NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 663 of 2013

1. Bhagwat Prasad Vaishnav, S/o. Late Badriprasad Aged About 50 years R/o Mudapar, P.S. Kotwali, Tah. and Distt. Korba C.G.

----Appellant

Versus

1. Sanjay Yadav, S/o Bhaiyya Lal Yadav Aged About 32 Years R/o Imaliduggu, Sitamadi, Korba, P.S., Tah. and Distt. Korba C.G.
2. Santkumar Yadav S/o Bhaiyya Lal R/o Imaliduggu, Sitamadi, Korba, P.S., Tah. And Distt. Korba C.G.
3. The Oriental Insu. Co. Ltd. Korba, Geetanjali Bhawan, Korba, Distt. Korba C.G.

---- Respondents

AND

M.A.(C) No. 664 of 2013

1. Radheshyam, S/o. Ramnath, Aged About 41 years,
2. Smt. Tara Bai, W/o. Radheshyam, Aged About 36 Years,
3. Ajay Kumar, S/o. Radheshyam, Aged About 16 Years, Minor, Thru- natural guardian, Father Radheshyam,

   All R/o. Chhiradih, Jaijaipur, At Present Kadambahara Khar, Manikpur, Korba, P.S. Kotwali, Tah. and Distt. Korba C.G.

----Appellants

Versus

1. Sanjay Yadav, S/o. Bhaiyya Lal Yadav, Aged About 32 Years, R/o Imaliduggu, Sitamadi, Korba, P.S., Tah. and Distt. Korba C.G.
2. Santkumar Yadav, S/o. Bhaiyya Lal, R/o. Imaliduggu, Sitamadi, Korba, P.S., Tah. and Distt. Korba C.G.
3. The Oriental Insu. Co. Ltd. Korba, Geetanjali Bhawan, Korba, Distt. Korba C.G.

---- Respondents

For Appellants	:	Mr. Sanjay Patel, Advocate.
For Respondent No.3.	:	Mr. Pankaj Agrawal, Advocate

<u>Hon'ble Shri Justice Goutam Bhaduri</u>

<u>Order On Board</u>

<u>14/08/2015</u>

1. Both the appeals are being heard and decided together by this common order as they are arising out of the same accident and award dated 18.04.2013, passed by the Additional Motor Accident Claims Tribunal, Korba, District Korba (C.G.). The award was passed in bunch of claim cases, out of which, the above two appeals have been preferred.

2. One appeal bearing M.A.(C) No.663/13 is arising out of the Claim Case No.36/2012, preferred by the injured, Bhagwat Prasad Vaishnav, and another appeal bearing M.A.(C) No.664/2013 is arising out of the Claim Case No.34/2012, preferred by the Radheshyam and two others, who are the dependents of the deceased, Vimal Kumar, who died in the road accident.

3. Briefly stated facts of the case is that the claimants, injured Bhagwat Prasad Vaishnav and the dependents of the deceased, Vimal Kumar alongwith others filed claim cases on the ground that on 01.01.2010 while they were traveling on a pick-up van driven by the deceased, Vimal Kumar and was going from Katghora to Korba, near a place known as Irrigation Colony, Darri, another truck bearing No.C.G.-12-C-0481, driven by the original non-applicant No.1, Sanjay Yadav in a rash and negligent manner dashed the said pick-up van, whereby Vimal Kumar, who was the driver of the pick-up van and one another died on the spot and other

passengers, who were traveling in the pick-up van had sustained severe injuries. Therefore, on the different heads, different claim petitions were preferred.

4. Common witnesses were examined in all the cases and single award was passed. One of the claimant was Bhagwat Prasad Vaishnav, who filed the claim petition for the injury caused to him, whereas parents of the deceased, Vimal Kumar namely Radheshyam and others preferred the claim petition for death of their son in the road accident.

