NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 02.07.2020

Order pronounced on 18.09.2020

MAC No.814 of 2013

1. Basanti Yadalwar, aged about 36 years, widow of Late Yogesh Yadalwar,
2. Ojashwi Yadalwar, D/o Late Yogesh Yadalwar, aged about 12 years (Minor), Through natural guardian - Mother Smt. Basanti Yadalwar,

Both R/o Near Bangla Gas Agency, Karbala Road, Bilaspur, Tah. and Distt. Bilaspur (C.G)

---- Appellants/Claimants.

Versus

1. Bharat Lal Rathore, S/o Butanga Rathore, aged about 43 years, R/o Village Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa (C.G.) -*Driver of Truck*
2. M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

   - *Owner of Truck*
3. Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. And Distt. Bilaspur C.G. - *Insurer of Truck*
4. R.K.E. Yadalwar, S/o Late Ramkrishna E. Yadalwar, aged about 65 Years,
5. Smt. Vimal Yadalwar. W/o R.K.E. Yadalwar, aged about 60 years,

Respondents No.4 & 5 R/o Near Ashoka Society, Qtr. No. E/7, Arera Colony, District Bhopal (M.P.)

---- Respondents.

With

MAC No. 475 of 2014

- Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. and Distt. Bilaspur C.G. -*Insurer of Truck*

---- Appellant/Non-applicant No.3.

Versus

1. Basanti Yadalwar, aged about 36 years, widow of Late Yogesh Yadalwar,
2. Ojashwi Yadalwar, D/o Late Yogesh Yadalwar, aged about 12 years (Minor), Through natural guardian - Mother Smt. Basanti Yadalwar,

   Both R/o Near Bangla Gas Agency, Karbala Road, Bilaspur, Tah. and Distt. Bilaspur (C.G) -*Claimants*
3. Bharat Lal Rathore, S/o Batunga Rathore, Aged About 43 Years, R/o Village- Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh. -*Driver of truck*
4. M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

   - *Owner of Truck*

---- Respondents

With

<u>MAC No. 822 of 2013</u>

- Basanti Yadalwar, aged about 36 years, widow of Late Yogesh Yadalwar, R/o Near Bangla Gas Agency, Karbala Road, Bilaspur, Tah. and Distt. Bilaspur (C.G)

---- Appellant/claimants.

Versus

1. Bharat Lal Rathore, S/o Butanga Rathore, aged about 43 years, R/o Village Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa (C.G.) -*Driver of Truck*
2. M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

   - *Owner of Truck*
3. Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. And Distt. Bilaspur C.G. - *Insurer of Truck*

--- Respondents.

With

<u>MAC No. 474 of 2014</u>

- Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. and Distt. Bilaspur C.G. -*Insurer of Truck*

---- Appellant/Non-applicant No.3

Versus

1. Basanti Yadalwar, aged about 36 years, widow of Late Yogesh Yadalwar, R/o Near Bangla Gas Agency, Karbala Road, Bilaspur, Tah. and Distt. Bilaspur (C.G)
2. Bharat Lal Rathore, S/o Butanga Rathore, aged about 43 years, R/o Village Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa (C.G.) -*Driver of Truck*
3. M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

   - *Owner of Truck*

---- Respondents.

With

<u>MAC No. 821 of 2013</u>

- Sanjay Shekhar @ Sanju Bharadwaj, S/o Parasram Bharadwaj, Aged About 21 Years, R/o Near Bangla Agency, Karbala Road, Bilaspur, Tah. And Distt. Bilaspur C.G.

---- Appellant/claimant.

Versus

1. Bharat Lal Rathore, S/o Butanga Rathore, aged about 43 years, R/o Village Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa (C.G.) -*Driver of Truck*
2. M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

   - *Owner of Truck*

3. Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. And Distt. Bilaspur C.G. *- Insurer of Truck*

--- Respondents.

