevant portion, which is as under,

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.

(emphasis supplied)

(d) Then we have the ruling reported in Mahant Dhangir and Another Vs. Madan Mohan and Others, In that decision, the Court took the view that the rule itself is liberal enough and that to invoke the said rule, only two requirements are to be satisfied. Firstly, the parties before the lower court should be there before the appellate Court and secondly, the question raised must properly arise out of judgment of the lower Court. In paragraph 12 of the said Judgment, the

Supreme Court has referred the ruling reported in (1964) 1 SCR 980 (Panna Lal v. State of Bombay).

It has to be noted that the rulings of the Supreme Court reported in (1964) 3 SCR 549; (1965) 3 SCR 550; and Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, were not brought to the notice of the Court.

(e) The next ruling is reported in The State of Punjab and Others Vs. Bakshish Singh, Paragraphs 8 and 9 are relevant, which we quote hereunder in extenso.

8. This provision gives very wide power to the appellate court to do complete justice between the parties and enables it to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed any appeal or cross-objections.

9. The discretion, however, has to be exercised with care and caution and that too in rare cases where there have been inconsistent findings and an order or decree has been passed which is wholly uncalled for in the circumstances of the case. The appellate court cannot, in the garb of exercising power under Order XLI Rule 33, enlarge the scope of the appeal. Whether this power would be exercised or not would depend upon the nature and facts of each case.

(emphasis supplied)

Here again, it has to be noted that such a power must be exercised in rare cases where there have been inconsistent findings and an order or decree has been passed which is wholly uncalled for.

(f) Finally we have a very recent judgment to be mentioned, which is reported in 2003 (3) Law Weekly 721 (Banarsi and others. v. Ram Phal). The Supreme Court, after considering various rulings referred by us above, so also some more rulings, has laid down the law as under;

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 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 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 in discretion 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 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 or 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 O.41.

(emphasis supplied)

It has to be noted that the Supreme Court considered the ruling reported in (1964) 1 SCR 980 (cited supra). In fact in that ruling itself the Supreme Court held that the facts of that case was similar to the illustrations given in the code.

28. Let us take an example. A person dies in a road accident, leaving a minor son and an unmarried daughter of 18 years. A claim is made for Rs.6,00,000/- under the Motor Vehicles Act. The Tribunal awards Rs.2,00,000/-, to be shared among the claimants equally. The respondents in the O.P. files an appeal, questioning the award of Rs.2,00,000/-. The unmarried daughter alone files a cross objection. The Court comes to the conclusion that the just compensation has to be fixed at Rs.4,00,000/-, in which case the Court, even though the minor son represented by the next friend has not filed any cross objection, can invoke Order-41 Rule-33, holding that the minor son will also be entitled for the enhanced compensation ie., Rs.1,00,000/-.

29. Coming to the Land Acquisition Act, take a case where a joint family consisting of father and two sons own three acres of land and the same is acquired by the Government and the Reference Court fixes the compensation payable at Rs.3,00,000/-, obviously to be shared among them in the ratio 1:1:1. Questioning this, the State files an appeal. The father and one son alone file cross objection but not the other son. The High Court, in appeal, comes to the conclusion that the value of the land has to be fixed at Rs.4,50,000/-. In such a case, even though one son has not filed cross objection, the Court can, invoking

Order-41 Rule-33, hold that he will also be entitled for the enhanced compensation.

30. It has to be noted that in both the above cases, invoking Order-41 Rule-33 will not be inconsistent with the findings of the appellate court and that further this will avoid inequality in the relief granted to similarly placed parties.

31. Learned counsel appearing for the claimants would contend that a learned single Judge of this Court in *Managing Director, Thanthai Periyar Transport Corporation, Villupuram v. Sundari Ammal and four others*, (1999) 3 MLJ 147 has considered various rulings including the one reported in *The State of Punjab and Others Vs. Bakshish Singh*, and has held that the Court has got wide power to do complete justice between the parties and by invoking Order-41 Rule-33 CPC., Court can award enhanced compensation even without cross objection.

32. We may point out that the learned single Judge, though referred to the ruling reported in *The State of Punjab and Others Vs. Bakshish Singh*, , has not rather noticed that in para No.9 of the said Ruling, the Supreme Court has pointed out as to what it meant by rare cases ie., where there have been inconsistent findings and an order or decree has been passed which is wholly uncalled for in the circumstances of the case. Hence, we do not find any substance in the submission made by the learned counsel for the claimants.