5. The Tribunal in case of Bhagwat Prasad Vaishnav, which was bearing Claim Case No.36/2012, passed an award of Rs.63,069/- and out of it, 50% was deducted by holding that the pick-up van, wherein the injured was traveling was also liable for contributory negligence. Likewise for death of Vimal Kumar, the Claim Case No.34/2012 was filed by Radheshyam and two others, the Tribunal has passed an award of Rs.4,96,000/- and out of which 50% was deducted by application of contributory negligence.

6. The owner and driver of the offending vehicle, the original non-applicant No.1 and 2 refuted the averments of the claim petitions. It was stated that the accident had happened due to rash and negligent driving of the pick-up van itself, therefore, he was liable for contributory negligence. Further it was stated that the vehicle, truck was insured with the original non-applicant No.3 i.e. the Oriental Insurance Company Limited, therefore, the compensation, if any, is to be made good by the insurance company.

7. The insurance company, the non-applicant No.3, contended that the claim petition was preferred on the false and frivolous grounds by the claimants. It was stated that at the time of the accident, the driver of the vehicle was not holding any valid driving license and the driver of the pick-up van was responsible for the accident, therefore, there was a breach of conditions of the insurance policy was committed and the insurance company is not liable to make good the payment.

8. Learned counsel for the appellants in both the appeals would submit that the finding which is arrived at by the learned Claims Tribunal about the contributory negligence is completely perverse. It is contended that despite the eye-witness have categorically stated that at the relevant time, the offending truck was being driven in rash and negligent manner had caused the accident, the same fact was totally ignored. He further submits that on the basis of the statement of the driver of the offending truck, perverse finding has been arrived at by the learned Claims Tribunal. Therefore, he submits that the finding of contributory negligence is liable to be set-aside. Further more in respect of the claim of compensation, the counsel submits that adequate compensation has not been granted to the injured as also to the dependents of the deceased. He further submits that because of wrong assessment of income, just compensation has not been awarded and he prays for enhancement.

9. Per contra, learned counsel appearing on behalf of the insurance company would submit that the Tribunal has correctly assessed the

contributory negligence on the basis of the statement of the witnesses. He would further submit that just compensation has been awarded to both the claimants i.e. the injured and the dependents of the deceased, therefore, would submit that the award is well merited, which do not call for any interference.

10. I have heard the learned counsel for the parties, perused the documents and the evidence on record.

11. Since the finding of contributory negligence is primarily held in both the appeals i.e. the appeal filed by the injured as also by the dependents of the deceased, Vimal Kumar. Therefore, at first, the finding of the Tribunal with respect to the contributory negligence, is tested.

12. The claimants have examined one Pitambar as AW-1, he stated to be the eye witness and was traveling in such pick-up van. He states that on 01.01.2010, they were going from village – Funga to Korba. When they just passed Darri police station at turning, the truck came from the opposite side dashed the pick-up. He further stated that at that time, the pick-up van was going on its side. In the cross-examination, the witness has stated that where the accident had happened a slope exists there. The other witness is Yogesh Kumar Karsh (AW-4) has stated that at the time of the accident, he was going on his motor cycle, when he reached near a place Irrigation Coloney, he saw, a truck which was coming from Korba bearing No. C.G.-12-C-0481, driven by Sanjay Kumar Yadav in rash and negligent manner, dashed the pick-up van and caused the accident. He further stated that he rescued the injured passengers from pick-

up van. In the cross-examination, certain suggestion were given, but he maintained the fact that the offending truck over take him and dashed the pick-up van. He further denied the suggestion that accident had happened in middle of the road. In the cross-examination, this witness has stated that at the place of accident, two vehicles can pass at a time. He has further stated that the tuck went on the right side of the road and dashed the vehicle. This witness has categorically denied the fact that the accident had happened due to rash and negligent act of the pick-up van.

13. FIR is marked as Ex.P/2. Reading of the FIR, Ex.P/2 would show that the FIR was lodged after one and half hour of the accident on the same date by one Santosh Ram. He has reiterated the factum of the accident. The injured, Bhagwat Prasad Vaishnav has also corroborated the same fact that while they were traveling in the pick-up van at that time, at a place near Irrigation Colony, Darri a truck coming from opposite side, driven in negligent manner dashed the pick-up vehicle, thereby the injury was sustained. Certain suggestion given to this witness in the cross-examination that at the time of the accident, since the driver of the pick-up van did not slept on previous night and had fallen asleep, the accident had caused, but such suggestion was not accepted.

