

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1231 OF 2012**

Vijay Singh S/o Late Gulab Singh Aged About 44 Years R/o Village Sirgitti, P.S. Tarbahar, Bilaspur, Distt. Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. Jageshwar @ Jaggu Sahu S/o Vishnu Sahu Aged About 21 Years R/o Semra, Joratarai, P.S. Bakhara, Distt. Dhamtari Chhattisgarh (Driver of Vehicle Truck No.CG05/ZC/0262).
2. Arvind Pal Singh Khalsa S/o Late Mehtab Singh Aged About 55 Years R/o Mehtab Singh Garage Sihawa Chowk, Dhamtari, P.S. City Kotwali, Distt. Dhamtari Chhattisgarh (Owner of Vehicle Truck No.CG05/ZC/0262).
3. Branch Manager The Oriental Insurance Company Limited, Branch Office Rajeev Plaza, Near Bus Stand, Bilaspur, Distt. Bilaspur Chhattisgarh (Insurer of Vehicle Truck No.CG05/ZC/0262).

---- Respondents

For Appellant	:	Mr. Keshav Dewangan, Advocate.
For Respondent No. 3	:	Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****17/01/2019**

1. By this instant appeal, appellant/claimant (injured) assailed the legality, validity and propriety of the impugned award dated 21/09/2012 passed by the Second Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims

Tribunal') in Claim Case No.124/2011, whereby the learned Claims Tribunal partly allowed the claim application filed by appellant/claimant and awarded an amount of Rs.8,37,532/- as compensation in an injury case where the appellant/claimant sustained 65% disability as per the certificate issued by the Medical Board.

2. Brief facts for disposal of this appeal, are that, on 20/02/2009 at about 10.00 P.M. the appellant/claimant along with other Army Personnels was going to Kondagaon from Raipur. On the way near village Chhati, the said vehicle stopped due to some mechanical defect. When the appellant/claimant was standing on the side of the road getting his vehicle repaired, at that relevant time, the truck bearing registration No. CG05/ZC/0262 (hereinafter referred to as 'offending vehicle') which was coming from opposite direction i.e. District Dhamtari and being driven by respondent No.1 rashly and negligently, dashed the said stationary vehicle causing grievous injury over left leg of the appellant. In the said accident, two persons died and other Army Personnels have also sustained injuries.
3. The appellant/claimant was treated at Christian Hospital, Dhamtari, and 'Kalda Cosmetic Surgery Institute and Burn Centre, Raipur'. During course of treatment, his left leg below knee was amputated. He sustained 65% permanent disability in the said accident.

Thereafter, he filed a claim application under Section 166(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.27,94,517/- in total as compensation.

4. Respondents No. 1 & 2 did not choose to appear before the learned Claims Tribunal and were proceeded *ex parte*.
5. Respondent No.3/Insurance Company submitted its reply and denied all the pleadings made in the claim application with respect to the accident. It has been pleaded that at the time of accident, the offending vehicle was being driven in violation of the conditions of the insurance policy, therefore, the Insurance Company is not liable to pay any amount of compensation. It has further been pleaded that there was contributory negligence on the part of other vehicle and the driver and insurer of the said vehicle have not been arrayed as one of the party respondents in the claim application, therefore, the claim application ought to have been dismissed on the ground of non-joinder of necessary party. It has lastly been pleaded that the amount of compensation awarded is on the higher side.
6. Learned Claims Tribunal after appreciation of evidence on record, partly allowed the claim application considering the disability certificate of the appellant/claimant Exhibit P-8 issued by the Medical Board and assessed the functional disability of the appellant/claimant

to the extent of 15%, granted total compensation of Rs.8,37,532 in favour of the appellant/claimant alongwith interest @ 6% per annum from the date of application till its realization on the following heads. The calculation made by the learned Claims Tribunal is given below:-

1.	Towards loss of income	:	Rs.7,37,532/-
2.	Towards physical and mental agony	:	Rs.50,000/-
3.	Loss of amenities in life	:	Rs.50,000/-
	Total	:	Rs.8,37,532/-

7. Learned counsel appearing for appellant/claimant submitted that the appellant/claimant was working as Assistant Commandant in CRPF Battalion and on the date of accident, he was posted at Kondagaon. He further submitted that due to the disability sustained by him, which is amputation of his left leg below knee making him 65% disable as assessed by the Medical Board vide Exhibit P-8, his promotional avenue has been lost. He further submitted that the appellant/claimant has produced documentary evidence with respect to the promotion of other co-employee of his batch and the document showing the rejection of the name of appellant/claimant for promotion by the Departmental Promotion Committee on account of medical unfitness as well as non-passing in pre-promotional course. He

further submitted that subsequently, he had passed pre-promotional course, but due to medical unfitness sustained by him i.e. permanent disability of 65%, he has not been promoted and as a result of which, he is continuously suffering for loss of future prospects and learned Claims Tribunal had not assessed the loss of future earnings adequately. He lastly submitted that in addition to enhancement of loss of future earnings, an amount awarded towards pain and suffering as well as loss of earnings is also on the lower side, which may be enhanced suitably.

8. On the other hand, learned counsel appearing for respondent No.3/Insurance Company submitted that the learned Claims Tribunal awarded an amount towards future earnings is on higher side. He further submitted that the learned Claims Tribunal failed to consider the plea of contributory negligence as pleaded by it in his written statement as there was an accident between two vehicles. He further submitted that the Insurance Company has also filed cross-objection for setting aside the award passed by learned Claims Tribunal and to reduce the amount of compensation suitably considering the fact of contributory negligence as well as there is no loss of income of the appellant/claimant as he was still in service.
9. I have heard learned counsel appearing for the parties and perused the records carefully.

- 10.** Undisputedly, the appellant/claimant was an employee of CRPF, which is a Government service and is a field job. It is also not in dispute that the appellant/claimant sustained severe injury over his left leg, due to which, his left leg below knee was amputated and thereafter, the Medical Board has issued a disability certificate showing 65% permanent disablement.
- 11.** From considering the evidence of the appellant/claimant as well as evidence of Shri B.R. Banerjee (AW-2) who is an employee of CRPF and posted at Group Centre, it is evident that even after sustaining permanent disability of amputation of his left leg, the appellant/claimant is still in the service of CRPF and has been posted in the category of Shape-3. Further, from perusal of the evidence of Shri B.R. Banerjee (AW-2), it reveals that due to amputation of left leg of appellant, he cannot be posted at Shape-1 and unless and until, an employee of CRPF of a category of Assistant Commandant is posted at Shape-1, he cannot be given future promotion on account of his disablement.
- 12.** From perusal of Exhibit P-34, it reveals that at the time of the consideration of name of appellant/claimant for promotion, his name was rejected on the ground that he is not able to achieve target of Shape-1 and has also not completed pre-promotional course. Though the appellant has completed the subsequent pre-promotional

course, but looking to the nature of disability sustained by him, which is amputation of his left leg, he cannot achieve the category of Shape-1 employee, therefore, looking to the criteria for promotion as revealed from the statement of Shri B.R. Banerjee (AW-2) who is an employee of CRPF, the promotion avenue of the appellant/claimant have been closed permanently.

- 13.** From the aforementioned facts and evidence available on record, I am satisfied with the arguments raised by learned counsel for the appellant/claimant that the promotion avenue has been permanently closed for him due to permanent disability of 65% sustained by him on his left leg and thereby he is suffering continuously loss of income due to loss of promotional prospects.
- 14.** Learned Claims Tribunal though have calculated loss of future earnings by assessing permanent disability of 15%, but has not assigned any reason or not mentioned any basis to arrive at a finding that the loss of future income would be 15% irrespective of the disability and the nature of job, which appellant/claimant was performing prior to the date of accident.
- 15.** The object of the M.V. Act is that in a case of death or permanent disability or injury, the legal heirs of the said person or who sustained permanent disability in an accident is to be awarded 'just and proper

compensation', for which, he may be entitled on or prior to the date of accident.

16. The Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and Ors.**¹ has framed guidelines for assessing the future prospects of the deceased or permanently disabled persons with respect to the person who are in permanent job or self employed on fixed salary basis. The relevant portion of the judgment reads as under:-

“57. Section 168 of the Act deals with the concept of “just compensation” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma (supra)* and it has been approved in *Reshma Kumari (AIR 2013 SC*

1 AIR 2017 SC 5157

(*supp*) 474). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

x x x x

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

17. In the light of above judgment, if the case in hand is considered, it is apparent that the appellant/claimant has lost his promotional avenue due to suffering of 65% disability on account of amputation of his left leg below knee and looking to the nature of job, which

appellant/claimant was performing as Assistant Commandant in the Department of CRPF as well as the fact that on the date of accident, age of the appellant/claimant has been shown as 45 years and he lost his all promotional avenues as it is clear from the evidence available on record. The non-promotion of appellant/claimant will also affect his Salary, Gratuity, G.P.F. and Monthly Pension etc. on his retirement. Due to the disability sustained by the appellant/claimant, he sustained huge financial loss on rejecting his name by the D.P.C. mentioning one of the reasons for same is disability and the other reason shown has been met out by the appellant/claimant through passing of the relevant exam. True it is that the amount of award should not be a bonanza for claimants but at the same time, it is also to be seen that the claimants should be awarded reasonable and just compensation.

- 18.** The loss sustained by the appellant/claimant is to be considered in an objective manner. For every loss of income mathematical calculation may not be possible, but it is to be assessed by taking into consideration several factors causing loss of income to claimant/claimants. As discussed above, the reasons causing financial loss to the appellant/claimant on GPF, Gratuity and Monthly Pension due to loss of his promotional avenues on account of appellant's disability is to be suitably compensated. I have also

perused the copy of salary slip enclosed as Ex. P-28 and also the pay-scale of promotional post i.e. Deputy Commandant along with the grade pay mentioned in Ex. P-30. From perusal of the aforementioned two documents it leaves no doubt that the appellant will suffer major loss of pay due to his becoming unfit for further promotion. Therefore, in the considered opinion of this Court, the appellant/claimant will be entitled for 30% of the assessed income towards future prospects in the facts and circumstances of the case.

19. Coming to the cross-objection with regard to the contributory negligence on the part of the appellant/claimant is concerned, from perusal of the record, it would reveal that except the pleading made in the written statement, the Insurance Company had not led any evidence before the learned Claims Tribunal.
20. 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.**² 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

2 2013 AIR SCW 5375

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.”

21. In the matter of **Jiju Kuruvila and others v. Kunjamma Mohan and others**³, 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

3 (2013) 9 SCC 166

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.”

22. In the light of the aforementioned law laid down in the matters of **Minu Rout** (supra) and **Jiju Kuruvila** (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 appellant. The findings of contributory negligence are based on only presumption and the learned Claims Tribunal rightly not considered the plea of contributory negligence and it is hereby affirmed.
23. So far as the plea of learned counsel for respondent No.3/Insurance Company with respect to awarding of higher compensation by applying wrong multiplier is concerned, it is evident from the oral and documentary evidence available on record that on the date of

accident, age of the appellant/claimant is in between 41 to 45 years, therefore, the learned Claims Tribunal has committed an error by applying the multiplier of 15, whereas in view of the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**⁴, the correct multiplier would be 14. Therefore, the finding recorded by the learned Claims Tribunal that the multiplier of 15 is applicable to the case is erroneous in law and it is set aside. In the considered opinion of this Court, the relevant multiplier is 14 instead of 15.

- 24.** For the aforementioned reasons, the award passed by the learned Claims Tribunal is recalculated as below:-

The learned Claims Tribunal taken the income of the appellant/claimant as Rs.27,316/- per month on the basis of salary certificate (Exhibit P-28), which comes to Rs.3,27,792/- per annum. 30% towards loss of future prospects ($3,27,792 \times 30\% = 98,337.6/-$ rounded off to Rs.98,340/-), the annual loss of income comes to Rs.98,340/-. At the time of accident, the appellant/claimant was in the age category of 41 to 45 years, multiplier of 14 would be applicable in the present case. After applying the multiplier of 14, the total loss of future income comes to Rs.13,76,760/- ($98,340 \times 14$). The learned Claims Tribunal awarded a sum of Rs.50,000/- towards pain and

⁴ (2009) 6SCC 121

suffering and Rs.50,000/- towards loss of amenities in life as non-pecuniary damages, which do not call for any interference.

- 25.** On the basis of the above recalculation, award passed by the learned Claims Tribunal is modified accordingly and now the appellant/claimant is held entitled for total compensation of Rs.14,76,760/- (13,76,760 + 50,000 + 50,000). This additional amount of compensation shall carry interest @ 6% per annum as awarded by the learned Claims Tribunal from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.
- 26.** In the result, the appeal as well as cross-objection are allowed in part and the award impugned stands modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge