IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1620 OF 2012
ALONG WITH
CIVIL APPLICATION NO. 4005 OF 2012
IN
FIRST APPEAL NO. 1620 OF 2012

Royal Sundaram Alliance Insurance Co. Ltd.]
Block No. 101-103, Subham 1,]
Sarojani Naidu, Kolkata – 700 017] ....Appellant

Versus

1. Mr.Ajit Chandrakant Rakvi]
Age : 60 years,]
Mayur Co-op. Housing Society]
Tilak Nagar, Chembur,]
Mumbai – 400 089.]
]
2. M/s. Concrete & Mortar India]
Jugal Jyoti, First Floor,]
176, C.S.T. Road, Santacruz (E),]
Mumbai-400 098.]..... Respondents

Mr. Mehta I/b KMC Legal Venture, Advocate for appellant.

Mr.T.J. Mendon, Advocate for respondent No.1.

CORAM : N. J. JAMADAR, J.

RESERVED ON : 11th MARCH 2019
PRONOUNCED ON : 19th MARCH 2019

JUDGMENT :

1. Admit.

2. With the consent of the counsels for the parties, heard finally.

3. This appeal is directed against the Award dated 2nd May 2012 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai (MACT) in Application No. A.25/2007, under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short).

4. The parties are, hereinafter, referred to in the capacity in which they were arrayed before the MACT.

5. Shorn of superfluities, the background facts leading to this appeal can be stated as under :-

On 18th October 2006, at about 11:00 am., the applicant (respondent No.1 herein) was riding a motorcycle on his way to Chembur from Dadar, Mumbai. When he came near T-Junction, the Dumper bearing No.MH06-CG-164, owned by the opponent No.1 and insured with the opponent NO.2(the appellant herein) came from behind in a high speed. The driver of the dumper drove it in a rash and negligent manner and gave dash to the applicant from behind. The applicant sustained multiple injuries including a grievous injury to the right forearm with fracture of ulna. The right forearm of the applicant was thus amputed. The applicant, thus, approached MACT and claimed compensation of Rs.7 lakhs.

6. The Tribunal, after appraisal of the evidences adduced and documents tendered, came to the conclusion that the accident occurred due to

negligence of the driver of the offending Dumper. The applicant suffered grievous injury and 70% disability on account of traumatic amputation of right forearm. Thus, the Tribunal awarded compensation as under :-

"Treatment expenses	:	Rs. 1,20,000/-
conveyance	:	Rs. 3,000/-
special diet	:	Rs. 2,000/-
loss of income	:	Rs. 36,000/-
pain and suffering	:	Rs.1,00,000/-
disability	:	Rs. 2,01,600/-
Loss of amenities of life	:	Rs. 40,000/-
Total	:	**Rs. 5,02,600/-"**

7. Being aggrieved by and dissatisfied with the aforesaid award, the insurer came in appeal.

8. I have heard Shri Mehta, the learned counsel appearing for the appellant and Shri Mendon, the learned counsel for respondent No.1-applicant.

9. The learned counsel for the appellant advanced a two-pronged submission. Firstly, it was urged that the Tribunal committed a manifest error in fastening the liability upon the insurer without properly appreciating the nature of the contract of insurance. It was submitted that the contract, under which the opponent No.1 was insured, was Contractor's Plant and Machinery Policy. Thus, the liability of the insurer was limited to

the incidents which occurred within the precincts of the plant. In the case at hand, the accident had occurred on a public road and was not at all covered by the contract of insurance. Secondly, the Tribunal was not justified in awarding the compensation under the head of treatment expenses (Rs.1,20,000/-), without there being any documentary evidence to substantiate the same. As a second limb of this submission, it was urged that, the Tribunal arrived at the said sum of Rs.1,20,000/- on the basis of the amount reimbursed to the applicant under a mediclaim policy. Thus, the applicant was unjustifiably allowed a double benefit, i.e., statutory, under terms of the policy in question, and contractual, in terms of the policy under which the applicant had insured himself, for one and the same expenses.

10. In contrast to this, the learned counsel for the respondent No.1 urged that none of the aforesaid challenges to the impugned award merit countenance. The learned counsel for the respondent No.1 would submit that it is indubitable that the accident arose out of the use of a motor vehicle and, thus, the Tribunal had competence to award the compensation. The Dumper in question falls within the definition of 'motor vehicle' under Section 2(28) of the Act. Thus, the fact that the accident occurred on the public road cannot be a ground to exonerate the insurer of its statutory liability.

