



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 674 of 2022

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Order Reserved on 13.04.2026

Order Pronounced on 13.07.2026

Order (Full) Uploaded on 14.07.2026

1 - Branch Manager, The Oriental Insurance Company Limited Regional Office
Near Pachpedi Naka, Raipur, Tahsil And District Raipur Chhattisgarh
... Appellant

versus

1 - Rajendra Jain S/o Javrilal Jain Aged About 41 Years R/o Keshkal, Borgaon
P.S. And Tahsil Keshkal, District Kandagaon Chhattisgarh.

2 - Nandkishore Kura S/o Ramuram Aged About 32 Years Driver Of Vehicle R/o
Village Charkai, P.S. And Tahsil Farasgaon, District Kandaon Chhattisgarh.

3 - Jasbeer Pandey S/o Kishan Pandey, Aged About 40 Years Owner Of Vehicle
R/o Village Charkai, P.S. And Tahsil Farasgaon, District Kandaon Chhattisgarh.
... Respondents

For Appellant	:	Shri Hanuman Prasad Agrawal, Advocate
For Respondent No.1	:	Shri Shobhit Koshta, Advocate
For Respondents No.2 & 3	:	Ms. Pooja Yadav, Advocate on behalf of Shri Shivendu Pandya, Advocate

Hon’ble Shri Justice Sachin Singh Rajput

C A V Order

- 1.** This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the MV Act') calls in question validity, correctness and judicial propriety of the award dated 22.02.2022 passed by the Additional Motor Accidents Claims Tribunal, District Kondagaon (Chhattisgarh) (for short 'Claims Tribunal') in Motor Accident Claim Case No.12 of 2021.
- 2.** By the award impugned, learned Claims Tribunal has awarded compensation of Rs.14,17,920/- on account of the injuries sustained by respondent No.1/claimant in an accident that occurred on 1.10.2016 by rash and negligent driving of the offending vehicle Bolero Pickup bearing registration No. CG-27-B-0740 driven by respondent No.2, owned by respondent No.3 and insured with the appellant.
- 3.** As per the pleadings of the claim application, respondent No.1/claimant, who was aged about 38 years on the date of accident, he was engaged in a business of hardware and electronics and was earning Rs.30,000/- per month. He met with the accident due to rash and negligent driving of the offending vehicle. Total compensation of Rs.35,50,000/- was claimed.
- 4.** Respondents No.2 and 3, i.e. the driver and owner of the offending vehicle did not file any written statement to the claim application and they remained *ex parte*.
- 5.** The appellant/insurance company filed a written statement and denied the averments of the claim application. The insurance company pleaded that the driver of the offending vehicle was driving the offending vehicle carefully and it was the claimant who dashed the offending vehicle by

driving his car negligently on wrong side. The insurance company also pleaded that the claimant was not having a licence to drive the car. Therefore, the claimant was responsible for the accident. The insurance company also pleaded that the driver of the offending vehicle did not possess any valid and effective licence to drive the offending vehicle on the date of accident and the offending vehicle was being driven without any permit and fitness certificate. Thus, the insurance company pleaded that it is not liable for payment of any compensation to the claimant.

- 6.** On the basis of above pleadings, learned Claims Tribunal framed issues and having decided them awarded the above stated compensation.
- 7.** Learned counsel for the appellant/insurance company submits that the accident had occurred by head on collision between two vehicles. Learned Claims Tribunal erred in only holding 25% contributory negligence on the claimant. It should have been taken as 50% contributory negligence. He further submits that the disability certificate was not proved in accordance with law. The doctor, who was examined on behalf of the claimant, is not an orthopedician. Thus, no reliance can be placed on such certificate. He next submits that the monthly income of the claimant is taken as Rs.10,000/- which is on higher side, particularly, in absence of any documentary evidence in this regard. He submits that the date of accident is 1.10.2016. Thus, in absence of any documentary evidence, the Claims Tribunal ought to have taken minimum wages for assessment of his future loss. He further submits that apart from the future loss of earning capacity, further loss for 18 months has been assessed and awarded by the Claims Tribunal, which requires to be set aside. He further submits that the amount of compensation is exaggerated, which requires to be set

aside. No documentary evidence from the Municipal Corporation, Raipur has been adduced to show that the claimant had an electrical shop. He placed reliance on **(2021) 18 SCC 596 National Insurance Company Limited Vs. Chmundesawari & others**. Cross objection under Order 41 Rule 22 of CPC has been filed by respondent No.1/claimant seeking enhancement of compensation and setting aside findings of contributory negligence.

