2024 INSC 652

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. 10192 /2024**
(Arising out of SLP (C) No. 28968/2018)

**VAIBHAV JAIN** **...Appellant (s)**

**VERSUS**

**HINDUSTAN MOTORS PVT. LTD.** **...Respondent(s)**

**J U D G M E N T**

**MANOJ MISRA, J.**

**1.** Leave granted.

**2.** This appeal impugns the judgment and order of the High Court of Chhattisgarh at Bilaspur[1] dated 15.11.2017, whereby Miscellaneous Appeal (Civil) No.1306 of 2007 filed by the appellant was dismissed and Miscellaneous Appeal (Civil) No.1147/2017 filed by the claimant(s) was allowed thereby enhancing the compensation already awarded to them.

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Reason:

[1] High Court

**3.** At the outset, we would like to put on record that the Special Leave Petition (SLP) against the impugned order was filed by impleading six respondents. Respondents 1 to 4 (R-1 to R-4) were heirs and legal representatives of the deceased Pranay Kumar Goswami on whose accidental death the claim arose. Respondent no.5 (R-5), namely, Shubhashish Pal, was the person who drove the vehicle at the time of accident; and Respondent no.6 (R-6), namely, M/s Hindustan Motors, was the manufacturer of the vehicle. However, on 23.10.2018, this Court issued notice only to the manufacturer (R-6) (i.e., M/s Hindustan Motors) and the SLP was dismissed *qua* R-1 to R-5 by observing that the question raised in the matter is about the liability of the dealer (i.e., the appellant). Therefore, in our view, the impugned award has attained finality insofar as the rights of the claimant-respondents are concerned. In consequence, it appears, the Registry has shown M/s Hindustan Motors as the sole respondent though, initially, there were six respondents. Be that as it may to have a clear understanding of the matter, we shall describe the parties as they were described in the SLP at the time of its presentation.

**FACTUAL MATRIX**

**4.** A claim petition for death compensation was filed before the Tribunal by claimant-respondents (R-1 to R-4)

(i.e., legal heirs of the deceased who died in the accident), under Section 166 of the Motor Vehicles Act, 1988[2], against driver of the offending vehicle (R-5); M/s. Hindustan Motors Private Limited (R-6) (i.e., manufacturer of the vehicle); and Vaibhav Jain (i.e., Proprietor of M/s Vaibhav Motors - the dealer of R-6) (the appellant herein). The deceased was R-6's Territory Manager whereas the driver of the vehicle was R-6's Service Engineer. Thus, the driver and the deceased were employees of R-6 (i.e., M/s Hindustan Motors). The accident took place when the vehicle was taken out for a test drive from the dealership of the appellant.

**5.** On the pleadings of the parties, five issues were framed by the Tribunal. Out of those five, the issue relevant for the purposes of this appeal is:

> Whether prior to the accident M/s. Hindustan Motors had sold the offending vehicle to M/s. Vaibhav Motors (i.e., the dealer)? If not, whether the dealer can be held liable for the compensation, jointly and severally, with M/s. Hindustan Motors?

**6.** As regards issue of ownership of the vehicle, the Tribunal held that on the day of accident, M/s. Hindustan Motors was the owner of the vehicle though Vaibhav Motors was in possession of the vehicle as its dealer.

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2 M.V. Act

Based on that, the Tribunal held M/s. Hindustan Motors as well as M/s. Vaibhav Motors (the appellant) jointly and severally liable for the compensation awarded.

**7.** Aggrieved by quantum of the compensation awarded, the claimants (R-1 to R-4) preferred Miscellaneous Appeal (Civil) No.1147/2017 before the High Court; whereas *vide* Miscellaneous Appeal (Civil) No.1306/2007, the dealer (i.e., the appellant herein) questioned the award to the extent it made him jointly and severally liable for payment of the compensation.

**8.** Both the aforesaid appeals were heard simultaneously and disposed of by the impugned order. The claimants' appeal was allowed, and the compensation was enhanced. However, the appellant's appeal was dismissed.

**9.** We have heard Shri Arup Banerjee for the appellant and Ms. Purti Gupta for M/s Hindustan Motors; and have also perused the materials on record.

**Submissions on behalf of the appellant**

**10.** The learned counsel for the appellant submitted:

(i) On the date of accident, the owner of the offending vehicle was its manufacturer M/s. Hindustan Motors (R-6) in whose name the vehicle was temporarily registered and there

was no evidence that the vehicle was transferred to the appellant.

(ii) The driver of the vehicle and the deceased were both employees of M/s Hindustan Motors and they took the vehicle from the dealership for a test drive, therefore, the vehicle, at the time of accident, was in the control and possession of M/s Hindustan Motors through its employees.

(iii) The liability for compensation is of the owner of the vehicle including the driver. Section 2 (30) of the M.V. Act defines the "owner" as a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

(iv) The Dealership Agreement between the appellant and M/s. Hindustan Motors is neither an agreement of hire-purchase nor of lease or hypothecation, therefore, even if the dealer is taken to be in constructive

possession of the vehicle, the dealer would not be its owner within the meaning of Section 2 (30) of the M.V. Act.

(v) Clauses 3 (b) and 4 of the Dealership Agreement, relied to fasten liability on the appellant, are in respect of defects in the vehicle and not in respect of any claim for compensation arising from an accident involving the vehicle. The concept of possessory owner as obtaining under section 2 (19)[3] of the Motor Vehicles Act, 1939 is no longer available under the M.V. Act, 1988 since the definition of owner has undergone a sea change.

(vi) The judgment of this Court in "**Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari & Ors.**[4]" was based on the definition of owner as obtaining under the old Act hence it would not be of any help to decide ownership of a vehicle under the new M.V. Act, 1988.

(vii) Once it is established that appellant is neither owner nor driver of the vehicle, it

3 "owner" means, where the person, in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement.

4 (1997) 7 SCC 481

cannot be made liable for the compensation.

**Submissions on behalf of M/s Hindustan Motors (R-6)**

**11.** Per contra, learned counsel for M/s Hindustan Motors submitted:

(i) M/s. Hindustan Motors had sold the vehicle to the appellant *vide* challan *cum* invoice No.20302564 for an amount of Rs.7,73,475/-. Pursuant thereto, the car bearing temporary registration No. CG04RPRTC-0478 was delivered to the appellant on principal-to-principal basis. As the sale stood complete in all respects, the appellant was owner of the vehicle on the date of accident. (To buttress the above submission, reliance was placed on a decision of this Court in "**M/s. Tata Motors Limited vs. Antonio Paulo Vaz and Anr.**[5]**"**)

(ii) Assuming that the deceased as well the driver was an employee of M/s Hindustan Motors, once the vehicle was sold and delivered to the dealer, the driver and the dealer alone would be liable for

5 (2021) 18 SCC 545

compensation. More so, because clause 3 (b) of the Dealership Agreement absolved M/s Hindustan Motors of its liability by providing as follows:

> "3(b) After the motor vehicles are dispatched /delivered the Company's liability in respect of any defect in the motor vehicle will be limited to the Company's obligations under the warranty clause and the Company will have no other liability and all liability other than the one under warranty as aforesaid shall be to the account of the Dealer."
>
> (Emphasis supplied)

(iii) The dealer being the possessory owner was rightly held liable in the light of the decision of this Court in **Rajasthan State Road Transport Corporation** (*supra*).

(iv) Even if M/s. Hindustan Motors did not file an appeal against the impugned award, this Court can absolve M/s. Hindustan Motors of its liability by modifying the award in exercise of its power under Order 41 Rule 33 of the Civil Procedure Code, 1908 (for short CPC) as expounded by this Court in "**Bihar Supply Syndicate vs. Asiatic Navigation & Ors.[6]"** and "**Sri Chandre**

6 (1993) 2 SCC 639

**Prabhuji Jain Temple & Ors. vs. Harikrishna & Anr.[7].**

**ISSUES**

**12.** Having noticed the rival submissions, in our view, following issues fall for our consideration: -

(i) Whether, as a mere dealer of M/s Hindustan Motors, the appellant could be considered owner of the vehicle and as such liable, jointly and severally with M/s Hindustan Motors, to pay the compensation as directed by the Tribunal/ High Court?

(ii) Whether clauses 3 (b) and 4 of the Dealership Agreement absolved M/s Hindustan Motors of its liability to pay compensation as an owner?

(iii) Whether M/s Hindustan Motors, even without preferring an appeal against the award of the Tribunal, could question its liability under the award by relying on the provisions of Order 41 Rule 33 of the CPC?

**Issue No.(i)**

7 (1973) 2 SCC 665

**13.** Before we delve into the afore-stated issues, we must have a look at the concept of 'ownership' of a vehicle as obtaining under the M.V. Act for fixing liability in respect of compensation. Section 166[8] of the M.V. Act enumerates the persons who may file an application for compensation before the Claims Tribunal whereas Section 168(1)[9] of the M.V. Act speaks about the award of the Tribunal. Interestingly, Section 166, though specifies the persons who may file an application for compensation, omits to specify person(s) against whom the application is to be

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8[8] **Section 166. Application for compensation. –** (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made –

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be,

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the claims tribunal shall lapse.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the claims tribunal having jurisdiction over the area in which the accident occurred, or to the claims tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contains such particulars as may be prescribed.

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

(4) The claims tribunal shall treat any report of accident forwarded to it under section 159 as an application for compensation under this Act.

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.

9[9] **Section 168.- Award of the Claims Tribunal. –** (1) On receipt of an application for compensation made under section 166, the claims tribunal shall, after giving notice of the application to the insurer and after giving the parties including the insurer an opportunity of being heard, hold and inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it be just and specifying the person or persons to whom compensation shall be paid and in making the award the claims tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be: ..

filed. However, sub-section (1) of Section 168 by providing that the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident, gives sufficient indication on whom the liability for compensation would fall.

**14.** In **Godavari Finance Company v. Degala Satyanarayanamma & Ors.**[9] a question arose whether a financier would be an owner of a motor vehicle within the meaning of Section 2(30)[10] of the M. V. Act, 1988. In that case, the accident took place on 29.5.1995 and, admittedly, the vehicle was not in control of the financier though its name was entered in the registration book of the vehicle. The extract of the registration book, however, revealed that the vehicle was registered in the name of fourth respondent therein (i.e., not the financier) and that the hire-purchase agreement with the financier had also been cancelled on 10.11.1995. In that context, while holding that financier was not liable, interpreting the definition of 'owner', as provided in Section 2(30), this Court observed:

> "12. Section 2 of the Act provides for interpretation of various terms enumerated therein. It starts with the phrase unless the context otherwise requires. The definition of owner is a comprehensive one. The interpretation clause itself states that the vehicle

9 [9] (2008) 5 SCC 107

10[10] **Section 2. –** In this Act, unless the context otherwise requires, --

**(30)** "owner" means the person in whose name a motor vehicle stands registered, and while such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

which is the subject matter of a hire purchase agreement, the person in possession of vehicle under that agreement shall be the owner. Thus, the name of financier in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. We are not unmindful of the fact that ordinarily the person in whose name the registration certificate stands should be presumed to be the owner, but such a presumption can be drawn only in the absence of any other material brought on record or unless the context otherwise requires.

13. In case of a motor vehicle which is subjected to a hire purchase agreement, the financier cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle, and not the financier being the owner would be liable to pay damages for the motor accident.

15. An application for payment of compensation is filed before the Tribunal constituted under Section 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entertaining a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may be held to be constructively liable as the employer of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the use of the vehicle or the persons who are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of the vehicle is found to be liable, it would have to reimburse the owner in as much as a vehicle is compulsorily insurable so far as the third party is concerned, as contemplated under section 147 thereof. Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role."