With

MAC No. 472 of 2014

- Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. and Distt. Bilaspur C.G. *-Insurer of Truck*

---- Appellant/Non-applicant No.3

Versus

1. Sanjay Shekhar @ Sanju Bharadwaj, S/o Parasram Bharadwaj, Aged About 21 Years, R/o Near Bangla Agency, Karbala Road, Bilaspur, Tah. And Distt. Bilaspur C.G.
2. Bharat Lal Rathore, S/o Butanga Rathore, aged about 43 years, R/o Village Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa (C.G.) *-Driver of Truck*
3. M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

- Owner of Truck

---- Respondents

With

MAC No. 823 of 2013

- Basanti Yadalwar, aged about 36 years, widow of Late Yogesh Yadalwar, R/o Near Bangla Gas Agency, Karbala Road, Bilaspur, Tah. and Distt. Bilaspur (C.G)

---- Appellant/Claimant.

Versus

- Bharat Lal Rathore, S/o Butanga Rathore, aged about 43 years, R/o Village Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa (C.G.) *-Driver of Truck*
- M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

- Owner of Truck

- Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. And Distt. Bilaspur C.G. *- Insurer of Truck*

--- Respondents.

With

MAC No. 477 of 2014

- Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, Tah. and Distt. Bilaspur C.G. *-Insurer of Truck*

---- Appellant/Non-applicant No.3

Versus

1. Basanti Yadalwar, aged about 36 years, widow of Late Yogesh Yadalwar, R/o Near Bangla Gas Agency, Karbala Road, Bilaspur, Tah. and Distt. Bilaspur (C.G)

2. Bharat Lal Rathore, S/o Butanga Rathore, aged about 43 years, R/o Village Kosmanda, Bandhwapara, Gasti Chowk, P.S. Champa, Distt. Janjgir-Champa (C.G.) -*Driver of Truck*
3. M/s Prakash Industries, Through the Manager, M/s. Prakash Industries, Tahsil Champa (CG), District Janjgir-Champa (C.G.)

- *Owner of Truck*

---- Respondents.

For respective Appellant/s	: Mr. Pushkar Sinha, Adv. and Mr. Om. P Agrawal.
For Insurance Company	: Mr. Qamrul Aziz, Adv.
For respective respondent/s	: Mr. Pushkar Sinha, Adv. and Mr. Om. P Agrawal.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

MAC No.814/2013, MAC No.821/2013, MAC No.822/2013, MAC No.823/2013 and MAC No.472/2014, MAC No.474/2014, MAC No.475/2014, MAC No.477/2014 are being disposed of by this common order as all these appeals arise out of the same accident.

2. It is undisputed fact that the respondent No.1 is the truck driver namely Bharat Lal Rathore, Respondent No.2 is the owner of offending truck namely M/s. Prakash Industries bearing Registration No. CG-04/G-1508 and respondent No.3 is the Insurance Company of the Truck No.CG-04/G-1508, and respondent Sanjay Shekhar is the driver of Matiz Car bearing Registration No. MP-26-G-4468.

3. As per claim the petitions on 03.10.2006 at about 7-8 PM Yogesh Yadalwar, Ku. Yashashwi and appellant Basanti Yadalwar was on the way from Bilaspur to Raipur in Matiz Car bearing Registration No.MP-26-G-4468, which was driven by Sanjay Shekhar Bhardwaj in a moderate speed on the proper side. At the same time when they reached near Chanderi Village a truck was coming very rashly with heavy light from opposite direction. The driver of the vehicle No.MP-26-G-4468 to save the vehicle move the vehicle in left side and dashed a Truck bearing Registration No.CG-4/G-1508 which was lying on the road without complying the indication provided under the relevant law. In the alleged incident Yogesh Yadalwar and Ku. Yashshwi were died. Appellant Basanti and driver Sanjay Shekhar Bhardwaj received grievous injuries.

The accident was reported and FIR No.246/2006 was registered at Police Station Simga in which after investigation charge-sheet was filed against the respondent No.1- Bharat Lal - driver of the truck.