8. Learned counsel for respondent No.1/claimant submits that simply because the accident occurred on account of head on collision between two vehicles, its *ipso facto* would not lead to irresistible conclusion of contributory negligence on the part of the claimant. He further submits that Ex.D8 is the MLC of the driver of the offending vehicle which goes to show no injury on his person. Thus, it can be safely held that it is the driver of the offending vehicle who is solely responsible for the accident. He further submits that though the disability certificate of 40% was exhibited, however, the Claims Tribunal, looking to the facts and circumstances of the case, only assessed 25% as functional disability which require interference by this Court. He further submits that the Claims Tribunal has rightly assessed the monthly income of the claimant to Rs.10,000/-. He further submits that future prospect has not been added. He placed reliance on **2024 SCC OnLine Chh 4599 [New India Assurance (Insurance) Company Ltd., through Authorised Signatory The New India Assurance Company Ltd. v. Kuldeep Ekka and others]**
9. Learned counsel for respondents No.2 and 3 i.e. the driver and the owner of the offending vehicle, supports the impugned award.

- 10.** I have heard learned counsel for the parties and perused the record with utmost circumspection.
- 11.** The first question that arises for determination is whether the learned Claims Tribunal was justified in holding that the claimant/respondent No. 1 was guilty of contributory negligence to the extent of 25% and, consequently, whether the said finding calls for interference by way of enhancement or reduction.
- 12.** Learned counsel appearing for the appellant placed reliance upon the decision of the Hon'ble Supreme Court in *Chamundeswari (supra)*, wherein the Hon'ble Supreme Court has observed in para No. 10 as follows:-

"Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record."

- 13.** Per contra, learned counsel appearing for respondent No. 1 placed reliance upon the judgment of this Court in *Kuldeep Ekka (supra)*, wherein the following observations have been made in paragraphs 8 to 11:-

*"8. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the matter of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. reported in **AIR 2013 SCW 5375** dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any independent witness was examined to prove the allegation of contributory negligence. The*

Supreme Court, while setting aside the finding of contributory negligence, held as under:

"12. The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge- sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law."

*9. In the matter of Jiju Kuruvila and others v. **Kunjujamma Mohan and others reported in (2013) 9 SCC 166** the Hon'ble Supreme Court has held as under:-*

"20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the

rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

10. Similarly, in the matter of Mohammed Siddique and Another v. National Insurance Company Limited and Others reported in (2020) 3 SCC 57, Hon'ble the Supreme Court has held in para 13 as under:

"13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

11. In the light of the aforementioned law laid down in the matters of Minu Rout (supra), Jiju Kuruvila (supra) and Mohammed Siddique (supra), if the facts and circumstances of the present case is considered, it is evident that though the general plea of contributory negligence was taken by the Insurance Company in its written statement, but the Insurance Company has not examined either driver of the offending vehicle in the witness box or not made any effort to bring any independent witness to establish the plea of contributory negligence on the part of the deceased. According to the evidence available on record, the motorcycle which was driven by the deceased with two pillion riders was more than its capacity and during the postmortem, the odour of alcohol from the stomach of the

deceased would have to be assumed to determine that the deceased was in drunken condition at the time of the accident and hence he had driven the motorcycle in rash and negligent manner due to which the said the accident had taken place but an assumption can never take the place of evidence. The argument of contributory negligence are based on only assumption and the learned Claims Tribunal rightly not considered the plea of contributory negligence and it is hereby affirmed."

14. In the light of the aforesaid judicial pronouncements, the facts and circumstances of the present case are required to be examined meticulously. The learned Claims Tribunal framed Issue No. 1 with regard to the rash and negligent driving of the offending vehicle, whereas Issue No. 3 pertained to the alleged contributory negligence on the part of the claimant/respondent No. 1. While deciding Issue No. 1, the Tribunal held that the accident had occurred due to the negligence of the driver of the offending vehicle. However, while deciding Issue No. 3, the Tribunal further recorded a finding that the claimant/respondent No. 1 had also contributed to the occurrence of the accident and assessed his contributory negligence at 25%.
15. The burden of proving Issue No. 1 rested upon the claimant/respondent No. 1 whereas the burden of establishing Issue No. 3 rested upon the appellant and respondent Nos. 2 and 3. In order to discharge the burden cast upon him, the claimant/respondent No. 1 examined himself as AW-1 and deposed in consonance with the averments made in the claim petition. He stated that on the date of the accident, while returning from Kondagaon to Farasgaon after attending to his personal work, the driver of the offending vehicle drove the vehicle in a rash and negligent manner and collided head-on with his car, resulting in grievous injuries to him as

well as to the co-occupant namely- Saurabh Shukla. He further deposed regarding the nature of injuries sustained by him and the treatment undertaken thereafter. He also exhibited the criminal case records in support of his claim. During cross-examination, he admitted that the accident was a head-on collision between the two vehicles. No independent eyewitness was examined by the claimant to corroborate his version regarding the manner in which the accident had occurred. On behalf of the Insurance Company, Gaurav Kumar, Branch Manager was examined as NAW-1. He deposed that a counter First Information Report had also been registered against the claimant/respondent No. 1 in relation to the same accident. He proved the First Information Report (Exhibit D-5), seizure memos (Exhibits D-6 and D-7) and the arrest memo (Exhibit D-9). The driver of the offending vehicle- Nand Kishore was examined as NAW-2. He deposed that the accident had occurred in the year 2016 when the claimant's car collided with the offending vehicle, resulting in injuries to its occupants. He specifically denied the allegation that he was driving the offending vehicle in a rash or negligent manner. However, he admitted that a criminal case arising out of the accident had been registered against him. The owner of the offending vehicle- Jashbeer Pandey was examined as NAW-3. He deposed that he was travelling in the offending vehicle at the relevant time and that, while attempting to overtake, the claimant's car collided with the offending vehicle. According to him, the occupants of the claimant's vehicle sustained injuries, whereas he himself suffered only minor injuries. Although he denied the suggestion that the accident had occurred due to the negligence of the driver of the offending vehicle, he admitted that a

criminal case in connection with the accident had also been registered against him.

16. Thus, while the claimant/respondent No. 1 attributed the entire negligence to the driver of the offending vehicle, the driver as well as the owner of the offending vehicle sought to attribute the blame to the claimant/respondent No. 1. The documentary evidence on record further reveals that an FIR was lodged against the driver of the offending vehicle, and upon completion of investigation, a charge-sheet was filed against him. Simultaneously, a counter FIR was also registered against the claimant/respondent No. 1 arising out of the very same accident, culminating in the filing of a charge-sheet against him under Sections 279 and 337 of the Indian Penal Code. Upon appreciation of the aforesaid oral as well as documentary evidence, the learned Claims Tribunal held that the claimant/respondent No. 1 had also contributed to the occurrence of the accident and assessed his contributory negligence at 25%. While doing so, the Tribunal placed reliance upon the decision of the Hon'ble **Supreme Court in *APSRTC v. K. Hemlatha & Others; (2008) 6 SCC 767.***

17. In the considered opinion of this Court, the finding recorded by the learned Claims Tribunal regarding contributory negligence is founded upon a proper appreciation of the evidence available on record. Though learned counsel appearing for the Insurance Company strenuously contended that since the accident was a head-on collision, the claimant ought to have been held guilty of contributory negligence to the extent of 50%, such contention cannot be accepted in the facts of the present case. The evidence on record demonstrates that the claimant/respondent