33. The learned counsel appearing for the insured would draw the attention of this Court to the ruling reported in (2003) 3 SCC 274 (*Nagappa v. Gurudayal Singh and others*) where the Supreme Court has ruled that "the Court is required to determine the just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases where from the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award" and submits that the said ruling would empower the Court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross objection. The counsel would further contend that the ruling reported in AIR 2003 SCW 1494 (*Banarsi and others. v. Ram Phal*) would not stand in the way for two reasons, (1) the ruling in *Nagappa's* case is by a three Judge Bench and (2) the subsequent ruling by two judges Bench in *Banarsi's* case has not considered the ruling in *Nagappa's* case.

34. All that the Supreme Court held in *Nagappa's* case is that the Tribunal or the Court can award more compensation than the one that has been claimed in appropriate cases. In *Banarsi's* case, the Supreme Court ruled that the Court can exercise its powers under Order 41 Rule 33 of CPC and the same is subject to at least three limitations. The Court also pointed out that the same has to be consistent with the findings of the appellate Court and to be invoked to set right the neglected among similarly placed persons.

35. The legal position can be summed up as under:-

(i) The power conferred under Order XLI Rule-33 to the Appellate Court is a very wide power to do complete justice, but however, discretion to use such power is to be exercised judiciously with care and caution and only in rare cases.

(ii) The nature of power conferred under Order XLI Rule 33 has been explained by the Supreme Court in the rulings reported in 2003 (3) Law Weekly 721 and The State of Punjab and Others Vs. Bakshish Singh, The provision confers power of widest amplitude on the appellate Court so as to do complete justice between the parties. 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. 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. The Court can invoke such power provided it is consistent with the findings arrived at by the appellate court and that the same would remove the inconsistencies, inequities or inequalities in reliefs granted to similarly placed parties.

(ii) In Oriental Fire And General Insurance Co. Ltd. v. Amarsing Pratapsing Sikliker, I (1993) ACC 627, the Division Bench of Gujarat High held as under:-

15. Unfortunately, in a case where the claimant is awarded an amount of Rs. 1,00,000/- interest only at the rate of 6% per annum from the date of the application till realisation was awarded from the opponents. Cross-objections are not filed. In view of the peculiar facts and circumstances, we are of the opinion that the powers of this court under Order 41, Rule 33 of the CPC ("Code" for short) should be exercised in absence of cross-objections so as to enhance the rate of interest. The learned counsel for the appellant has contended that this is not a fit case wherein this court should exercise its discretion to enhance the rate of interest from 6% per annum on the amount of compensation. Thus, it is submitted that this is not a fit case where the Tribunal has failed to exercise the discretion for award of interest. In other words, it is contended that mere award of lesser rate of interest cannot be said to be a sufficient ground so as to call for the exercise of powers of this court under Order 41, Rule 33 of the Code. This submission is seriously controverted by the learned counsel for the claimant.

17. It becomes very clear from the aforesaid provisions that the appellate Court is empowered to grant adequate relief so as to do substantial justice between the parties even in absence of cross-objections or appeal. Considering the scope of this rule and the factual scenario emerging from the evidence on record, we are of the opinion that the rate of interest is required to be upwardly revised even in absence of cross-objections or appeal at the instance of the original claimant, while exercising the powers of this court under Order 41, Rule 33 of the Code. Rule 33 is, primarily, intended to confer power upon the appellate court to do justice by granting relief to a party who has not appealed. We are reminded of the observations made by the Rajasthan High Court in the case of Municipal Board, Mount Abu v. Hari Lal, reported at 1988 ACJ 821 = II (1981) ACC 397 Raj.

Should the courts be silent spectators and feel helpless and impotent by not redressing injustice and by tolerating such grave injustice simply because due to the human values for compensation which could be valued and imagined by the advocate drafting the petition were too low or the appellant's inability to pay the court fee which may be a more tangible ground for putting the reduced claim. Inadequate claim has been made at both levels of the original court and the appeal.

I have repeatedly observed in various decisions, e.g., Pista Aggarwal's case and Rao Dheer Singh's case that in adjudicating compensation cases, the claim case should not be considered like those of easement or mortgage or property dispute. For social welfare legislation of a State wedded to socialism and the Constitution's focus is on social injustice not only in the preamble, but in directive principles which are to be enforced by passing legislation like the Fatal Accidents Act or Motor Vehicles Act or other alike social welfare statutes the approach should be liberal, humanistic, non-technical and equitable.

The underlying purport and design of the provisions of Order 41, Rule 33 would clearly go to show that the Parliament has enacted such a provision with a view that the court could rise to the occasion and render substantial justice between the parties even in absence of cross-objections or appeal. Thus, the framers of the Code, who had hardly any concept of social justice then in that period of 1908, had enacted under Order 41, Rule 33 that even if the appellant may not have made a perfect claim the court should not become silent spectator and remain impotent to give appropriate relief to one who rightly deserves the potentiality. All the courts should deliver justice according to the needs of the litigants and the circumstances emerging from the evidence on record, has been thus recognised by the provisions incorporated in Order 41, Rule 33 of the Code. Therefore, in absence of the cross-objections by the claimant, this court can invoke the provisions of Order 41, Rule 33 even if required, "suo motu" and enhance the compensation or rate of interest. In the case of National Insurance Co. Ltd. v. Tulsi Devi, reported in 1988 ACJ 962 it was held by the Rajasthan High Court that under Order 41, Rule 33 of the Code, the appellate court can saddle the insurer with enhanced liability.

18. In the case of Maharashtra State Road Trans. Corporation v. Kamalabai, reported in 1989 ACJ 750 where the claimants neither filed an appeal nor preferred cross-objection but urged the appellate court to grant higher rate of interest taking aid of Order 41, Rule 33 of the Code, it would be appropriate to reproduce the relevant observations of the Bombay High Court:

It is well settled that provisions of Order 41, Rule 33 of the Code can be resorted to "ex debito justitiae", i.e., to do justice to the parties in exceptional cases by varying the decree in favour of the respondents although they might not have preferred any appeal against the decree.

19. In the case of Sonaram Vs. Jaiprakash and Others, the High Court of Madhya

Pradesh under Order 41, Rule 33 of the Code enhanced the compensation granted by the Tribunal even though no appeal was preferred by the claimant. Similarly, in the case of *Sewaram alias Sewan v. Nanhe Khan alias Asgar Beg* reported in 1987 ACJ 354 (MP), the High Court of Madhya Pradesh awarded 10% interest on the compensation amount in absence of appeal or cross-objection by the claimants. Likewise, Rajasthan High Court in the case of *Rajasthan State Road Transport Corporation v. Manumati Mahamia* reported in 1987 ACJ 1045 (Rajasthan), enhanced the rate of interest to 12 per cent instead of 6% granted by the Tribunal from the date of the application till realisation.

20. In our opinion, the powers granted under the provisions of Order 41, Rule 33 of the Code are widest in amplitude and could be exercised in favour of the respondents notwithstanding that the respondents or claimants have not filed any cross-objection or appeal. The power of the Tribunal to award interest is provided in Section 171 of the Motor Vehicles Act, 1988 (corresponding Section 110-CC of the Motor Vehicles Act, 1939), where any court or Claims Tribunal allows claim for compensation made under this Act, such court or Tribunal may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date but not earlier than making such application in this behalf. Thus, a wide discretion is given to the Tribunal for awarding rate of interest while granting the amount of compensation. Motor Vehicles Act is, undoubtedly, a welfare legislation. Needless to reiterate that whenever unfortunate victims of road accident or the dependants of the deceased victims enter the thresholds of the court for justice, they should not be overburdened with the technicalities or strict pleadings of the law applicable in other civil cases. In fact, most of the accident victims in our country are pedestrians or cyclists, and most of them are illiterate and come from poor strata of the society and suffering from poverty and ignorance. Considering the benevolence in the provisions of the Motor Vehicles Act and the facts and circumstances emerging from the record of the cases on hand, we are of the opinion that the Tribunal has seriously erred in awarding rate of interest of 6 per cent only in a serious case of disintegration of the bodily frame of the claimant.

21. In view of the facts and circumstances and aforesaid proposition of law, we are convinced that this is a fit case wherein the rate of interest should be revised upwardly and enhanced even in absence of appeal or cross-objection by the original claimant, who is a living victim of the violent accident. In the case of *State of Madhya Pradesh v. Diwan Chandra Gupta* reported in 1989 ACJ 320, the Madhya Pradesh High Court was pleased to enhance the rate of interest from 6% to 12% from the date of the application till payment even without cross-objection. Without any cross-objection, in an appeal at the instance of the insurer, like one on hand, interest was directed to be paid at the rate of 12% per annum from the date of the application by the Madhya Pradesh High Court in the case of *New India Assurance Co. Ltd. v. Shakuntla Bai* reported in 1987 ACJ 224. Similar view was taken by the Gauhati High Court in the case of *United India Fire & General Insurance Company Limited v. Malati Bala* reported in 1985 (1) Gau.

LR 443. In that case the award of the Tribunal was faulted by the High Court for not giving reasons for awarding only 6% interest and not higher interest, taking the view that the Tribunal had committed jurisdictional error in doing so and that could be corrected by the High Court without cross-objection of the claimant-respondent.

22. The Full Bench of Madhya Pradesh High Court, in the case of *Prakramchand v. Chuttan @ Alim & Ors.* reported in 1991 ACJ 1051 held in an appeal u/s 110-D of the Motor Vehicles Act, 1939, that High Court can act without cross-objection and enhance the interest to 12% per annum from the date of the application till realisation on the compensation awarded by the Tribunal. In this decision, the Full Bench has considered relevant provisions of law including the special provisions under the Motor Vehicles Act, 1939, for filing appeal u/s 110-D (corresponding Section 173 of the Motor Vehicles Act, 1988). We are in complete agreement with this decision that the appellate court even in an appeal u/s 110-D of the Motor Vehicles Act, 1939 (Section 173 of the Motor Vehicles Act, 1988) is empowered under the provisions of Order 41, Rule 33 of the Code for enhancement of compensation or rate of interest even in absence of any cross-objection or appeal. Section 110-CC of the Motor Vehicles Act, 1939 and the corresponding Section 171 of the Motor Vehicles Act, 1988, provide for the award of interest on the amount of compensation awarded by the Tribunal. It would be appropriate to refer to the provisions of Section 171 of the Motor Vehicles Act, 1988, which read as under:

171. Award of interest where any claim is allowed. Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

23. The view which we are inclined to take is also very much reinforced by the decision of the Apex Court, rendered in the case of *Narcinva V. Kamat v. Alfredo Antonio Doe Martins*, reported in 1985 ACJ 397 In that case the Supreme Court awarded interest at the rate of 12% per annum despite there being no cross-objection of the claimants. In short, when the appellate court finds that the Tribunal has failed to exercise discretion or has erred in exercise of the discretion, then in that case, appellate court is empowered to grant appropriate relief in respect of compensation or in respect of rate of interest. It would be interesting to refer to the observations made by the Full Bench of the Madhya Pradesh High Court in the case of "*Prakramchand*" (supra) as under:

11. Obviously, the view which has consistently prevailed with the summit court on the interpretation of Section 110-CC is that Claims Tribunal, and in appeal the High Court also, in determining the compensation payable to the claimant preferred by application u/s 110-A of the Act, ought to award, in addition to the compensation, simple interest at the rate of 12 per cent per annum from the date of application. By holding so, their Lordships have expressed the view that

non-exercise or improper exercise of jurisdiction by the Tribunal or High Court u/s 110-CC taints the award made in regard to the compensation. Reason for that is not far to seek as Section 110-CC vests jurisdiction in Tribunal to make direction in regard to interest payable to the claimant "in addition to the amount of compensation" determined. They also purport to hold that it is the duty of the Claims Tribunal and the High Court to "specify" the rate of interest and the date from which that becomes payable and that is discharged by specifying the interest at the rate of 12 per cent per annum and the date of payment as from the date of application. That mandate, in our view, in regard to interpretation of Section 110-CC has become the law of the land, as contemplated under Article 141 of the Constitution and that is binding on all courts in India. We are buttressed in this conclusion noticing the emerging trend at the summit level. In a recent decision rendered on 3.5.1990, in the case of Ramesh Chandra v. Randhir Singh, 1990 ACJ 777 (SC), the view taken is that for the award of interest, no pleading is necessary, while in the decision rendered on 15.11.1989, in the case of R.L. Gupta v. Jupiter General Insurance Company, 1990 ACJ 280 (SC), in categorical terms, the Apex Court observed that "there have been several orders of this Court in recent cases in compensation disputes where the Court has awarded 12 per cent interest" and on that ground, their Lordships raised interest also from 6 per cent to 12 per cent while enhancing the compensation.

24. In view of the aforesaid circumstances and the settled proposition of law, we are of the clear opinion that this is a fit and appropriate case wherein the rate of interest awarded by the Tribunal at 6% per annum is required to be upwardly revised and enhanced so as to make the award of compensation just and reasonable.