14. The driver of the offending vehicle truck, Sanjay was examined as DW-1. In his examination in chief, he has not stated anything the way the accident had happened. In the cross-examination, by the claimants, he admitted the fact that against him a criminal case under Section 304A I.P.C. was registered and was pending. In the

cross-examination by the insurance company, when the suggestion was given, he admitted such suggestion that at the time of the accident, he was going on the left side of the road. He also admitted the suggestion at that time, the vehicle was being given in moderate speed. He also admits the suggestion by the counsel of the insurance company that pick-up van came to the wrong side of the road and dashed the truck. He further suggested that the accident had happened due to negligence of the pick-up van.

15. The learned Claims Tribunal has assessed the negligence solely on the statement of this witness, Sanjay Yadav (DW-1), wherein he has stated in the cross-examination. As against this, if we go through the statement of the eye-witness and the injured, they have categorically maintained the fact that at the relevant time, due to rash and negligent driving of the truck, it dashed the pick-up van. The suggestion given to the witness namely Yogesh Kumar Karsh (AW-4) would be of relevance, wherein he denied the suggestion that the truck was on its left side, but on the contrary it is stated that the truck came to the right side of the road and dashed the pick-up van. He has also stated that at the place of accident, the width of the road allows two vehicle to easily pass, therefore, if the statement is further surveyed, it would go to show that the offending vehicle the truck came to the extreme right side of the road and dashed the pick-up van, whereby the accident took place. The driver of the truck did not say anything in the examination in chief about the manner of accident. It was only on the suggestion of the cross-examination that too by the counsel of the insurance

company, he admitted the suggestion given that because of the negligent driving of the pick-up van, the accident happened. The Tribunal on that basis has held the contributory negligence of pick-up van. So, in my considered opinion I am of the view such finding of contributory negligence, which was on the suggestion of the insurance company it can not overturn the statement of the eye-witnesses, who in the examination in chief maintained the statement and affirmed that the rash and negligent driving that of the truck and further clarified in the cross-examination that the truck came to the right side of the road and dashed the pick-up van. In this circumstances, the finding arrived at by the learned Tribunal about contributory negligence on the part of the pick-up van can not be sustained and is apparently wrong therefore, it is set-aside.

16. Now coming to the quantum of compensation. M.A.(C) No.663/2013 is filed by the injured, Bhagwat Prasad Vaishnav. The Tribunal has awarded an amount of Rs.43,069/- for medical expenses on a consolidated sum. Rs.10,000/-, for disablement. Rs.5,000/-. For pain and suffering and Rs.5,000/- for special diet and for transportation.

17. I have perused the documents and the statement adduced by the claimants. The claimant, Bhagwat Prasad Vaishnav has stated that because of accident, his fingers were broken, bone of the waist were broken and he sustained injuries on his kidney and abdomen for which he was operated. He further stated that right leg was also got fractured. 8 teeth were broken and as a result of it, he was admitted initially to the NTPC Hospital and subsequently he was

admitted to Dharam Hospital, Bilaspur and thereafter looking to his serious condition, he was referred to Sector – 9 Hospital, Bhilai, wherein he was admitted for 20 to 25 days. It is also stated that in such hospital, he was also operated for injury on kidney and abdomen. It was further stated that in such treatment, he spent Rs.5.00 lacs to Rs.5.50 lacs for his treatment and became permanent disabled and one of his leg is also shortened. He further stated that after the accident, he could not walk without any support. He has placed the documents of disablement as Ex.P/98. The disablement document was proved by Dr. R.K.Thawait (AW-6). Though in the examination in chief, the Doctor has stated that he has issued the certificate but in the cross-examination, he stated that he has not examined the patients and had only signed the certificate and issued them. Therefore, virtually the document, Ex.P/98, the disablement certificate has not proved by the doctor, who had examined the injured.

18. Nevertheless, bunch of documents of medical treatment are on record. One of the documents of treatment i.e. Ex.P/51 of Bhilai hospital purports and shows that the injured was in ventilator support and was seriously ill. Thereafter, the document would show, he was operated initially at NTPC. Discharge slip of NTPC hospital would show thereafter, he was admitted to the hospital at Bilaspur and subsequently, he was admitted to the Bhilai hospital. This fact also can not be ignored from the initial medical examination that three fractures were sustained besides the other injuries for which he had to under go treatment.

19. It is a settled law that the compensation in personal injury cases should be determined under the following heads:

Pecuniary Damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disabilaity.

(iii) Future medical expenses.

Non-Pecuniary Damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

[In routine personal injury cases, compensation will be awarded only under Heads (i), (ii)(a) and (iv)]

20. The Hon'ble Supreme Court, in **Govind Yadav v. New India Insurance Company Limited, (2011) 10 SCC 683,** while considering the principles under which the pecuniary compensation is to be granted, held in para 11 as under:

> "**11**. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his

> medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term 'compensation' used in Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident."

21. The Hon'ble Supreme Court, while adjudicating the quantum of compensation, has reiterated the law laid down in **Raj Kumar v. Ajay Kumar and another, (2011) 1 SCC 343** and has held that a person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

22. The claimant has not made any statement about the income, but this fact can not be ignored that during such accident, he must have earning, as the part of notional income can not be ignored. The Tribunal has assessed the notional income of the injured to Rs.3,500/- at para-33 of the award, therefore, considering the nature of injury, the fracture and considering the age of the injured, it can be inferred that he could not earn any amount for a minimum period of six months, therefore, apart from the medical expenses awarded, by the learned Court below of Rs.43,069/-, which appears to be correct on the basis of evidence placed by way of medical bills and receipts another amount of Rs.21,000/- is awarded for loss of

income during the period of treatment @ Rs.3,500 x 6 for a period of six months. The loss of income for future, no averments have been made by the claimants, therefore, it can not be assumed in absence of any statement or evidence. The claimant has further stated that there is a shortening of leg after the incident for which he has to pass through sticks, therefore obviously future medical would be required, therefore, amount of Rs.15,000/- is awarded for future medical expenses.

23. Then coming to the non-pecuniary damages i.e. damages for pain and suffering and trauma of the consequences of the injuries. The documents of treatment corroborates the fact that the injured has to pass through severe medical treatment and the photograph attached in the claim petition also corroborates the same. Therefore, looking to the nature of the injuries that three fractures were sustained besides the injury on the kidney and abdomen were also sustained and teeth were broken for which an amount of Rs.1,00,000/- is awarded for pain and suffering and trauma as a consequence of injuries sustained and Rs.25,000/- is further awarded for expectation of life. Apart from it, the amount of Rs.5,000/- awarded by the learned Claims Tribunal for transportation and special diet is further enhanced to Rs.10,000/-. Therefore, the amount of compensation in M.A.(C) No.663/2013 is reassessed as under :-

S.No	Heads	Calculation
(i)	For medical expenses	Rs. 43,069.00
(ii)	For loss of income during the period of treatment @ Rs.3,500 x 6 for a period of six months.	Rs. 21,000.00
(iii)	For future medical expenses	Rs. 15,000.00
(iv)	For pain and suffering and trauma	Rs.1,00,000.00
(v)	For expectation of life	Rs. 25,000.00
(vi)	For transportation and special diet	Rs. 10,000.00
	Grand Total	**Rs.2,14,069.00**

