

(2019) 06 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Motor Accidental Case (CMAM) No. 187 Of 2014

United India Insurance Co. Ltd

APPELLANT

Vs

Mohamad Ramzan Mir And Others

RESPONDENT

Date of Decision : 04-06-2019

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 337, 427
Motor Vehicles Act, 1988 — Section 149(2)(a)(ii), 173
Jammu And Kashmir. Motor Vehicles Rules, 1991 — Rule 328(3)
Code Of Civil Procedure, 1908 — Order 41 Rule 22, Order 41 Rule 33

Citation : (2019) 06 J&K CK 0012

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Syed Wasiq Ahmad, Syed Manzoor

Judgement

Rajesh Bindal, J

1. The Insurance Company is in appeal against the award of the Motor Accident Claims Tribunal, Anantnag dated 23.04.2014.

2. Briefly the facts, as are evident from record, are that deceased Tariq Ahmad Mir while driving Motorcycle bearing registration No. JK03-397 was hit by Tata Sumo bearing registration No. JK03-3439 at Levdoora, Qazigund. As a result of the accident he sustained multiple injuries. He was taken to Government Hospital Qazigund, however, considering seriousness of the injuries suffered he was referred to SKIMS Soura, Srinagar. He died at SKIMS on the same day. It was claimed that Tata Sumo vehicle was being driven rashly and negligently. It was owned by Mohammad Hussain Bhat. It was claimed that the deceased was a young boy of 22 years. He was a businessman by profession having monthly income of Rs. 15,000/-. He was running his own saw mill. Compensation to the tune of Rs. 25 lakhs was claimed. The claimants are parents, sisters and brothers of the deceased. The factum of accident and registration of FIR have not been denied.

3. In the claim petition respondent Nos. 1 and 2, were the driver and owner of the Tata Sumo whereas the respondent No.3 was the Insurance Company. Respondent No.4 was impleaded, claiming that he was the buyer of the Tata Sumo from respondent No. 2. After service only the Insurance Company and the first owner of the vehicle, namely, respondent Nos. 2 and 3 in the claim petitioner appeared, whereas the driver and the buyer of the vehicle i.e. respondent Nos. 1 and 4 were proceeded against ex-parte on 23.12.2010. The Tribunal framed the following issues:-

"1.Whether on 20.04.2005 at Levdoora Qazigund the respondent No.1 was driving Tata Sumo bearing No. JK03-3439 rashly and negligently, caused death of Tariq Ahmad Mir who was plying motorcycle bearing No. JK03-397? OPP

2. If issue No.1 is proved in affirmative to what extent the petitioners/representatives are entitled to receive the compensation and from whom? OPP

3. Whether respondent No.1 (driver) was not holding valid and effective D/L at the time of accident, therefore, respondent No.3 cannot be saddled with liability? OPR3

4. Whether the accident caused due to the contributory negligence of the deceased while plying his motorcycle? OPR3.

5. Relief."

4. Accepting the claim petition, compensation of Rs. 6,54,000/- was awarded along with interest @ 6% per annum from the date of filing of the claim petition till payment.

5. While assessing the compensation, the income of the deceased was assessed at Rs. 6,000/- per month. Multiplier of 13 was applied. Deduction of 1/3rd was made. Adding compensation under the heads of loss of estate, transportation of dead body and funeral expenses, the total amount assessed was Rs. 6,54,000/-. It is the said award which has been impugned by filing the present appeal by the Insurance Company.

6. Learned counsel for the appellant-Insurance Company submitted that the finding recorded by the Tribunal on the issue, as to whether the driver of the vehicle was holding a valid and effective driving license, is totally perverse. The driver had failed to put in appearance and was proceeded against ex-parte. The first owner of the vehicle, who had put in appearance, had merely stated that he had sold the vehicle to respondent No.4 in the claim petition. The respondent No.4 as well as the driver of the vehicle had failed to put in appearance. A photocopy of the driving license was produced on record by the claimants. The genuineness of the driving license, photocopy of which was placed on record, was verified from the office of Regional Transport Officer, Srinagar. Khurshid Ahmad Shah, Senior Assistant from the office of RTO Office, Srinagar, who appeared as a witness stated that DL No. 61730/K had been issued in favour of Bashir Ahmad son of Mohammad Abdullah R/O Uri Baramulla and not the driver

of the vehicle in question. The license was for LMV and Motorcycle and valid up to 26.04.1997. Once the driver of the vehicle was not possessing a valid driving license, the liability of the claim could not have been fastened on the Insurance Company. Onus to prove the genuineness of the driving license shifts on the Insurance Company only once initial burden is discharged by the owner/driver of the vehicle. In the case in hand, the driver and owner have failed to put in appearance. In support of his plea reliance was placed on judgment of Hon'ble the Supreme Court in Pappu and others vs. Vinod Kumar Lamba and another, 2018 ACJ 690.

7. On the other hand learned counsel for the claimants submitted that in appeal no dispute has been raised by the Insurance Company against the claimants, hence, they cannot be deprived of the compensation. It is a dispute between the Insurance Company and the owner and driver of the vehicle. At the most, the Insurance Company may succeed to get recovery rights. He further submitted that even if the claimants have not filed any appeal, still even in the appeal filed by the Insurance Company they can claim just and fair compensation, which the Tribunal had failed to assess in the present case. The age of the deceased was 22 years. He was a bachelor. The multiplier applied, considering the age of the parents, was wrong, as it should have been keeping in view of the age of the deceased. Sufficient evidence was led to prove that the income of the deceased was Rs. 15,000/- per month but still the Tribunal had reduced the same to Rs. 6,000/- per month. Dependency was not properly assessed as deduction of 1/3rd was made. Compensation awarded under different heads was not proper. Same deserves to be enhanced and further future prospects have not been taken care of. Reliance was placed on judgment of this High Court in Union of India and another vs. Khan Shazia, 2016(1) S.L.J 349 (HC).

8. It was further submitted that in terms of the interim orders passed by this Court, part of amount of compensation was directed to be released, however, because of error in the name of the claimant, the cheque could not be encashed. Opportunity be given to return the same to this Court and whatever amount of compensation is assessed, the same may be directed to be transferred to the Tribunal for its disbursement to the claimants.

9. Learned counsel for respondent No.12 in the appeal/ respondent No.4 in the claim petition, namely, the buyer of the Tata Sumo, who was proceeded against ex-parte before the Tribunal, admitted the fact that respondent No. 12 had purchased the vehicle. It was further submitted that the issue regarding driving license has been considered by the Tribunal threadbare, referring to the judgment of Hon'ble the Supreme Court in National Insurance Company Ltd vs. Swarn Singh and ors, 2004 ACJ 1. Correct finding has been recorded as the Insurance Company had failed to discharge the burden to prove that the driving license produced on record by the claimants was not valid. He further referred to the judgment of Hon'ble the Supreme Court in Pepsu Road Transport Corporation vs. National Insurance Company, AIR 2014 SC 305. The argument is that the

liability to pay compensation has been rightly put on the Insurance Company and the award passed by the Tribunal does not call for any interference by this Court. Rather the appeal deserves to be dismissed with special costs.

10. In response, learned counsel for the Insurance Company submitted that had the claimants been aggrieved of the amount of compensation awarded by the Tribunal, they could have preferred appeal or even file cross objections. Merely because the Insurance Company is in appeal that too raising the issue with driver and owner of the vehicle, the claimants cannot seek enhancement of the compensation. He further submitted that brothers and sisters of the deceased, who was a bachelor, cannot be said to be dependent on him to claim compensation or for the purposes of determination of dependency.

11. Heard learned counsel for the parties and perused the relevant referred record.

12. Some basic facts which are not in dispute are that deceased Tariq Ahmad Mir died in a road accident while driving Motorcycle bearing registration No. JK03-397 after it was hit by Tata Sumo bearing registration No. JK03/3439. Claim petition was filed on 04.08.2005. Age of the deceased was 22 years. In the claim petition filed, the claimants were father, mother, five sisters and two brothers of the deceased. The Tata Sumo was originally owned by Mohammad Hussain Bhat, however, he claimed that the same had been sold to Abdul Hamid Khanday, a fact not in dispute. FIR No. 63/2005 was registered regarding the accident at Police Station Qazigund under Sections 279, 337 and 427 R.P.C. The factum of accident is not denied by the Insurance Company.