(iii) In *Prakramchand Vs. Chuttan and Others*, , the Full Bench of Madhya Pradesh High Court held as under:-

1. When this appeal came, for hearing before one of us (S. K. Dubey, J.), sitting singly, and it was heard at some length by him, he took the view that the interpretation of Section 110-CC, Motor Vehicles Act, 1939, for short, the "Act", in the context of Order 41, Rule 33, CPC by another learned single Judge of this Court in the case of *Oriental Fire and General Insurance Co. Ltd. Indore v. Kamla Bai*, 1990 MPJR 140, hereinafter referred to as *Kamlabai's* case was required to be examined by Larger Bench. Indeed, according to him, the view expressed in the decision cited, conflicted directly with this Court's decision in *Manjula Devi Bhuta v. Manjushri Raha*, 1968 Jab LJ 189 and otherwise also, the question was a general importance to decide whether in appeal, the Court had power, jurisdiction or duty to award interest at a higher rate in the absence of cross-objection in that regard by the claimant.

2. Twin provisions, above-referred, are extracted in the extenso :

Section 110-CC, M.V. Act:

110-CC. Award of interest where any claim is allowed.-- Where any Court or Claims Tribunal allows a claim for compensation made under this Act, such Court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

Order 41, Rule 33, CPC:

33. Power of Court of Appeal.-- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees as, 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 u/s 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.

3. On facts, it is not disputed that in this matter, there is no cross-objection. Admittedly also, the award impugned in the appeal, passed by the M.A.C.T., Shivpuri, interest has been awarded at the rate of 6% per annum and that is made payable from the date of award. Therefore, it is necessary to examine first afore-cited Kamlabai's case (1990 MPJR 140) (supra). The question of enhancement of interest was raised by the claimant/respondent in the appeal preferred by Insurer, assailing his liability under the award. The appeal was dismissed and, at the same time, claim for enhanced interest too was negated. There is not discussion on the import, purport or scope of Section 110-CC of the Act and the decision is based squarely on Order 41, Rule 33, CPC, relying on a Bench decision of this Court in Sumanbai and Others Vs. State of M.P. and Others, as also in Rukmani Devi's case, 1984 ACJ 548. We reproduce, however, the extract which the learned Judge made from Sumanbai's case:

A reading of Order 41, Rule 33 clearly goes to show that the rule has been made to provide for certain contingency where it may become necessary to pass a decree although a party may not have preferred an appeal but it does not provide that where a decree has become final against the defendant and the defendant has not challenged that decree by way of appeal or cross-objection still it can be set aside because one of the parties has preferred the appeal whereof the question of the decree against the other defendant is not at all raised.

4. The observation afore-quoted, was made by the Bench in rejecting Insurer/respondent's contention challenging the quantum of compensation awarded,

relying on Order 41, Rule 33, CPC. That is not made in connection with a claim for interest. The appeal was by claimant and the Bench enhanced the interest awarded to 6% per annum and made that payable from the date of application till realisation, modifying Tribunal's award of interest at the rate of 4%, payable from the date of the order. On merit also otherwise, as regards quantum, modification in the award passed by the Tribunal was made. The basis of the view taken in rejecting respondent's contention is that the said respondent/ Insurer had not raised any other "defence" in the proceedings before the Tribunal except that the deceased was a passenger in a private car and Insurer was not liable. On facts, the Tribunal had negated that defence.

5. Similarly, in *Rukmani Devi* (1984 ACJ 548) (supra), there was no controversy in the appeal by the claimant as regards jurisdiction for enhancing rate of interest without cross-objection. At para 14, while raising the quantum of compensation, order was also made for payment of interest to the claimant at the rate of 6% per annum from the date of application till payment "as directed by the Tribunal". A learned single Judge, deciding *Kamlabai's* case (1990 MPJR 140) (supra), referred also to the case of *Santosh*, 1985 MPWN 145. That decision too deserves attention. That was a case u/s 12, M.P. Accommodation Control Act and the question was, if any adverse finding can be assailed without cross-objecting, invoking Order 41, Rule 22, CPC. Evidently, in our opinion, the scope of Rules 22 and 23 of Order 41 are entirely different. Intermixing of the two is liable, according to us, to blur judicial vision resulting in wrong interpretation of Rule 33. Suffice it to say, it is not possible for us to agree with the view expressed in *Kamlabai* that the jurisdiction of Appellate Court is cribbed and cabined in terms of Rule 22 so far as it concerns the respondents. True, that provides cross-objection to be filed by the respondent to the decree impugned in the appeal and he has been assured thereunder the right to support the decree even by assailing any finding made against him in the judgment by the Court allowing his claim to the extent decreed. Although both provisions are procedural and relate to hearing and disposal of the appeal, Rule 22 embodies the right of the respondent in relation to the matter enumerated therein. On the other hand, Rule 33 deals with power and jurisdiction of the appellate Court exercisable in the appeal in the manner contemplated therein; that power "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". That clear legislative mandate impinges in no way on the right of the respondent, contemplated in Rule 22.

6. For the view, we have taken, we find support in *Manjula Devi* (1968 Jab LJ 189)(supra). It has been held that the range and sweep of the discretionary power envisaged under Order 41, Rule 33 is very wide as it enables the appellate Court to use it in a proper case even in favour of a party who has neither appealed nor filed the cross-objection so as to prevent justice being defeated. Two decisions of the Apex Court, *Pannalal Vs. State Bombay and Others*, and *Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others*, were

considered in that case. The Court, in allowing cross-objection of the claimant, modified the award and held, liable the party exonerated by the Tribunal. That was done exercising jurisdiction under Order 41, Rule 33, while rejecting the contention, at the same time, that in an appeal u/s 110-D, cross-objection could not be filed as appeal was not under CPC. Not only provisions of Order 41, Rule 22, CPC were held in exhaustive, those of Rule 14 of the Rules framed under the Act were similarly held inadequate and not impinging on Court's power under Order 41, Rule 33.

7. In *Panna Lala* (supra), provisions of Rules 22 and 33 of Order 41 were juxtaposed and considered. Direct support for our view, we receive from the holding therein that "if a party who could have filed cross-objection under Order 41 Rule 22, has not done so, it cannot be said that the appeal Court can under no circumstances give him relief under provisions of Order 41, Rule 33, CPC". Further, it was held, "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 *Nirmala Bala* (supra), the Court held that "where in appeal, the Court reaches a conclusion which is inconsistent with that of the Court appealed from, and in adjusting the right claimed by the appellant, it is found necessary to grant relief to person who has not appealed, the power under Order 41, Rule 33 may properly be invoked.

Relevance of *Giasi Ram and Others Vs. Ramjilal and Others*, to the controversy is more pointed because duty of appellate court to exercise jurisdiction under Order 41 Rule 33 in appropriate cases is stressed stating that "it would be perpetrating grave injustice" in a particular case if that is not done because of words used in Rule 33 "which ought to have been passed" which means "which ought in law to have been passed" by the trial Court. Indeed, the Proviso draws the limit by affirmatively debarring exercise of jurisdiction under Rule 33 for passing order u/s 35-A. What cannot be doubted is Rule 22 and Rule 33 are mutually exclusive and it is not possible to agree with the view expressed in *Kamlabai's* case (1990 MPJR 140) because Rule 33 operates in a different field for different purpose and is not controlled by Rule 22. The words "although such respondents or parties may not have filed any appeal or objection" manifest clearly that legislative intent. *Kanaya Ram and Others Vs. Rajender Kumar and Others*, was relied on in this Court's decision in *Shamsher Khan*, 1988 ACJ 395 : 1987 Jab LJ 72 in taking the view that change in law having bearing on the rights of parties before the appellate Court is required to be taken note of under Order 41, Rule 33, CPC to mould relief accordingly. That decision was on Section 110-D of the Act and compensation was enhanced on the basis of guidelines provided in Section 92-A of the Act despite inapplicability in terms of that provision.

8. Recent Full Bench decision of this Court in *Smt. Sarmaniya Bai and Others Vs. Madhya Pradesh Rajya Parivahan Nigam and Others*, , has held that such provisions of CPC, the application of which is not explicitly excluded thereunder or under the Act to a proceeding under the Act, may be invoked by the parties

and in that view of the matter, the contention of the claimant that the provisions of Order 21, CPC were applicable to the execution of an award passed by the Tribunal was upheld. In our view, the High Court, hearing an appeal u/s 110-D of the Act, for same reason, is entitled to exercise jurisdiction contemplated under Order 41, Rule 33, CPC to give necessary relief to the claimant due to him under the law. Powers which are to be exercised in appeal u/s 110-D are widely stated inasmuch as any person "aggrieved" in any manner by the award passed by the Claims Tribunal is entitled to prefer the appeal except when the amount in dispute in the appeal is less than Rs. 2,000/-. The provision does not expressly limit the powers and jurisdiction which the High Court may exercise in the appeal filed. What is clear, however, is that High Court is vested with the jurisdiction to adjudge the legality of the award and to give necessary relief to the parties before it because it is duty-bound, acting as an appellate Court, to examine the legality, propriety of the award as also due exercise of jurisdiction vested in it by the Tribunal. For doing so, the High Court must possess all powers in that behalf to make effective exercise of its jurisdiction, see, in this connection ITO v. Mohd. Kunhi, AIR 1969 SC 430.

9. As a special law, providing a special forum, albeit in regard to remedy available under pre-existing dispensation, that makes special provision in respect to many matters. A Civil Court passing a money-decree, is entitled to pass orders in respect of interest as per Section 34, CPC, but deviation from that is made in Section 110-C and that is significant. On the principal sum adjudged "from the date of the suit to the date of decree" interest may be awarded till realisation or such earlier date as may be fixed by the Court ceiling is set at 6% per annum. On the other hand, Section 110-CC of the Act directs that "in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim" to vest wider jurisdiction in the Claims Tribunal for awarding interest. Neither is a ceiling set nor is the jurisdiction to award interest limited to the date of decree. The only limitation expressly provided on exercise of discretion of Claims Tribunal awarding interest is that simple interest has to be awarded and "from such date not earlier than the date of making claim". Another significant departure made in Section 110-C is that the expression used are "shall also be paid" carry in that a mandate against the judgment-debtor in regard to discharge of that liability and a duty of the Tribunal to pass that mandate. Such an express mandate is not readable in Section 34, CPC. Indeed, such requirement is also not to be read in Section 3, Interest Act, 1978 which makes Court's jurisdiction to allow interest to the person held entitled to the debt or damage claimed, "if it thinks fit".

10. We refer now to the case-law cited by counsel. The decision in Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, was rendered on an appeal by the respondent in the claim petition. He challenged Tribunal's decision exonerating the Insurer of the liability and shifting that to him. While allowing the appeal, the award of the Tribunal as well as the judgment of the High Court were modified not only holding the Insurer liable for the

compensation awarded, but also for interest, which their Lordships awarded at the rate of 12% per annum from the date of the accident till payment despite there being no cross-objection of the claimant. True, no objection was raised. Whether such an order could be passed by the High Court was not decided and not being posed that was made. Whether such an order ought to have been passed and not being passed by the High Court, it had to be passed by the Supreme Court was not posed even as a question to be decided *Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others*, took the view that the High Court erred in the exercise of its discretion u/s 110-C in not awarding interest from the date of the application though at the rate of 6% per annum award in that regard was made. Their Lordships directed not only interest to be paid from the date of application, but at the rate of 12% per annum. In *Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others*, relying on *Narchinva Kamat and Chameli Wati*, their Lordships enhanced similarly the interest to 12% per annum and made that payable from the date of application to the date of payment.

11. Obviously, the view which is consistently prevailed by the Summit Court on the interpretation of Section 110-CC is that Claims Tribunal, and in appeal, the High Court also, in determining the compensation payable to the claimant preferred application u/s 110-A of the Act, ought to award, in addition to the compensation, simple interest at the rate of 12% per annum from the date of application. By holding so, their Lordships have expressed the view, non-exercise or improper exercise of jurisdiction by the Tribunal or High Court u/s 110-C taints the award made in regard to the compensation. Reason for that is not far to see as Section 110-CC vests jurisdiction in Tribunal to make direction in regard to interest payable to the claimant "in addition to the amount of compensation" determined. They also purport to hold that the duty of the Claims Tribunal and the High Court to "specify" the rate of interest and the date from which that becomes payable is discharged by specifying the interest at the rate of 12% per annum and the date of payment as the date of application. That mandate, in our view, in regard to interpretation of Section 110-CC has become the law of the land, as contemplated under Article 141 of the Constitution and that is binding on all Courts in India. We are buttressed in this conclusion noticing the emerging trend as well at the summit level. In a recent decision rendered on 3-5-1990 in the case of *Ramesh Chandra v. Randhir Singh*, 1990 (II) 86. The view taken is that for award of interest, no pleading is necessary, while in the decision rendered on 15-11-1989, in the case of *R. L. Gupta v. Jupiter General Insurance Company*, 1990 (1) MPWN 177, in categorical terms, the Apex Court observed that "there have been several orders of this Court in recent cases in compensation disputes where the Court has awarded 12% interest" and on that ground, their Lordships raised interest also from 6% to 12% while enhancing the compensation.

12. Brief survey, we also make of this Court's decisions cited at the Bar, bearing on the interpretation of Section 110-CC. *Shamsher Khan* (supra) took note of

Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others,) and Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others,) and took the view that the Court was "bound by the supreme judicial dicta" and on that basis interest on the enhanced amount of compensation was raised to 12% per annum from the date of the application. Five Division Benches of this Court have also taken the same view following the same reasoning. Indeed, in State of M.P. v. Diwan Chand, 1988 (I) MPWN 64. that cross-objection interest was enhanced from 6% to 12% per annum from date of application till payment. In Lachiyabai Vs. Darshan Singh and Another, , interest was awarded at the rate of 12% per annum from the date of application till payment. To the same effect are also decisions in Modhiya v. Ramesh Chandra, 1987-IMPWN 223; State of Madhya Pradesh v. Ashadevi, 1988 Jab LJ 485 : State of M.P. and Others Vs. Ashadevi and Others,) and in Nisar Fatima v. M.P.S.R.T.C., 1988 Jab LJ 725 : (AIR 1989 NOC 130). Without cross-objection, in Insurer's appeal, interest was directed to be paid by him at the rate of 12% per annum from date of application in New India Assurance Co. Ltd. and Others Vs. Smt. Shakuntalabai and Others,

13. Evidently, the trend-setter is the decision of a learned single Judge of this Court rendered on 30-11-1985 in State of M.P. v. Shantibai, 1986 (1) MPWN 54, wherein Section 110-CC was compared with Section 34, CPC to hold the view that in the absence of specific statutory mandate prescribed in Section 110-CC, about rate of interest, minimum interest charged by commercial Bank being 12%, that should be specified to make the award of interest reasonable. Without cross-objection of the respondent, the award was modified in appeal by this Court by raising the interest from 6% to 12%. For the view taken, inspiration was derived from a Bench decision of the Gauhati High Court in the case of United India Fire and General Insurance Company v. Malati Bala, (1985) 1 Gauhati LR 443. In that case, the award of the Tribunal was faulted by the High Court for not giving reasons for awarding only 6% interest and not higher interest, taking the view that Tribunal had committed jurisdictional error in doing so and that could be corrected by the High Court without cross-objection of the claimant/respondent. In the case of Sardar Ishwar Singh, Truck Owner and Another Vs. Himachal Puri and Others, decided on 18-9-1989, power was exercised suo motu in owner's appeal to enhance interest to 12% per annum while enhancing the compensation. We have no doubt that in so far as this Court is concerned, it has been the considered and consistent view of several Benches of this Court for at least last five years that for proper award of interest u/s 110-CC it is necessary to specify, even without cross-objection, the rate of interest, to be payable at 12% per annum from date of application till realisation, while awarding or enhancing compensation in appeal.

14. For all the aforesaid reasons, we hold that Kamlabai (supra) does not lay down the law correctly. We hold further that in appeal u/s 110-D of the Act, the High Court can act without cross-objection and enhance interest to 12% per annum, payable from the date of application till realisation, on the compensation awarded.

13. For the reasons as aforesaid, the appeal is dismissed and the award amount is enhanced from Rs. 5,84,000/- to Rs. 6,88,000/- along with interest @ 9% per annum from the date of filing of the claim petition till realization. The shares of the claimants in the enhanced award amount shall be equal.

14. The appellant has deposited the amount awarded by the Claims Tribunal out of which Rs. 5,00,000/- has been released to the claimants and the remaining amount is lying with the Claims Tribunal. Let the remaining amount be released to the claimants in terms of the award of the Claims Tribunal.

15. The enhanced award amount be deposited by the appellant with UCO Bank, Delhi High Court Branch by means of cheque drawn in the name of UCO Bank A/c Komal within 30 days. Upon the aforesaid amount being deposited, UCO Bank is directed to release 50% of the said amount to respondents No.1 to 4 by transferring the same to their savings bank account and the remaining amount to be kept in fixed deposit for three years in the names of respondents No.1 to 4 (in equal share).

16. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of the beneficiaries.

17. Withdrawal from the aforesaid account shall be permitted to the beneficiaries after due verification and the Bank shall issue photo Identity Card to the beneficiaries to facilitate identity.

18. No cheque book be issued to the beneficiaries without the permission of this Court.

19. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiaries along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiaries.

20. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

21. Half yearly statement of account be filed by the Bank in this Court.

22. On the request of the beneficiaries, Bank shall transfer the Savings Account to any other branch according to their convenience.

23. The beneficiaries shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).

24. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No.09871129345). The LCR be sent back forthwith. The statutory amount deposited by the appellant be refunded back. Copy of this judgment be sent to the claimants/respondents No.1 to 4.