24. Now turning to the M.A.(C) No.664/2013, filed by the parents and brother of the deceased, Vimal Kumar. The Tribunal has assessed the monthly income of the deceased to Rs.4,500/-. Admittedly, the deceased was driving the pick-up van and therefore, certainly he can be considered as a skilled labour. As the accident had happened in the year 2010 and taking into the statement of the father of the deceased, namely Radheshyam, who has stated that his son was earning Rs.12,000/- per month as a driver, where from an amount of Rs.6,386/- was paid as a installment of loan of the vehicle, which was financed. The witness has further proved the receipt of payment of loan of Rs.6,400/-, which was marked as Ex.P/34 to Ex.P/41, therefore, this part of the statement appears bonafide that the amount of loan was being paid by the earning of the deceased, Vimal Kumar. So taking the cumulative evidence in this case, though no document has been filed with respect to the income in my considered opinion, the income in any case would be rendered less than Rs.6,000/- per month i.e. Rs.72,000/- per annum.

25. Here in the instant case, the age of the deceased, Vimal Kumar appears to be of 21 years as would be evident from postmortem report, Ex.P/33. Considering the fact that the deceased was aged about 21 years at the time of the accident, there would be further addition of 50% as future prospects as per the law laid down in case of ***Rajesh & Others Vs. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54,*** over and above the income of Rs.72,000/- and thereby the 50% of amount comes to Rs.36,000/- and total income comes to Rs.1,08,000/-.

26. Since the deceased was bachelor, therefore, 50% would be deducted from the annual income towards personal expenses, thereby the amount comes to Rs.54,000/- per annum. As per the postmortem report Ex.P-33, the deceased Vimal Kumar was aged about 21 years at the time of accident, therefore, multiplier of 18 would be applicable as per the law laid down in case of ***Sarla Verma Vs. DTC, reported in (2009) 6 SCC 121***, and thereby the dependency works out to Rs.9,72,000/-.

27. Further, under conventional head, the Tribunal has only awarded Rs.5,000/- for funeral expenses and Rs.5,000/- for love and affection, which appears to be very meager. Following the law laid down in case of ***Asha Verman Vs. Maharaj Singh and Ors., reported in 2015 AIR SCW 3577,*** Rs.50,000/- is granted for loss of love and affection. Further the Tribunal has failed to award any amount towards loss of estate, therefore, considering the age of the deceased and the avocation carried out by him, Rs.50,000/- is awarded for loss of estate. The amount of Rs.5,000/- granted for

funeral expenses is enhanced to Rs.25,000/-. Thus the total compensation to be reassessed in M.A.(C) No.664/2013 is as follows :-

S.No	**Heads**	**Calculation**
(i)	Loss of dependency	Rs.9,72,000.00
(ii)	For loss of love and affection	Rs. 50,000.00
(iii)	For loss of estate	Rs. 50,000.00
(iv)	For funeral expenses	Rs. 25,000.00
	Grand Total	**Rs. 10,97,000.00**

28. In the result, both the appeals are allowed in part. The total compensation in M.A.(C) No.663/2013 is recomputed as Rs.2,14,069/-. After deducting Rs.31,750/- as awarded by the Tribunal, the enhancement would be Rs.1,82,319/- and the appellant will be entitled to the said sum of Rs.1,82,319/- in addition to what is already awarded by the Claims Tribunal. In M.A.(C) No.664/2013, the total compensation is recomputed as Rs.10,97,000/-. After deducting Rs.2,48,000/- as awarded by the Tribunal, the enhancement would be Rs.8,49,000/- and the appellants will be entitled to the said sum of Rs.8,49,000/- in addition to what is already awarded by the Claims Tribunal. It is made clear that since the finding of contributory negligence is set-aside, therefore, the claimant shall be entitled for entire amount, which would be recoverable from the respondent/insurance company.

29. Now coming to the interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held in para 19 that the High Court has erred in awarding an interest at the rate of 8% per

annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of ***Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481 : AIR 2012 SC 100***. Therefore, in the instant case, interest @ 9% per annum is awarded on the compensation amount from the date of filing of the application till the date of payment. There will be no deduction on the head of contributory negligence as has been held in the foregoing paras.

30. The Registry is further directed to communicate the claimants in writing the "amount enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.

31. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram