

SATYA PRAKASH DWIVEDI

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v.

MUNNA ALIAS CHANDRABHAN YADAV AND OTHERS

(Civil Appeal No. 5926 of 2021)

SEPTEMBER 17, 2021

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**[DR DHANANJAYA Y CHANDRACHUD AND
B V NAGARATHNA, JJ.]**

Code of Civil Procedure, 1908 – Or.XLI r.33 – Power of Court of Appeal – Appellant-claimant met with an accident and sustained grievous injuries – Appellant filed claim petition – Tribunal passed the judgment and order awarding compensation of Rs.5,42,633/- along with interest by accepting the permanent disability to the extent of 50% to that particular part of the body – However, the High Court construed functional disability at the rate of 20% rather than 50% as assessed by the Tribunal and reduced the overall compensation from Rs.5,42,633/- to Rs.3,26,833/- – On appeal, held: Or.XLI r.33 does not confer unrestricted rights to interfere with decrees which are not assailed merely because the appellate court does not agree with the opinion of the court appealed from – The Appellate Court must apply its judicial mind – A judgment on merits should not be lightly interfered with or reversed purely on technical grounds unless it has resulted in failure of justice – The High Court could not have reduced the percentage of functional disability from 50% to 20% when there was no challenge to the said finding arrived at by the Tribunal by an appeal or cross objection filed by the Insurance company and in the absence of recording justifiable reasons for doing so – The High Court was not right in its approach in the matter for another reason that the Insurance company had not filed any appeal seeking a reduction in the compensation amount awarded by the Tribunal – Thus, the High Court was not justified in exercising its power u/Or. XLI r.33 of the CPC in the instant case and reducing the compensation from Rs.5,42,633/- as awarded by the Tribunal to Rs.3,26,833/- i.e. a total reduction of Rs.2,15,800/- in the compensation amount – Thus, the impugned judgment of the High Court is set aside and the compensation amount of Rs.5,42,633/- awarded by the Tribunal is restored.

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A **Allowing the appeal, the Court**

HELD: 1. Upon a plain reading of Order XLI Rule 33 of the CPC, it reveals that the Appellate Court has the power to pass any decree or order which ought to have been passed, and to pass such other decree or order as the case may require.

B **Notwithstanding that the appeal is against a part of the decree, this power may be exercised by the court in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. However, the said power must be exercised with caution or circumspection, particularly, in the absence there being any cross objection or appeal filed by the**
C **respondents. Such a power has to be exercised in exceptional cases when its non-exercise will lead to difficulties in the adjustment of rights of the parties. [Para 13][265-C-E]**

2. The Order XLI Rule 33 does not confer unrestricted rights to interfere with decrees which are not assailed merely
D **because the appellate court does not agree with the opinion of the court appealed from. It is the duty of the appellate court to decide the appeal in accordance with law. The appellate court must apply its judicial mind to the evidence as a whole while deciding a case and a judgment on merits should not be lightly**
E **interfered with or reversed purely on technical grounds unless it has resulted in failure of justice. [Para 14][265-E-G]**

3. In the instant case, although the High Court has placed reliance on the judgment of this Court in Raj Kumar vs. Ajay Kumar – (2011) 1 SCC 343, in view of this Court it could not
F **have reduced the percentage of functional disability from 50% to 20% when there was no challenge to the said finding arrived at by the Tribunal by an appeal or cross objection filed by the Insurance Company and in the absence of recording justifiable reasons for doing so. The injured appellant-claimant had filed the appeal seeking enhancement in the quantum of compensation**
G **by contending that he had suffered 70% disability to the particular parts of his body but the Tribunal had overlooked the same and had assessed disability only at the rate of 50%. Instead of considering that contention on merits, the High Court ignored**

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the same and instead gave weightage to the contentions of the respondent-Insurance Company which was to the effect that the computation of functional disability at the rate of 50% was on the higher side and the same had to be toned down and therefore, the power under Order XLI Rule 33 of CPC could be exercised to do complete justice to the parties. This Court finds that the High Court was not right in its approach in the matter for the reason that the respondent – Insurance Company had not filed any appeal seeking reduction in the compensation amount awarded by the Tribunal and consequently, in the appeal filed by the injured appellant-claimant, the contention of the Insurance Company ought not have been allowed by ignoring the plea of the appellant-claimant seeking enhancement in the compensation. The appellant-claimant could not have been worse off than what had been granted to him by the Tribunal, in an appeal filed by him seeking enhancement of compensation. [Para 15][265-G-H; 266-A-D]

4. This Court is of the view that the High Court was not justified in exercising its power under Order XLI Rule 33 of the CPC in the instant case and reducing the compensation from Rs.5,42,633/- as awarded by the Tribunal to Rs.3,26,833/- i.e. a total reduction of Rs.2,15,800/- in the compensation amount. Thus, this Court finds it just and proper to restore the compensation i.e. Rs.5,42,633/- awarded by the Tribunal vide its judgment and Award dated 01.07.2017, by setting aside the impugned judgment and award passed by the High Court. [Paras 17 and 18][266-G-H; 267-A-B]

Raj Kumar v. Ajay Kumar (2011) 1 SCC 343 : [2010] 13 SCR 179 – referred to.

Case Law Reference

[2010] 13 SCR 179 referred to Para 15

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5926 of 2021.

From the Judgment and Order dated 28.01.2021 of the High Court of Judicature for Allahabad in First Appeal From Order No.3182 of 2017.

A Vipin Kumar, Deepak Goel, K. K. Srivastava, Advs. for the Appellant.

S. L. Gupta, Ms. Gunjan Sharma, Asutosh Sharma, Neeraj Srivastava, Varinder Kumar Sharma, Advs. for the Respondents.

B The Judgment of the Court was delivered by

B V NAGARATHNA, J.

1. Leave granted.

C 2. The appellant was injured in a road traffic accident. He has filed this appeal, being aggrieved by the impugned judgment and award dated 28.01.2021 passed by the Allahabad High Court in First Appeal from Order No.3182 of 2017 by which the High Court dismissed the said appeal filed by the him and reduced the compensation amount from Rs.5,42,633/- to Rs.3,26,833/- on the premise that the Motor Accident Claims Tribunal (for the sake of convenience, the ‘Tribunal’) had arbitrarily construed functional disability at the rate of 50% without any evidence to that effect. The High Court deemed it appropriate to assess 20% functional disability inasmuch as it was nowhere mentioned that the disability was permanent in nature and was irreversible.

D 3. The short question that arises in this appeal is, whether, the High Court, in exercise of its appellate jurisdiction could have reduced the compensation awarded by the Tribunal in the first appeal filed by the injured claimant seeking enhancement of compensation. In other words, whether the High Court was justified in exercising its power under Order XLI Rule 33 of the Code of Civil Procedure 1908 (for short, the ‘CPC’).

E 4. Succinctly stated the facts are that the appellant -claimant while riding on his motorcycle bearing Registration No.UP93H-5532 met with an accident at about 6.30 p.m. on 30.10.2002 when a Truck, bearing Registration No.UP32Z-2570, came on the wrong side of the road and collided against the appellant-claimant, as a result of which he sustained grievous injuries. Although the appellant-claimant underwent treatment for about 470 days, he was rendered disabled. He was 32 years of age at the time of accident and was running a canteen and said to be earning Rs.10,000/- per month. Appellant filed a claim petition seeking compensation of Rs.17 lakhs along with interest at the rate of 17% per annum from the date of filing of claim petition till the date of actual payment on account of grievous injuries sustained by him in the accident.

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5. It is pertinent to mention that the Tribunal initially awarded compensation of Rs.6,03,000/- along with 7% interest per annum from the date of judgment till actual payment vide its Award dated 30.10.2006 passed in Motor Accident Claim Petition No.299 of 2002. Being aggrieved by the said Award, the respondent – Insurance Company approached the High Court by filing First Appeal from Order No.293 of 2007. By order dated 03.12.2015, the High Court set aside the Award dated 30.10.2006, except the finding recorded by the Tribunal that the accident had actually taken place, allowed the said appeal and remanded the matter to the Tribunal for decision afresh in light of the observations made in the said order.

6. On remand, the Tribunal passed the judgment and order dated 01.07.2017 awarding compensation of Rs.5,42,633/- along with interest at the rate of 7% per annum from the date of filing the petition till the date of actual payment by accepting the permanent disability to the extent of 50% to that particular part of the body and taking into account his income as Rs.54,000/- per annum. The Tribunal also applied multiplier of 15 in calculating the future loss and also awarded compensation on other heads. Not being satisfied with the said Award, the appellant-claimant filed an appeal being First Appeal from Order No.3182 of 2017.

7. By the impugned judgment dated 28.01.2021, the High Court construed functional disability at the rate of 20% rather than 50% as assessed by the Tribunal, assessed the age of claimant to be above 35 years and by applying the multiplier of 15, computed the total compensation under the Head of loss of income at Rs.1,51,200/-. The High Court also awarded compensation under the other heads i.e. Rs.53,633/- under the Head of medical treatment; Rs.25,000/- under the head of mental and physical pain; Rs.36,000/- under the Head of loss of income; Rs.18,000/- under the head of nutritious diet; and Rs.5,000/- under the head of conveyance. The High Court noted that the Tribunal had not awarded any compensation under the head of attendant charges and future treatment, it awarded compensation for a sum of Rs.18,000/- and Rs.20,000/- respectively under those heads, even though the High Court reduced the overall compensation from Rs.5,42,633/- to Rs.3,26,833 resulting in a total reduction of compensation to Rs.2,15,800/-. This was on account of construing functional disability at the rate of 20% rather than 50% as assessed by the Tribunal. The age of the claimant was also assessed as being above 35 years and taken the same in the bracket of

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- A 36 to 40 years. Multiplier of 15 was applied rather than 17 as applied by the Tribunal. Hence this appeal by special leave.

8. We have heard learned counsel appearing for the parties and perused the record.

- B 9. Sri Vipin Kumar, learned counsel appearing for the appellant-claimant, contended that the High Court was not right in reducing the quantum of compensation awarded to the appellant, in an appeal filed by him seeking enhancement of the same. The main grievance of the appellant is that the High Court ought not to have exercised power under Order XLI Rule 33 of the CPC to reduce the compensation awarded by the Tribunal in an appeal filed by the appellant-claimant. It was submitted that while on the one hand, the High Court reduced the quantum of compensation by reducing the percentage of functional disability from 50% to 20%, at the same time the High Court granted compensation under the heads of ‘attendant charges’ and ‘future medical treatment charges’ in a sum of Rs.18,000/- and Rs.20,000/- respectively. It was urged that the High Court should not have exercised its power under Order XLI Rule 33 of the CPC, particularly, in the absence of any appeal or cross objection filed by the respondent-Insurance Company. That the power under Order XLI Rule 33 of the CPC has to be exercised in exceptional cases when its non-exercise would lead to difficulty in the adjustment of rights of various parties. Therefore, learned counsel for the appellant sought for setting aside the impugned judgment and award passed by the High Court and for restoration of the judgment and award of the Tribunal, in case this Court is not inclined to award a higher compensation.

- F 10. Sri S.L. Gupta, learned counsel appearing for the respondent-Insurance Company supported the impugned judgment and award passed by the High Court and contended that there is no merit in this appeal.

11. We have considered the contentions of the respective parties in light of the facts and relevant provisions of law.

- G 12. Order XLI Rule 33 of the CPC reads as under:

“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

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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 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.”