11. Admittedly, the accident had occurred on a public road. The finding recorded by the Tribunal that the accident occurred due to the negligence on the part of the driver of the Dumper, in the backdrop of the dash from behind, is impeccable. There is not much controversy over the fact that the applicant suffered grievance injury in the nature of fracture of right ulna and the consequent amputation, resulting in 70% permanent disability.

12. The edifice of the defence that the contract of insurance did not cover the risk, of the nature at hand, was sought to be built on the terms of the insurance policy. Indeed, the policy is entitled, “Contractor's Plant and Machinery Policy”. The description of the Machineries covered and the Sum Insured is as under :-

SL. NO	**QTY**	**DESCRIPTION TYPE, MODE, CAPACITY OF MACHINE**	**MAKE**	**YEAR OF MAKE**	**SUM INSURED (Rs.)**	**EXCESS**	
						For claims arising out of AOG perils	For claims arising out of perils other than AOG
1	1 no.	STETTAR TRANSIT MIXER MOUNTED ON ASHOK LEYLAND TAURUS 2516 REG MH04 CG 1624 ENG NO. FEW 404543 CH.NO. FWR 221672	ASHOK LEYLAND	2005	14,40,000/-	2% of S.I. subject to a minimum of Rs.30,000/-	1.00% of S.I. subject to minimum of Rs.12,500/-

Total Sum Insured :

Third party Liability – (AOA : AOY = 1:1) Rs.14,40,000/-

Rs. 100,000/-"

13. The learned counsel for the appellant pressed into service the Third Party Liability clause, which reads as under :

> ***"THIRD PARTY LIABILITY***
>
> *In consideration of the payment of the additional premium of Rs.250/-. It is hereby agreed and declared that notwithstanding anything to the contrary stated in this policy, the Company will indemnify the insured:*
>
> *a) against legal liability for the accidental loss or damage caused to the property of other persons.*
> *Against legal liability (liability under contract expected) for fatal or non-fatal injury to any persons other than the insured or his own employees or employee of the owner of the works/site premises/location or employees of the other firms/connected with any other work, site/premises/location or members of the family of the insured or any of the aforesaid.*
>
> *EXCLUSIONS UNDER THE TPL EXTENSION -*
>
> *The Company will not indemnify the insured, under this extension in respect of -*
>
> *b) The first amount of policy excess of each claim for any one occurrence related to property damage.*
>
> *c) Expenditure incurred in doing or redoing or making good or repairing or replacing any thing covered or coverable under the policy.*
> *d) Liability consequent upon -*
>
> > *i) bodily injury to or illness of employees/workmen/members of the families of the insured or of the owners of the works/site/premises/location or of any other firm/contractors connected with any other work at*

the works/site/premises/location.

ii) loss of or damage or property belonging to or held in trust by or under custody of the owner of the works/site/premises/location of any other firms/contractors or an employee/workmen/family members of any of the aforesaid.

iii) any accident cost by vehicles licensed for general road or by waterborne vessels or used aircraft.

iv) any agreement by the insured to pay any sum by way of indemnity or otherwise unless such liability would have attached also in the absence of such agreement."

14. Laying emphasis upon the aforesaid exclusion clauses of the policy, it was urged that the Tribunal was not justified in fastening liability on the appellant-insurer.

15. In the context of aforesaid defence, the Tribunal was of the view that the exclusion clause, added after third party liability clause, did not exclude the insurer from third party liability. Since the insurer accepted premium of Rs.250/- and thereby undertook the liability to indemnify the owner for compensation payable to third party in fatal or non-fatal cases, the insurer could not avoid the liability, opined the Tribunal.

16. In order to appreciate the aforesaid challenge, it is necessary to note the nature of the machinery in question. It was a 'transit mixer' which was mounted on Ashok Leyland Truck bearing Registration No. MH04 CG 1624.

The transit mixer was thus mounted to facilitate its mobility from one place to another. The underlying vehicle, i.e., Ashok Leyland Truck, however, thereby did not loose its identity as a motor vehicle. Section 2(28) of the Act defines 'motor vehicle' to mean “any mechanically propelled vehicle adapted for use upon roads”. Indisputably, the truck on which machine was mounted squarely falls within the definition of the 'motor vehicle'. Resultantly, under Section 147 of the Act, it was statutorily incumbent upon the insurer to issue a policy of insurance which insured the owner against any liability which may be incurred by him in respect of the death or bodily injury to any person or damage to any property of the third party. In this view of the matter, the submission on behalf of the appellant that it was a contract of insurance in respect of plant and machinery only, is unworthy of acceptance.

17. It is imperative to note that Section 165 of the Act which provides for constitution of the Claims Tribunal, for the purpose of adjudicating claims for compensation, uses the words, *“arising out of the use of motor vehicle”*. The fundamental requirement is that the accident should arise out of the use of the motor vehicle. By a catena of judgments, the expression *“ the use of the motor vehicle”* has received pragmatic interpretation. It is not restricted to the use of vehicle in motion only.

18. A profitable reference in this context can be made to a recent three Judge Bench judgment of the Supreme Court in the case of ***Kalim Khan & Ors. Vs. Fimidabee & Ors.*** [1] wherein following proposition was expounded :-

> *"24. It may be reiterated here that the causal relationship should exist between violation and the accident caused. There has to be some act done by the person concerned in causing the accident. The commission or omission must have some nexus with the accident. The word 'use' as has been explained by the authorities of this Court need not have an intimate and direct nexus with the accident. The Court has to bear in mind that the phraseology used by the legislature is "accident arising out of use of the motor vehicle". The scope has been enlarged by such use of the phraseology and this Court taking note of the beneficial provision has placed a wider meaning on the same. There has to be some causal relation or the incident must relate to it. It should not be totally unconnected. Therefore, in each case what is required to be seen is whether there has been some causal relation or the event is related to the act."*
>
> (emphasis supplied)

19. In the backdrop of the definition of 'motor vehicle' and the interpretation which the expression *"arising out of use of the motor vehicle"* has received, it would be rather naive to urge that motor vehicle, on which a machinery was mounted, looses its character of a 'motor vehicle'. Nor it would stands to reason that when the accident arises out of the use of said vehicle, while in transit, the insurer would be absolved of its liability.

20. This leads me to the second challenge of double benefit mounted by the learned counsel for the appellant. Evidently, the Tribunal had awarded

1 (2018) 7 SCC 687

compensation under the head of medical expenses on the basis of the fact that a sum of Rs.1,20,000/- was reimbursed to the applicant, under the contract of mediclaim insurance. Would the said reimbursement of medical expenses disentitle the applicant to claim compensation under the Act, under the said head?

21. The Tribunal was of the view that the said reimbursement, was not deductible. Adverting to the proposition of law laid down by the Supreme Court in the case of ***Helen C. Rebello Vs. MSRTC*** [2]***,*** that the amount received by the claimant on the life insurance of the deceased is not deductible from the compensation computed under the Act, the Tribunal held that the said principle applied even to the personal injury claim and thus did not allow the deduction. This view of the Tribunal, according to the learned counsel for the appellant, is not sustainable as there is a clear case of double benefit in respect of the very same expenses.

22. Per contra, the learned counsel for the respondent No.1 stoutly submitted that the said reimbursement of expenses under an independent contract of insurance has no bearing upon the claim under a statutory liability. Moreover, the applicant had paid premium for purchasing the said insurance. Thus, the benefit, which emanated from the said contract,

2 AIR 1998 SC 3191

cannot be adjusted against the compensation payable under the Act.

23. Apparently and at the first blush, the submission on behalf of the appellant appears attractive. However, the submission warrants a close scrutiny in the backdrop of the nature of the statutory liability of the insurer, under the Act. The other facet of the aforesaid question is, whether the contract of medical insurance, which the applicant independently had with his insurer, would enure for the benefit of the insurer, who had underwritten a statutory liability under the Act?

24. For an answer, reference to the judgment of the Supreme Court in the case of ***Helen C. Rebello*** (Supra), at this juncture, would be advantageous. In the said case, the question that arose for consideration was, "Whether life insurance money of the deceased is to be deducted from claimants' compensation receivable under the Motor Vehicles Act, 1939?" After an elaborate consideration, the Supreme Court held that the said amount received by the claimant was not deductible from the compensation receivable under the Act. The relevant portions of paragraphs 35, 36 and 37 of the judgment are extracted below :-

> *"35 This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the*

same transaction, viz., same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the 'pecuniary gain' only on account of one's accidental death. This, of course, is pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law.

36.....When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual.

37 As we have observed the whole scheme of the Act, in relation of the payment of compensation to the claimant, is a beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act, 1855 and what is brought under Section 110-B of 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident spite of no fault of the owner of the

> *vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is in addition to any other right to claim compensation respect whereof under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit to the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have given of this statute, evidenced by two distinct sets of decisions of the various high courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount should be accepted and the other set, which interpreted to deduct, is to be rejected.....”*
>
> (emphasis supplied)

25. It may be apposite to also note two judgments of this Court. First, in the case of ***Vrajesh Navnitlal Desai Vs. K. Bagyam & Ors.*** [3]**.** In the said case, the Tribunal had deducted a sum of Rs.29,000/- which the claimant therein had received as medical reimbursement. This Court, after referring to the judgment of ***Madhya Pradesh State Road Trans. Corporation Vs. Priyank*** [4] held that the said amount cannot be deducted because it was paid to the claimant under the contract of insurance for which he had paid the premium.

26. Second, in the case of ***United India Insurance Co. Ltd. Vs. Anjana W/o. Nileshkumar Parmar & Anr.***[5]**,** the question which arose before the learned Single Judge of this Court was, whether the amount of Rs.5 lakhs,

3 2006 ACH 65 (BOM.)
4 Manu/MP/0436/1999
5 2012(3) Mh.L.J. 914

paid under the Group Hospitalization Policy by the employer of the husband of the applicant, should be deducted from the total amount of compensation awarded under the Act. The learned Single Judge, after placing reliance upon the aforesaid judgment in the case of ***Vrajesh Navnitlal Desai*** (Supra), held that the said amount was not deductible.

27. It must, however, be noted that there is a cleavage of judicial opinion on the point as to whether the amount of reimbursement received under a mediclaim policy, be deducted from the compensation payable under the Act, in the judgments of various High Courts. A Division Bench of Calcutta High Court in the case of ***New India Assurance Company Limited Vs. Bimal Kumar Shah & Anr.***[6] elaborately considered the judgments which hold the view that such amount is required to be deducted and those which record a contrary view and, thereafter, by placing reliance upon the observations of the Supreme Court in the case of ***Helen C. Rebello*** (Supra), especially paragraph Nos.35 to 37, extracted above, came to the conclusion that the reimbursement of medical expenses under a contract of insurance is not deductible. While arriving at the aforesaid conclusion, the Calcutta High Court observed as under :-

> *".....However, the Hon'ble Supreme Court has been pleased to go on and make it clear that an amount earned out of one's own contribution cannot be said to be "pecuniary gain" only on account of the accident. After all, it is not the case that the*

6 2018 SCC OnLine Cal. 10368

employer paid the Mediclaim of the victim in this or any other case of third party risk. The victim took out a medical insurance as and by way of a general insurance contract by paying premium. It was his contribution. If he gets something out of his own contribution, for an accident, under an insurance policy he has taken out himself, can a statutory liability on a different insurer who has taken on the risk towards third parties due to an accident caused by the offending vehicle which he has insured, then claim deduction of the amount the victim got from a different insurer based on his own contributions? I most respectfully think not, going by the spirit of the opinion delivered by the Hon'ble Supreme Court.

.....However, in the instant case, I cannot lose sight of the principles which control the entire ratio first, that the liability of an insurer of the offending vehicle to pay a third party compensation for injury or death caused in an accident by the offending vehicle, is statutory whereas the liability to pay a sum to the insured victim for such accidental death or injury, or for any other kind of death, is contractual, and second that the sum paid by the insurer of the victim (rather than the offending vehicle) in both cases is due to the premium paid by the victim from his own earnings. Once these important differences and similarities as I have extracted above are appreciated, it will appear, with the greatest of respect to the learned coordinate benches of the other Hon'ble Courts or the learned Single Benches of those Hon'ble Courts, that none of the judgments referred to in paragraph 7 and sub-paragraphs a, b, c, d, or e, lay down the law, in the teeth of the ratio laid down by the Hon'ble Supreme Court in the case of Rebello (supra) as noticed by me above."

(emphasis supplied)

28. In the light of aforesaid enunciation as regards the statutory liability of the insurer, the nature of general contract of medical insurance needs to be noted. The medical insurance covers a variety of ailments and medical expenses therefor, which are not otherwise specifically excluded. Often there is a upper limit. The duration is also stipulated by the terms of the contract. In this backdrop, the matter can be looked at from another angle.

If the claimant exhausts the upper limit or substantial part of the insured amount, for meeting the expenses of treatment, for the injury which is suffered in an accident, the claimant would not be entitled to the benefit of the medical insurance, if the occasion again arises on account of certain other ailments unconnected with the accident. If the policy is in the nature of Family Floater Plan and the limit is exhausted for meeting the expenses in connection with an injury suffered in an accident, by one member, the other members of the family cannot have the benefit of the medical insurance.

29. In the backdrop of these variables, the nature of the proceedings under the Act, becomes significant. A claim petition for compensation in regard to a motor accident filed by the injured before Tribunal constituted under Section 165 of the Act, is neither a suit nor an adversarial lis in the traditional sense. Though the tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. (***United India Insurance Co. Ltd. Vs. Shila Datta & Ors.*** [7]). This being the nature of the proceedings before the Tribunal, even in respect of the parties before it, in my view, the benefits emanating from an independent and unconnected contract of insurance cannot be considered by the Tribunal, as it besets with variables rooted in cotract.

7 (2011) 10 SCC 509

30. From this stand point, in the context of the distinction between the contractual liability under the contract of insurance (medical) and the statutory liability under the Act, the aforesaid proposition, not to deduct the amount of reimbursement received, under a mediclaim policy, appears to be in consonance with the principle of beneficial interpretation and advances the object of the Act. Hence, I am not persuaded to agree with the submission on behalf of the appellant that the said amount of Rs.1,20,000/- ought to have been deducted.

31. The residual submission that there was no documentary evidence, except the said fact of reimbursement of Rs.1,20,000/- in support of the claim of medical expenses does not carry much weight. The fact remains that the applicant had admittedly suffered fracture of ulna and was required to undergo medical treatment leading to amputation. Evidently, the said amount of Rs.1,20,000/- was reimbursed after it was found to be admissible. Thus, in the facts of the case, the Tribunal was within its rights in assessing the compensation on the strength of vouched medical expenses of Rs.1,20,000/-.

32. The learned counsel for the appellant also canvassed that the award of compensation under the head of "Pain and Suffering" (Rs.1,00,000/-) and "Disability" (Rs.2,01,600/-) was on the higher side. The Tribunal had

placed reliance upon the judgment of the Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar*** [8] to arrive at the computation for loss of income under the head of pain and suffering. The Tribunal has assessed the annual income at the conservative estimate of Rs.36,000/- per annum. The said assessment can, by no stretch of imagination, be said to be on a higher side.

33. A useful reference in this context can be made to a recent three Judge Bench judgment of the Supreme Court in the case of ***Jagdish Vs. Mohan & Ors.*** [9]**,** wherein, after following the aforesaid pronouncement in the case of ***Rajkumar*** (Supra), *inter-alia,* the following pertinent observations were made :

> *"14 In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing - at least in the facts of this case - can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity."*
>
> (emphasis supplied)

8 2011 ACJ 1
9 (2018) 4 SCC 571

34. Undoubtedly, the applicant had suffered a painful and debilitating grievous injury resulting in amputation of right forearm. The applicant was earning his livelihood as a manual worker. The amputation of right forearm unquestionably affected the applicant's prowess and capacity. The mental trauma and anxiety about future must have contributed to the physical suffering. The pain, mental agony and inconvenience caused to the applicant on account of the said disability was thus rightly appreciated by the Tribunal and compensation of Rs.1 lakh was awarded under the head of 'Pain and Suffering'. In the totality of the circumstances, I am not inclined to hold that the said amount is on a higher side.

35. It was lastly urged on behalf of the appellant that the insurer may be given the liberty to recover the amount from the insured, for the alleged breach of the conditions of policy. Assuming for the sake of argument that the insurer was not liable to pay the compensation, since the offending Dumper was duly insured, the appellant-insurer would still be liable to pay the compensation amount in the first instance and then recover the same from the owner of the offending vehicle. However, in the facts of the case at hand, on the basis of the findings recorded by the Tribunal, which this Court found to be justifiable, the liability of the insurer to satisfy the award stands established beyond cavil. Resultantly, the recourse to the principle

of 'pay and recover' is not warranted.

36. The upshot of above consideration is that no interference is warranted in the impugned award. Consequently, the appeal fails.

37. Thus, the appeal stands dismissed. In the circumstances, there shall be no order as to costs.

38. The amount of statutory deposit be remitted to the Motor Accident Claims Tribunal, Mumbai.

39. In view of the dismissal of the appeal, the civil application No. 4005 of 2012 does not survive and accordingly stands disposed of.

[N.J. JAMADAR, J.]