No. 1 sustained serious injuries in the accident, whereas the driver and owner of the offending vehicle suffered only minor injuries. At the same time, it cannot be overlooked that the owner of the offending vehicle himself stated that while overtaking, the claimant's vehicle collided with the offending vehicle. Such evidence indicates that the claimant also had an opportunity to exercise reasonable care to avoid the collision. Consequently, the claimant cannot be completely absolved of his responsibility in the occurrence of the accident. Equally, this Court does not find substance in the submission advanced on behalf of the claimant/respondent No. 1 that the accident occurred solely due to the negligence of the driver of the offending vehicle. The finding of contributory negligence recorded by the learned Tribunal at 25% is neither arbitrary nor perverse and does not warrant interference. With due respect the case laws cited by learned counsel for the appellant and claimant/respondent No. 1 in the given facts and circumstances & material on records lends no support to their contentions. In case of the Chamundeswari **(Supra)** driver of the offending vehicle was not examined and it is not so in the case in hand.

- 18.** The next question that falls for consideration is whether the compensation awarded by the learned Claims Tribunal constitutes just compensation or whether it requires enhancement or reduction.
- 19.** Learned counsel appearing for the claimant/respondent No. 1 submitted that the compensation awarded is inadequate and deserves suitable enhancement. Per contra, learned counsel appearing for the Insurance Company contended that, in the absence of any cogent documentary

evidence regarding the claimant's income, the Tribunal has assessed the monthly income on the higher side, warranting an appropriate reduction.

20. According to the pleadings, the claimant/respondent No. 1 was carrying on the business of hardware and electronics and claimed to be earning Rs. 30,000/- per month. However, during his cross-examination, he candidly admitted that he had not produced any documentary evidence, such as income tax returns, account books, licence or any other material, to substantiate the said income. In the absence of documentary proof, the learned Tribunal assessed the monthly income of the claimant at Rs.10,000/-. The accident occurred on 01.10.2016 and the claimant was approximately 38 years of age at the relevant time. There is no evidence on record to suggest that the claimant was not engaged in the business of hardware and electronics as pleaded. Having regard to his age, the nature of his avocation, the date of the accident and particularly the fact that he owned and was driving a motor car, the assessment of his monthly income at Rs.10,000/- cannot be said to be excessive or unreasonable. Consequently, the submission advanced by the learned counsel for the Insurance Company seeking reduction of the assessed income deserves to be rejected.
21. The next aspect requiring consideration is whether the learned Tribunal was justified in assessing the functional disability of the claimant at 25%. The disability certificate placed on record indicates that the claimant suffered 40% permanent physical disability. The evidence further discloses that one of his lower limbs had become shorter by approximately two inches, causing considerable difficulty in walking, standing, sitting and carrying out day-to-day activities. The learned

Tribunal while relying upon the principles laid down by the Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343***, examined the evidence on record and observed that the claimant had failed to satisfactorily establish the extent of loss of earning capacity resulting from the permanent disability. The Tribunal also took note of the fact that the claimant personally appeared before the Tribunal and was able to walk on his own while deposing. It was further observed that no evidence had been adduced to demonstrate that on account of the disability, the claimant had become incapable of carrying on his business or that his ability to manage the business had been substantially impaired. Accordingly, the Tribunal assessed the functional disability affecting the earning capacity of the claimant at 25%. The aforesaid finding is based upon a proper appreciation of the medical evidence as well as the oral testimony available on record. No material has been brought to the notice of this Court to hold that the assessment of functional disability at 25% is either arbitrary or contrary to the settled principles of law. An argument was advanced by Mr. Agrawal that disability certificate is not proved in accordance with law. Disability certificate Ex. P-202 was issued by District Medical Board consisting of three expert doctors. A unique disability ID was also issued to the claimant/respondent No.1. this has been duly proved by Dr. Sanjay Basak AW-2 who was a member of District Medical Board. Thus, this contention of Mr. Agrawal is hereby repelled. Accordingly, no interference with the said finding is called for.

22. The claimant has placed on record various medical documents relating to his treatment, all of which have been duly considered by the learned

Tribunal. Upon appreciation of the entire evidence, the Tribunal awarded compensation under the following heads:

- (i) Loss of earnings during the period of treatment – 01,80,000/-;*
- (ii) Loss of future earnings on account of permanent disability (25% functional disability affecting earning capacity) – 04,50,000/-;*
- (iii) Medical expense (during treatment- 06,02,560/-and future treatment- 02,00,000/-;*
- (iv)Transportation expenses -1,08,000/-;*
- (v) Pain and suffering (mental and physical agony) – 1,00,000/-;*
- (vi)Special diet – 25,000/-;*
- (vii)Attendant expenses – 25,000/-;*
- (viii) Loss of amenities and enjoyment of life – 2,00,000/-.*

Total compensation assessed: Rs.18,90,560/-.

However, the learned Tribunal deducted Rs. 4,72,640/- on account of 25% contributory negligence on the part of respondent No./1 claimant and thus awarded Rs. 14,17,920/- as compensation.

23. However, it is evident from the award that the learned Tribunal has failed to make any addition towards future prospects while computing the loss of future earning capacity. In view of the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and Others, (2017) 16 SCC 680*** and subsequent decisions, the claimant, being 38 years of age which evident from his driving license Ex. P-10-C in which his date of berth is shown as 28.08.1978 and self-employed, would be entitled to an addition of 40% towards future prospects. Accordingly, the monthly income of Rs.10,000/- deserves to be enhanced by adding 40% towards future prospects. The annual income would, therefore, be recalculated accordingly. The remaining computation shall thereafter be made by applying the multiplier applicable to the age of the claimant and taking into consideration the functional disability assessed at 25%.

24. In light of the above and taking guidance from the judgment of Hon’ble Supreme Court in the matter of **Raj Kumar (Supra), Narendra Singh Vs. Nishant Sharma and Another; (2015) 14 SCC 353**, this Court assesses the functional disability to 25%. Hence, this Court awards the compensation in the following manner:-

S.N.	Particular	Awarded by this Court
1.	Monthly Income of the claimant/respondent No. 1	10,000/-
2.	Future Prospects @ 40%	4,000/-
3.	Total Income	14,000/-
4.	Total Yearly Income	14,000 X12= 1,68,000/-
5.	Loss of earning capacity @25%	1,68,000/1/4= 42,000/-
6.	Multiplier of 15 applied to asses the loss of future earning capacity	42,000 X15= 6,30,000/-
7.	For pain & suffering	1,00,000/- (as awarded by Tribunal)
8.	Loss of enjoyment of life	2,00,000/- (as awarded by Tribunal)
9.	For attendant	25,000/- (as awarded by Tribunal)
10.	For nutritional diet	25,000/- (as awarded by Tribunal)
11.	For medical treatment	6,02,560/- (as awarded by Tribunal)
12.	For future treatment	2,00,000/- (as awarded by Tribunal)
13.	For transportation	1,08,000/- (as awarded by Tribunal)
14.	Loss of earning during treatment	1,80,000/- (as awarded by Tribunal)
	Total compensation	Rs. 20,70,560/-

25. Hence, the enhanced amount of compensation comes to Rs. 20,70,560/-. As held earlier the claimant/respondent No. 1 is contributed to tune of 25% in causing the accident thus 25% of amount i.e. 5,17,640/- is deducted from the above compensation. Thus after deducting the same, respondent No.1/claimant is held entitled to Rs. 15,52,920/-

(Rs.20,70,560 - Rs. 5,17,640/-) as compensation. After deducting the amount awarded by the learned Tribunal of Rs. 14,17,921/-, total enhanced amount of compensation comes to the tune of Rs. 1,35,000/-. Therefore, the claimant/respondent No. 1 shall be entitled to receive the enhanced compensation of Rs. 1,35,500/- with @6% from the date of receipt appeal i.e. 13.06.2020 till its actual payment.

- 26.** Consequently, the appeal of insurance company is dismissed and cross objection filed by claimant/respondent No.1 is allowed in part.

Sd/-

(Sachin Singh Rajput)
JUDGE