4. The Tribunal considering the facts and circumstances of the case and the evidence available on record by the impugned award granted compensation of Rs.24,95,346/- in a Claim Case No.15/2013, Rs.19,000/- in Claim Case No.13/2013, Rs.1,03,000/- in Claim Case No.12/2013, Rs.1,60,000/- in Claim Case No.14/2013 with interest of 7% per annum from the date of claim application till realization fastening liability on respondent No.3 – Insurance Company.

5. Being aggrieved by the impugned award the claimants have filed their respective appeals seeking enhancement of compensation.

6. Counsel for the Insurance Company contended that the Tribunal has granted an excessive amount in favour of the claimants. The Tribunal has grossly erred in not deducting the amount already disputed in the earlier claim case.

7. Heard Counsel for the parties and perused the material available on record in all the appeals.

As regards MAC No.814/2013 and MAC No.475/2014

(Arise out of common Claim Case No.15/2013)

8. The Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (**2017) 16 SCC 680** : 2017 (4) ACCD 2106 (SC):-

Para 59.

Now coming to the aspect of future prospects and claim of compensation in that head for those who are self employed. This issue is no more *res integra*. The Apex Court in Pranay Sethi (Supra) vide paras 56 and 57 has held thus:-

> **"56. The seminal issue is the fixation of future prospects in cases of deceased who is self employed or on a fixed salary. Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. reported in 2009 (6) SCC 121 has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not per se allowed any future prospects in respect of said category.**
>
> **57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be**

inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance ones income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

Ultimately, the Court vide para 59 concluded thus:-

"59. In view of the aforesaid analysis, we proceed to record our conclusion:-

"59.1. The two judge Bench in Santosh Devi Vs. National Insurance Co. Ltd. (2012) 6 SCC 421 : 2012 (a) ACCD 973 (SC) should have been well advised to refer to matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma a judgment by a co-ordinate Bench. It is because a co-ordinate Bench of the same strength cannot take a contrary view than what has been held by another co-ordinate Bench.

"59.2. As Rajesh Vs. Rajbir Singh (2013) 9 SCC 54 2013 (2) ACCD 969 (SC) has not taken note of the decision in Reshma Kumari which was delivered at earlier point of time, the decision of Rajesh (Supra) is not a binding precedent.

59.3 While determining the income, an addition of 50 % of actual salary to the income of the deceased towards future prospects, where the deceased has a permanent job and was below of age of 40 years, should be made. The addition should be 30 % of 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.

59.4 In case the deceased was self-employed or on a fixed salary an addition of 40 % of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 % where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the Tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinabove.

59.6 The selection of multiplies shall be as indicated in the table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely loss of estate loss of consortium an funeral expenses should be Rs. 15,000/-, 40,000/- and 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10 % in every three years."

9. The above legal position has not been disputed and the compensation therefore, is to be awarded after its computation in terms of the judgment in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, **(2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC)** and **Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65 : 2013 (2) ACCD 977 (SC)** in the light of observations made and directions issued by the Apex Court in constitution Bench. Judgment in Pranay Sethi (Supra).

10. In Pranay Sethi (Supra) the constitution Bench vide para 52 held thus :-

> **"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. *[(2013) 9 SCC 54]* It has granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi *[(2012) 6 SCC 421]* it does not seem to follow the same. The conventional and traditional heads, needless to say cannot be determined on percentage basis because that would not be an acceptable criteria on unlike quantification of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index fall in bank interest escalation of rates in many a field have to be noticed. The Court cannot remain obvious to the same. There has been a thumb rule in this aspect. Otherwise there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the Tribunals and Courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely Loss of estate,**

> **loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The principle or revisiting the said heads is an acceptable principle. But the revisit should not be fact centric or quantum – centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three year and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."**