13. Upon a plain reading of Order XLI Rule 33 of the CPC, it reveals that the Appellate Court has the power to pass any decree or order which ought to have been passed, and to pass such other decree or order as the case may require. Notwithstanding that the appeal is against a part of the decree, this power may be exercised by the court in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. However, the said power must be exercised with caution or circumspection, particularly, in the absence there being any cross objection or appeal filed by the respondents. Such a power has to be exercised in exceptional cases when its non-exercise will lead to difficulties in the adjustment of rights of the parties.

14. The aforesaid Rule does not confer unrestricted rights to interfere with decrees which are not assailed merely because the appellate court does not agree with the opinion of the court appealed from. It is the duty of the appellate court to decide the appeal in accordance with law. The appellate court must apply its judicial mind to the evidence as a whole while deciding a case and a judgment on merits should not be lightly interfered with or reversed purely on technical grounds unless it has resulted in failure of justice.

15. In the instant case although the High Court has placed reliance on the judgment of this Court in *Raj Kumar vs. Ajay Kumar* – (2011) 1 SCC 343, in our view it could not have reduced the percentage of functional disability from 50% to 20% when there was no challenge to the said finding arrived at by the Tribunal by an appeal or cross objection filed by the Insurance Company and in the absence of recording justifiable reasons

- A for doing so. As already stated, the injured appellant-claimant had filed the appeal seeking enhancement in the quantum of compensation by contending that he had suffered 70% disability to the particular parts of his body but the Tribunal had overlooked the same and had assessed disability only at the rate of 50%. Instead of considering that contention on merits, the High Court ignored the same and instead gave weightage to the contentions of the respondent-Insurance Company which was to the effect that the computation of functional disability at the rate of 50% was on the higher side and the same had to be toned down and therefore, the power under Order XLI Rule 33 of CPC could be exercised to do complete justice to the parties. We find that the High Court was not right in its approach in the matter for the reason that the respondent – Insurance Company had not filed any appeal seeking reduction in the compensation amount awarded by the Tribunal and consequently, in the appeal filed by the injured appellant-claimant, the contention of the Insurance Company ought not have been allowed by ignoring the plea of the appellant-claimant seeking enhancement in the compensation. The appellant-claimant could not have been worse off than what had been granted to him by the Tribunal, in an appeal filed by him seeking enhancement of compensation.

16. It is noted that Dr Pushkar Anand, Orthopaedic Surgeon at District Hospital Hameerpur and Member of the Medical Board, had opined that the appellant sustained partial stiffness in both his knees, toes and wrists, as a result of the injuries sustained by him in the accident. There was disability of moving his feet and hence, the same was assessed at 70% and not disability of the whole body. The Tribunal, however, opined that the disability was only 50% as even the Doctor had admitted that the appellant's work would not be so badly affected as had been claimed by him. The High Court, however, has reduced the percentage of disability to 20% only by opining that there was no shortening of the lower limbs and that stiffness of the joints in the feet could have been due to injuries or disease viz., 'Ankylosis'. But in fact, the appellant had sustained fractures on both his lower limbs and hands.

17. We are of the view that the High Court was not justified in exercising its power under Order XLI Rule 33 of the CPC in the instant case and reducing the compensation from Rs.5,42,633/- as awarded by the Tribunal to Rs.3,26,833/- i.e. a total reduction of Rs.2,15,800/- in the compensation amount. At the same time, the High Court awarded an additional compensation under the heads of 'attendant' and 'future treatment' charges.

18. In view of the above, we find it just and proper to restore the compensation i.e. Rs.5,42,633/- awarded by the Tribunal vide its judgment and Award dated 01.07.2017, by setting aside the impugned judgment and award passed by the High Court. We consequently direct the respondent-Insurance Company to pay the said compensation amount along with interest thereon at the rate of 7% per annum from the date of filing the claim petition till the date of actual payment to the appellant-claimant within a period of three months. A B

19. Ordered accordingly.

20. The appeal is allowed in the aforesaid terms. No costs.

21. Pending interlocutory applications, if any, stand disposed. C

Ankit Gyan

Appeal allowed.