(Emphasis supplied)

**15.** In **Rajasthan State Road Transport Corporation (in short RSRTC) (supra)**, the vehicle along with services of the driver were hired by RSRTC from its registered owner. The issue which arose for consideration by this Court was whether RSRTC, which had hired the vehicle along with services of the driver from the registered owner of the vehicle, could be held vicariously liable for the accident caused by use of that vehicle. Answering the question in the affirmative, this Court, on the principle of vicarious liability of RSRTC for the tort committed by a person under its control and command, held:

> "17. ….. The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner……."

**16.** In that backdrop, this Court while construing the definition of "owner", as provided in Section 2(19) of the old Motor Vehicles Act, 1939[11], held that (a) the definition of "owner" under section 2 (19) of the Act is not exhaustive; (b) it has to be construed in a wider sense based on the

[11] See Footnote 3

facts and circumstances of a given case; and (c) it must include, in a given case, the person who has the actual possession and control of the vehicle and under whose direction and command the driver is obliged to operate the same. It was also observed that to confine the meaning of owner to the registered owner only would not be proper where the vehicle is in the actual possession and control of the hirer at the time of the accident.

**17.** In **National Insurance Co. Ltd. v. Deepa Devi & Ors.**[12] the question was as to who would be liable to pay compensation if the offending vehicle at the time of accident is under requisition for election. From the claimant's side, by relying on the decision of this Court in **Guru Govekar v. Filomena F. Lobo**[13]**,** it was argued that regardless of the vehicle being in possession of some other person, the owner would be liable. Negativing this argument, this Court held that when a vehicle is requisitioned for State duty, the owner of the vehicle has no other alternative but to hand over the possession to the statutory authority and, therefore, the case would be distinguishable from the one where the owner gives the vehicle to someone else on his own free will. Holding so, it was observed:

> "10. …. While the vehicle remains under requisition, the owner does not exercise any control there over. The driver

[12] (2008) 1 SCC 414
[13] ((1988) 3 SCC 1

> may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and /or its officers, the owner is only entitled to payment of compensation therefor in terms of the Act, but he cannot exercise any control thereupon. In a situation of this nature, this court must proceed on the presumption that Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view."
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> (Emphasis supplied)

**18.** While observing as above, this Court noticed that the clause defining "owner" is prefaced with the expression "unless the context otherwise requires" and, therefore, in the light of an earlier decision of this Court in **Ramesh Mehta v. Sanwal Chand Singhvi & Ors.**[14], it was held that where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.

**19.** What is clear from the decisions noticed above, is that 'owner' of a vehicle is not limited to the categories specified in Section 2(30) of the M.V. Act. If the context so requires, even a person at whose command or control the vehicle is,

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14[14] (2004) 5 SCC 409, paragraph 27

could be treated as its owner for the purposes of fixing tortious liability for payment of compensation. In this light, we shall now examine whether at the time of accident the vehicle in question was under the command and control of the appellant (i.e., the dealer).

**20.** According to the Tribunal, M/s. Hindustan Motors was admittedly the manufacturer of the vehicle and there was no evidence that the vehicle was sold to the dealer. The finding is that no sale letter was produced from its side to show that the car was sold to M/s. Vaibhav Motors. At the time of accident only two persons were present in the vehicle, and they were none other than employees of M/s. Hindustan Motors, namely, Pranav Kumar Goswami (the deceased) and Shubhashish Pal (the driver). Based on that, the Tribunal observed:

> "……*therefore, it is inferred that Hindustan Motors had given the Lancer car to Vaibhav Motors for the purpose of selling it. And the entire supervision was that of Pranav Kumar and Shubhashish Pal of Hindustan Motors. It is not proved that Hindustan Motors had sold the said Lancer car to Vaibhav Motors. Accordingly, the issue no.3 is held to be not proved.*"

**21.** However, the Tribunal held all non-applicants, namely, Shubhashish Pal (i.e., driver of the vehicle); M/s. Hindustan Motors (owner of the vehicle); and M/s. Vaibhav Motors (the dealer), jointly and severally liable for the compensation.

**22.** Against the award, the appellant (i.e., the dealer) filed an appeal but no appeal was preferred by M/s. Hindustan Motors even though a categorical finding was returned by the Tribunal that no evidence of sale of the vehicle to the dealer was produced by M/s Hindustan Motors. In view thereof, it does not lie in the mouth of M/s. Hindustan Motors to canvass that it was not the owner of the vehicle. We have, therefore, to consider whether M/s. Vaibhav Motors (the appellant), being in constructive possession of the vehicle as a dealer, could be held liable, particularly when M/s. Hindustan Motors was its owner and, at the time of accident, the vehicle was being driven by an employee of M/s Hindustan Motors.

**23.** As per the finding of the Tribunal, which remained undisturbed, the aforesaid two employees of M/s. Hindustan Motors took the vehicle from M/s Vaibhav Motors (the appellant) for a test drive. None of the employees of the dealer was present in the vehicle. Rather, at the time of accident, the driver and the co-passenger of that vehicle were employees of M/s. Hindustan Motors. There is nothing on record to suggest that the dealer had the authority to deny those two persons permission to take the vehicle for a test drive. More so, when they were representatives of the owner of the vehicle. In these circumstances, we can safely conclude that at the time of accident the vehicle was not only under the ownership of

M/s. Hindustan Motors but also under its control and command through its employees. Therefore, in our view, the appellant, being just a dealer of M/s Hindustan Motors, was not liable for compensation as an owner of the vehicle.

**24.** The issue no.(i) is decided in the aforesaid terms.

**Issue No.(ii)**

**25.** Now, we shall consider whether by virtue of clauses 3 (b) and 4 of the Dealership Agreement, M/s Hindustan Motors was absolved of its tortious liability, that is, whether the tortious liability shifted to the dealer (i.e., the appellant).

**26.** Clauses 3 (b) and 4 of the Dealership Agreement have been extracted in paragraph 14 of the judgment of the High Court. They read as under:

> "3 (b) After the motor vehicles are dispatched/ delivered the Company's liability in respect of any defect in the motor vehicle will be limited to the Company's obligations under the warranty clause and the Company will have no other liability and all liabilities other than the one under warranty as aforesaid shall be to the account of the Dealer.
>
> 4. After the motor vehicles are delivered, the Company's liability in respect of any defect in the motor vehicle will be limited to the Company's obligation under the warranty clause and the Company will have no other liability. All liabilities other than the one under warranty as aforesaid shall be to the account of the Dealer."

**27.** A careful reading of the aforesaid clauses would indicate that they deal with company's (M/s. Hindustan Motors') liability in respect of any defect in the motor vehicle. They limit the company's liability in respect of any defect in the motor vehicle to the company's obligations under the warranty clause. The use of the words "*and the company will have no other liability and all liabilities other than one under warranty as aforesaid shall be to the account of the Dealer*", in absence of specific exclusion of tortious liability arising from use of such vehicle, cannot absolve the owner of the motor vehicle of its liability under the Motor Vehicles Act and shift it on to the dealer when the vehicle at the time of accident was under the control and command of the owner (i.e., M/s Hindustan Motors) through its own employees as found above. We, therefore, reject the submission of the learned counsel for M/s. Hindustan Motors that it cannot be saddled with liability for payment of compensation in view of clauses 3 (b) and 4 of the Dealership Agreement.

**28.** Issue no.(ii) is decided in the aforesaid terms.

**Issue No.(iii)**

**29.** The issue as to whether M/s Hindustan Motors, without filing a separate appeal, or cross-objection, could take recourse to the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908[15] to challenge that portion of

[15] **Order 41 Rule 33. CPC. – 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

the award which made it liable, jointly and severally, for the compensation awarded is rendered academic in view of our findings on issues (i) and (ii). However, we propose to address the said issue.

**30.** In **Banarasi & Ors. V. Ram Phal**[16] this Court dealt with the scope of Order 41 Rule 22[17] CPC (post 1976 amendment) and the power of an appellate court under Order 41 Rule 33 CPC. While dealing with the scope of Rule 22 of Order 41, the Court observed:

"10. …. There may be three situations:

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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 favor 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 decrease are passed in one suit, be exercised in respect of all or any of the decrees, although any appeal may not have been filed against such decrees:

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

**Illustration**

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals and A & Y are respondents. The appellate court decides in favor of X. It has power to pass a decree against Y.

16 (2003) 9 SCC 606

17 **Order 41 Rule 22 CPC. – Upon hearing respondent may object to decree as if he had preferred a separate appeal..—**

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the appellate court within one month from the date of service on him or his pleader of notice of the day fix for hearing the appeal, or within such further time as the appellate court may deem fit to allow.

*Explanation.*-- A respondent aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under this rule, file cross objection in respect of the decree insofar as it is based on that finding, notwithstanding that by reason of the decision of the court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favor of that respondent.

(2) **Form of objection and provisions applicable thereto.** --- Such cross objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Omitted (by Act 46 of 1999, w.e.f. 1.7.2002)

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favor he is entitled to support without taking any cross-objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross- objection laying challenge to any finding adverse to him as the decree is entirely in his favor and he may support the decree without his cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage……"

In respect of the power of an appellate court under Order 41 Rule 33 CPC, the Court, after observing that the true scope of the power could be best understood when read along with Rule 4[18.] of Order 41, held:

> "15. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The above said provisions confer power of the widest amplitude on the appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject matter of the appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the appellate court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistent with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually, the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not 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: first, the power cannot be exercised to the prejudice or disadvantage of a person not a

18.[18.] **Order 41 Rule 4 CPC. – One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.** -- Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole degree, and thereupon the appellate court may reverse or vary the decree in favor of all the plaintiffs or defendants, as the case may be.

> 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 relief 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 favor of the respondent by the appellate court exercising power under Rule 33 of Order 41."
>
> (Emphasis supplied)

**31.** From the decision above, which has been consistently followed, it is clear that for exercise of the power under Rule 33 of Order 41 CPC the overriding consideration is achieving the ends of justice; and one of the limitations on exercise of the power is that that 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.

**32.** In the instant case, the Tribunal had returned a finding on issue no.3 that M/s. Hindustan Motors had provided no evidence to show that the vehicle manufactured and owned by it was sold by it to the dealer. Admittedly, its own employees /officers were in control of the vehicle at the time of accident and, therefore, M/s. Hindustan Motors was held jointly and severally liable for the compensation awarded. This part of the award

operated against it and was backed by a finding of ownership. By not challenging the same, through an appeal or cross-objection, M/s Hindustan Motors has allowed it to attain finality. Therefore, in our view, M/s Hindustan Motors cannot be allowed to question the same now. Issue no. (iii) is decided in the aforesaid terms.

**CONCLUSION**

**33.** In view of our conclusion that the appellant was neither the owner nor in control/ command of the vehicle at the time of accident, and the vehicle was being driven by an employee of M/s. Hindustan Motors, we are of the view that apart from the driver, M/s. Hindustan Motors alone was liable for the compensation awarded. Thus, the appellant should not have been burdened with liability to pay compensation.

**RELIEF**

**34.** However, as *vide* order dated 23.10.2018 the SLP was dismissed *qua* the claimant-respondents, we are unable to set aside the award to the extent it enables the claimant-respondents to recover the awarded compensation, jointly or severally, from the owner, dealer and driver of the vehicle. But we make it clear that if the awarded amount, or any part thereof, has been paid, or is paid, by the appellant, the appellant shall be entitled to recover the same from M/s. Hindustan Motors along with interest at

the rate of 6% p.a., with effect from the date of payment till the date of recovery.

**35.** The appeal is allowed to the extent above.

**36.** Pending application(s), if any, shall stand disposed of.

.....**J.**
(J.B. Pardiwala)

.....**J.**
(Manoj Misra)

New Delhi;
September 03, 2024