11. On the point of deduction from income towards personal expense also the law is almost settled by the constitution Bench vide para 59.5 the Bench has approved paras 30 to 32 of judgment in Sarla Verma (supra). Paras 30, 31 and 32 of the judgment in Sarla Verma (supra) runs as under:-

> **"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra (2003) 3 SLR (R) 601, the general practice is to apply standardized deduction. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third(1/3 rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where of number of defendant family members is 4 to 6 and one-fifth(1/5th) where the number of dependent family members exceeds six.**

> **31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors normally 50% is deducted as personal and living expense, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of this getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary the father is likely to have his own income and will not be considered as a dependent and the mother alone will be**

> **considered as a dependent. In the absence of evidence to the contrary, brother and sister will not be considered as dependents because they will either be independent and earning, or married or be dependent on the father.**
>
> **32.Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be dependent, and 50% would be treated as personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income to the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses, may be restricted to one-third and contribution to the family will be takes as two third.**"

12. It is undisputed that on the date of accident the deceased Yogesh Yadalwar was 42 years old. The deceased was working as Assistant Engineer in Irrigation Department and was drawing a salary of Rs.18, 928/- per month.

13. Thus, taking reliance in view of decisions of Hon'ble Supreme in Smt. Sarla Verma and others (Supra), National Insurance Co. Ltd. Vs. Pranay Sethi (Supra) and Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others, (2018) SCC online (SC) 1546, the claimants are held entitled for compensation in the following manner:-

Age of deceased	-	42 years
Notional income	-	Rs.2,27,136/- PA (Rs.18,928x12)
Future prospects (with 30% of the total income)	-	Rs. 2,95,276/- (Rs.68,140 **+** Rs.2,27,136/-)
Deduction towards personal expenses 1/3	-	Rs.98,428/-
dependency	-	Rs.1,96,858/-

		(Rs.2,95,276/- – Rs.98,428/-)
Multiplier	-	14
Compensation	-	**Rs.27,56,012/-** (Rs.1,96,858/-x 14)
Loss of consortium	-	**Rs.40,000/-**
Loss of estate, love and affection and pain, suffering etc.	-	**Rs.15,000/-**
funeral expenses	-	**Rs.15,000/-**
Total compensation	**-**	**Rs.28,26,012/-**

14. Since the Tribunal has already awarded Rs.24,95,346/- after deducting the same from the above amount, the claimants in the Claim Case No.15/2013 (Old Claim Case No.46/2009) are held entitled for additional compensation of **Rs.3,60,666/-** with interest of 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

Insurance Company deposited awarded amount in Claim Case No.46/2009 award dated 17.12.2009.

As regards MAC No.823/2013 and MAC No.477/2014
(Arise out of common Claim Case No.14/2013)

15. Admittedly, in this case the deceased Yashashwi was a minor student aged 10 years. This Court is relied upon the case of Hon'ble Supreme Court in the matter of **Kishan Gopal and another Vs. Lala and others, (2014) 1 SCC 244,** wherein a child aged about 10 years died in the motor vehicle. In this case accident was occurred on 19.07.1992, and the claimants were young parents, considering its various earlier decisions awarded Rs. 5 lacs towards total loss of dependency and other conventional heads.

16. Thus in view of the aforesaid decision, looking to the age of the parents and that of the deceased, this Court is of the opinion that the appellant/claimant is entitled for a total sum of Rs.5 Lacs as compensation, since the Tribunal has already awarded Rs.1,60,000/- after deducting the same, the claimant is held entitled for additional compensation of **Rs. 3,40,000/- with interest @ 6 % per annum** from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact. Order accordingly.

As regards MAC No.822/2013 and MAC No.474/2014
(Arise out of common Claim Case No.12/2013) (Injury case)
&
As regards MAC No.821/2013 and MAC No.472/2014
(Arise out of common Claim Case No.13/2013) (Injury case)

17. The case where the claimants have sustained injuries it would first be necessary to advert to the principles with regard to the compensation for injuries. The law in this regard is well-settled and reference can conveniently be made to the decision of the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and another, (2011) 1 SCC 343,** wherein it was held as under:-

> **"19. We may now summarise the principle discussed above.**
>
> **(i) All injuries for permanent disability arising from injuries, do not result in loss of earning capacity.**
>
> **(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).**

> **(iii) The doctor who treated an injured – claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.**
>
> **(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.**

In assessing the compensation payable the settled principles needs to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. This was so held in a recent decision by Three Hon'ble Judge Bench of the Hon'ble Supreme court in ***Jagdish Vs. Mohan and others, AIR 2018 S.C. 1347*** wherein it was observed as under:-

> "**8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:-**
>
> (i) **Pain, suffering and trauma resulting from the accident,**
>
> **(ii) Loss of income including future income,**
>
> **(iii) The inability of the victim to lead a normal life together with its amenities,**
>
> **(iv) Medical expenses including those that the victim may be required to undertake in future, and**
>
> **(v) Loss of expectation of life.**

18. It is not disputed that claimant Basanti Yadalwar remained admitted in Agrasen Hospital Raipur w.e.f. 09.10.2006 to 18.10.2006. In support of this Disability Certificate (Ex.P-7) has also been filed which shows that she is 50% physicaly disabled and is likely to be improved, then obviously she would have incurred expenditure towards medication apart from other miscellaneous charges therefore, in view of the above judgments and looking to the condition of the appellant/claimant Basanti (in MAC No.822/2013) she is held entitled for the amount as under:-

Medical Expenses	-	Rs.50,000/-
Special Diet	-	Rs.10,000/-
Pain and Suffering	-	Rs.30,000/-
Conveyance Expenses	-	Rs.5,000/-
Attendant	-	Rs.5,000/-
Loss of income	-	Rs.18,000/-
Expenses towards removing the steel rod from leg	-	Rs.15,000/-
Total	-	**Rs.1,33,000/-**

Thus the appellant/claimant in MAC No.822/2013 is entitled for total compensation of **Rs. 1,33,000/-.** The amount awarded by the Tribunal earlier be deducted from the same. The other conditions imposed by the learned claims Tribunal shall remain intact.

19. It is not disputed that claimant Sanjay Shekhar @ Sanju Bhardwaj remained admitted in Indraprasth Apollo Hospital Delhi w.e.f. 09.10.2006 to 26.10.2006. In support of this medical bill (Ex.P-57) has also been filed. In view of the above and looking to the condition of the appellant, the appellant/claimant (in MAC No.821/2013) is held entitled for the amount as under:-

Medical Expenses	-	Rs.50,000/-
Special Diet	-	Rs.10,000/-
Pain and Suffering	-	Rs.30,000/-
Conveyance Expenses	-	Rs.5,000/-
Attendant	-	Rs.5,000/-

Loss of income	-	Rs.18,000/-
Total	**-**	**Rs.1,18,000/-**

But in this case where he himself was negligent and caused the accident colliding with the stationary truck the Tribunal found that there was contributory negligence and 50% was deducted for contributory negligence. Thus the appellant/claimant Sanjay Shekhar is held entitled for total compensation of **Rs.59,000/-**. The amount awarded by the Tribunal earlier be deducted from the same. The other conditions imposed by the learned claims Tribunal shall remain intact.

Accordingly, the evidence adduced by claimant and appreciation by the Tribunal, this Court is of the opinion that the Tribunal was justified in contributory negligence.

20. In view of the above, appeals being MAC No.814/2013, MAC No.821/2013, MAC No.823/2013, 822/2013 filed by the claimants are partly **allowed** and the appeals being MAC No.477/2014, MAC No.472/2014, MAC No.474/2014 and MAC No.475/2014 filed by the Insurance Company are stands **dismissed**. The compensation awarded to the claimants/appellants under the order of Tribunal is accordingly enhanced and award stands modified to the extent indicated here-in-above.

Sd/-

(Vimla Singh Kapoor)
Judge

AJ