13. The driver of the vehicle and subsequent buyer thereof, who were respondent No. 1 and 4 in the claim petition, did not put in appearance before the Tribunal and were proceeded against ex-parte. The stand taken by respondent No.2, the first owner of the vehicle, before the Tribunal was that he had sold the vehicle to Abdul Hamid Khanday. Though he was proceeded against ex-parte before the Tribunal but is represented before this Court in the present appeal and factum of purchase of Tata Sumo, which was involved in the accident, is not denied by him.

14. In the claim petition it was pleaded that deceased was a businessman by profession and was running his own saw mill, having monthly income of Rs. 15,000/-. A sum of Rs. 25 lacs was claimed as compensation. The Tribunal awarded an amount of Rs. 6,54,000/-, directing the Insurance Company to pay the compensation.

15. As far as issue No. 3, on which arguments have been raised by learned counsel for the Insurance Company, is concerned, on the face of it the finding recorded is perverse. The respondent No.4 in the claim petition, who had admittedly purchased the Tata Sumo from respondent No.2 therein and the driver of the vehicle, were proceeded against ex-parte before the Tribunal. Meaning thereby, there was no stand taken by them regarding driving license as

nothing was produced by them on record. It is only the claimants who had produced a photocopy of the driving license on record. When it was verified by the Insurance Company, the same was found to be issued in favour of Bashir Ahmad son of Mohammad Abdullah. Khurshid Ahmad Shah, Senior Assistant from Regional Transport Office, Srinagar, appeared as a witness on behalf of the Insurance Company before the Tribunal and proved this fact. In his cross examination all what he stated and has been referred to by the Tribunal in the impugned award, was that validity of the license can be found only on perusal of the record and it cannot be determined on perusal of a photocopy of the license. Who has signed the verification report was not known to him.

16. With the aforesaid facts on record and referring to Swarn Singh's case (supra), the Tribunal opined that Insurance Company had failed to produce any cogent evidence on the issue of driving license, hence, it was fastened with liability to pay the compensation. While recording the aforesaid finding the Tribunal failed to appreciate the fact that there is no stand on record by the owner and driver of the vehicle, what to talk of producing any driving license. It is only a photocopy of the driving license which was produced by the claimants on record. Preliminary onus to prove that the driver was holding a valid driving license is on the owner and driver. It is only after that primary onus is discharged, that the onus shifts on the Insurance Company to prove otherwise. It has been so opined in Pappu's case (supra). The relevant paragraph of the judgment is extracted below:-

"11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive

the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."

17. The judgment in Pepsu Road Transport Corporation's case (supra) has no relevance in the case in hand as there is no stand of the owner and driver of the vehicle before the Tribunal regarding verification of the driving license of the driver by the owner at the time of his engagement.

Rather this is a case where no driving license has been produced on record.

18. In the light of the aforesaid facts the finding recorded by the Tribunal on issue No. 3 is reversed being perverse. The Insurance Company cannot be solely burdened with the liability to pay compensation. However, keeping in view the opinion expressed by Hon'ble the Supreme Court in Pappu's case (Supra) referring to earlier judgment of Hon'ble the Supreme Court in National Insurance Company Ltd vs. Swaran Singh, 2004 ACJ 1 (SC), the Insurance Company could only be directed to satisfy the award and have recovery rights from the owner/driver of the vehicle regarding the amount of compensation paid to the claimants in accordance with law.

19. Now comes the issue regarding enhancement of compensation claimed by the claimants while not filing any appeal or cross objections in the appeal filed by the Insurance Company, raising the issue regarding its liability to pay compensation. The case set up in appeal is that the liability should be fastened on the owner and the driver. Even if the Insurance Company has to pay the compensation initially to the claimants, recovery rights are required to be granted.

20. The learned counsel for the claimants sought to invoke the provisions of Order 41 Rule 33 C.P.C for seeking enhancement of compensation. Section 173 of the Motor Vehicles Act, 1988 provides for appeal against the award of the Tribunal to this Court. In terms of Rule 328 (3) of the J&K Motor Vehicle Rules, 1991, Order XLI CPC is applicable for the purpose of appeals to this Court. Order

41 Rule 22 CPC provides that in case a party to litigation fails to file appeal within the time permitted, he still has opportunity to file cross objections in any appeal filed by the other party. Period of one month has been provided therefor from the date of service of notice on him or the pleader. Order 41 Rule 33 CPC is the enabling provision conferring certain powers on the appellate Court. The purpose is to balance the equities. The provisions of Order 41 Rule 33 CPC cannot be stretched in favour of a party who does not wish to file appeal or cross objections against the issues decided against him by the court below for claiming relief more than what has been granted.

21. In the case in hand the Tribunal assessed the compensation payable to the claimants. In the process the findings were recorded while appreciating the evidence produced on record. The claimants were satisfied with the amount of compensation awarded, hence, did not file any appeal.

The aforesaid Rule has been incorporated with a view to grant inherent power to the appellate Court to do complete justice with the parties.

22. Scope of Order 41 Rule 33 CPC was considered by Hon'ble the Supreme Court in *Nirmala Bala Ghose and another vs. Balai Chand Ghose*, AIR 1965 SC 1874, wherein it was observed that aforesaid Rule is primarily intended to confer power upon the appellate court to do justice by granting relief to a party who has not appealed, when refusing to do so, would result in making inconsistent, contradictory or unworkable orders. Relevant paragraph thereof is extracted below:

"23.....When a party allows a decree of the Court of First Instance to become final, by not appealing against the decree, it would not be open to another party to the litigation, whose rights are otherwise not affected by the decree, to invoke the powers of the appellate Court under Order 41 Rule 33, to pass a decree in favour of the party not appealing so as to give the latter a benefit which he has not claimed. Order 41 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, when refusing to do so, would result in making inconsistent, contradictory or unworkable orders. We do not think that power under Order 41 Rule 33 of the Civil Procedure Code can be exercised in this case in favour of the deities."

[Emphasis supplied]

The judgment of Madras High Court in *Venukuri Krishna Reddi and another vs. Kota Ramireddi and others*, AIR 1954 Madras 848 was quoted with approval in the judgment of Hon'ble the Supreme Court in *Harihar Prasad Singh and others v. Balmiki Prasad Singh and others*, (1975) 1 SCC 212, where it has been laid down that Order 41 Rule 33 CPC should be exercised only where as a result of interference in favour of the appellant it becomes necessary to re-adjust the rights of other parties; where the question is one of settling mutual rights and obligations between the parties and where relief prayed for and to be granted is single and indivisible but claimed against a number of defendants. In these

circumstances even in an appeal filed by one party, the relief ultimately to be granted by the court could be adjusted. Relevant paragraph thereof is extracted below:

"Though Order 41 Rule 33 confers wide and unlimited jurisdiction on courts to pass a decree in favour of a party who has not preferred any appeal, there are, however, certain well-defined principles in accordance with which that jurisdiction should be exercised. Normally, a party who is aggrieved by a decree should, if he seeks to escape from its operation, appeal against it within the time allowed after complying with the requirements of law. Where he fails to do so, no relief should ordinarily be given to him under Order 41 Rule 33.

But there are well-recognised exceptions to this rule. One is where as a result of interference in favour of the appellant it becomes necessary to readjust the rights of other parties. A second class of cases based on the same principle is where the question is one of settling mutual rights and obligations between the same parties. A third class of cases is when the relief prayed for is single and indivisible but is claimed against a number of defendants. In such cases, if the suit is decreed and there is an appeal only by some of the defendants and if the relief is granted only to the appellants there is the possibility that there might come into operation at the same time and with reference to the same subject-matter two decrees which are inconsistent and contradictory. This, however, is not an exhaustive enumeration of the class of cases in which courts could interfere under Order 41 Rule 33. Such an enumeration would neither be possible nor even desirable."

[Emphasis supplied]

23. Further, the power conferred under Order 41 Rule 33 CPC is to be exercised in exceptional cases, otherwise general principle is that a decree passed by a court is not to be reversed in favour of a party who has not challenged the same. The issue was subsequently considered by Hon'ble the Supreme Court in *K. Muthuswami Gounder vs. N. Palaniappa Gounder*, (1998) 7 SCC 327. The opinion expressed in paragraph No. 12 thereof is extracted below:

"Order 41 Rule 33 enables the appellate court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (1) the appeal is as to part only of the decree; and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the Court and the question raised properly arises (sic out of) one of the judgments of the lower Court and in that event, the appellate Court could consider any objection to any part of the order or decree of the Court and set it right. We are fortified in this view by the decision of this Court in *Mahant Dhangir v. Madan Mohan*, 1987 Supp. SCC 528. No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order 41, Rule 33, Civil Procedure Code and each

case must depend upon its own facts. The Rule enables the appellate Court to pass any order/ decree which ought to have been passed. The general principle is that a decree is binding on the parties to it until it is set aside in appropriate proceedings. Ordinarily the appellate court must not vary or reverse a decree/ order in favour of a party who has not preferred any appeal and this Rule holds good notwithstanding Order 41 Rule 33 CPC. However, in exceptional cases, the Rule enables the appellate Court to pass such decree or order as ought to have been passed even if such decree would be in favour of parties who have not filed any appeal."

[Emphasis supplied]

The same was subsequently followed in *Banarsi and others vs. Ram Phal*, (2003) 9 SCC 606 and *Pralhad and others vs. State of Maharashtra and another*, 2011 (1) R.C.R. (Civil) 809. In the said case, while referring to earlier judgment of Hon'ble the Supreme Court in *Banarsi's* case (*supra*) it was opined that exercise of power under Order 41 Rule 33 CPC is subject to three limitations, namely, firstly, this power cannot be exercised to the prejudice of a person who is not a party before the court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party. Relevant paragraph thereof is extracted below:

"20. In *Banarsi v. Ram Phal*, this Court construing the provisions of Order 41 Rule 33 CPC held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject-matter of the appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party."

Judgment of Punjab and Haryana High Court in *Bhoop Singh vs. State of Haryana and others*, 2015 (2) RCR (Civil) 252 can also be referred to, which has taken the same view.

24. With specific reference to a case under the Act, the issue was considered by Hon'ble the Supreme Court in *Ranjana Prakash and others vs. Divisional Manager and another*, (2011) 14 SCC 639. Definite finding is that High Court cannot

increase compensation in an appeal filed by the owner/insurer for reducing the compensation nor can it reduce the compensation in an appeal filed by the claimants seeking enhancement thereof. Relevant paras of the judgment are extracted below:-

"7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation."

[Emphasis supplied]

25. If the judgment of this Court in Khan Shazia's case (supra) is considered in the light of the aforesaid enunciation of law by Hon'ble the Supreme Court, the same is per incurium as it does not consider any of the judgments of Hon'ble the Supreme Court as referred to above laying down the principles under which power under Order 41 Rule 33 CPC can be invoked by the appellate Court. Hence, the same is to be ignored.

26. If the consistent view of Hon'ble the Supreme Court on the issue is considered, it is not a fit case where the claimants could invoke the powers of this Court, without filing any application under Order 41 Rule 33 CPC to seek

enhancement of compensation in the appeal filed by the Insurance Company where the issue sought to be raised is that the Insurance Company is not liable to pay any compensation as the driver of the vehicle was not holding a valid driving license or in the alternative sought right to recover the same from the owner/driver in case the award is to be satisfied by the Insurance Company.

27. Primarily the issue sought to be raised by the claimants for seeking enhancement of compensation was assessment of income of the deceased, deduction on account of dependency, application of multiplier or the amount payable under different heads. If aggrieved, the claimants could have filed appeal or the cross objections but they failed to avail of the opportunity.

28. In view of my aforesaid discussions the present appeal filed by the Insurance Company is partly allowed. The findings on issue No. 3 are reversed. The Insurance Company cannot be solely held liable to pay the compensation. The award is to be satisfied firstly by the Insurance Company. However, it shall have right to recover the same from the owner/ driver of the vehicle in accordance with law.

29. If the amount of compensation is lying deposited in this Court, the same may be transferred to the Tribunal concerned along with interest earned thereon for disbursement to the claimants.