IN THE HIGH COURT OF JHARKHAND AT RANCHI

M. A. No. 178 of 2006

Superintendent of Police, Dumka, P.O., P.S. and District Dumka

... Respondent/Appellant

Versus

Bhanu Pratap Singh, son of Baleshwar Narayan Singh, resident of School Para, Dumka, P.O. Dumka, P.S. Dumka (Town), District – Dumka.

... Applicant/Respondent

WITH

C. O. No. 05 of 2025

Bhanu Pratap Singh, aged about 58 years, son of Baleshwar Narayan Singh, resident of School Para, Old Electricity Office Road, Dumka, P.O. Dumka and P.S. Dumka, District – Dumka.

... Respondent/Cross Objector

Versus

The Superintendent of Police, Dumka, P.O., P.S. and District Dumka

... Appellant/Respondent

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr. Sanjay Kumar Tiwari, S.C.-I
Mr Mihir Kumar Ekka, A.C. to S.C.-I

For the Respondent: Mrs Rakhi Rani, Advocate

Reserved on: 14.08.2026 **Pronounced on: 24/08/2026**

1. Heard learned counsel for the parties.

2. M.A. No. 178 of 2006 by the appellant (original respondent) challenges the Judgment and Award dated 24.12.2005 of the 1st Additional District Judge, Dumka (Tribunal), in Title Claim Case No. 37 of 1995, whereby the Tribunal has awarded a consolidated compensation of Rs. 9,58,000/- to be paid by the appellant to the original claimant (the respondent).

3. In the said appeal, a Cross Objection bearing No. 05 of 2025 dated 08.07.2025 has also been filed by the original claimant for enhancement of the compensation by modifying the judgment and award dated 24.12.2005.

4. The appellant contends that the Tribunal misapplied the law and erred in fastening liability and assessing compensation. It is submitted that the driver of the offending vehicle was not impleaded and that there was contributory negligence on the part of the motorcycle rider. It is further contended that the FIR was initially lodged against an unknown vehicle, and a final form was submitted, whereas the subsequent identification of the police jeep was belated and an afterthought.

5. It is also submitted that the medical evidence was not duly proved and that the medical disability of 60% could not be treated as equivalent to 60% functional disability. The appellant has also filed a reply opposing the cross-objection preferred by the respondent-claimant.

6. Per contra, the claimant, by way of the cross-objection, contends that the compensation awarded is inadequate. It is submitted that only Rs. 1,00,000/- was awarded towards medical expenses despite prolonged treatment in different hospitals; that the claimant remained bed-ridden for about three years and continues to have difficulty in walking; that no amount was awarded towards loss of

amenities of life or loss of marriage prospects; and that his functional disability ought to be assessed at 100%.

7. Based on the rival submissions and the material on record, the following points arise for determination:

I. Whether the impugned award is liable to be interfered with on the ground that the Tribunal failed to consider the appellant's grounds of challenge, namely, non-joinder of the driver, contributory negligence, and the involvement of the offending vehicle?

II. Whether the Tribunal erred in appreciating the distinction between medical and functional disability?

III. Whether the cross-objection is barred by limitation and, if so, whether it can nevertheless be entertained?

IV. Whether the compensation awarded by the Tribunal is just and reasonable and, if not, to what extent is the claimant entitled to enhancement?

8. On the first point for determination, the Appellant's contention regarding the non-joinder of the driver is without merit. The owner of the police jeep is already on record. The owner's liability for the driver's acts in the course of his employment does not depend on the driver being separately impleaded. Accordingly, in the circumstances of the present case, the non-joinder of the driver does not vitiate the proceedings or render the claim non-

maintainable. **(See: KSRTC v. P. Chandramouli, 2026 SCC OnLine SC 375)**

9. Be that as it may, it is also pertinent to note that no issue about the alleged non-joinder of the driver as a necessary party was framed by the learned Tribunal. The appellant, having not raised or pursued the objection before the Tribunal, cannot ordinarily be permitted to raise the same for the first time in appeal. In any event, no prejudice occasioned to the appellant on account of the alleged non-joinder has been demonstrated. Accordingly, the said ground also fails.

10. Moving further, the plea of contributory negligence is also unsupported by the evidence on record. C.W. 1 and C.W. 2 have deposed that the jeep came at speed from the opposite direction and dashed against the motorcycle. No independent evidence has been led by the appellant to establish any rash or negligent act on the part of the motorcycle rider.

11. The law in this regard is no longer res integra. The Hon'ble Supreme Court has held that the burden of proving contributory negligence lies on the party asserting it. In the absence of direct or corroborative evidence, no specific finding of negligence can be made against the claimant **(See: Jiju Kuruvila & Ors. v. Kunjujamma Mohan & Ors., (2013) 9 SCC 166)**.

12. In the present case, no evidence whatsoever has been led by the appellant to establish any negligence on the part of the motorcycle

rider. The burden, therefore, has not been discharged. Accordingly, the said ground also fails.

13. Lastly, the challenge to the identity of the offending vehicle is principally founded on the initial omission of the registration number in the first information report and the subsequent submission of a final form. However, the materials on record do not support the contention of the appellant.

14. The FIR refers to a government jeep having dashed against the motorcycle in a rash and negligent manner. The evidence on record categorically indicates that the claimant himself was unconscious after sustaining excessive bleeding, and the informant was not the claimant. The Tribunal also noticed apparent cuttings in Exts. 17 and 18 without initials. A prayer for re-investigation was thereafter allowed by the learned C.J.M., Dumka, on 02.08.1995, followed by submission of the charge-sheet (Ext. 19). O.P.W. 1 admitted that the charge-sheet was submitted against the driver of jeep No. BHI-4973 and that the driver was named therein.

15. In a claim under S. 166 of the Motor Vehicles Act, the involvement of the offending vehicle is required to be established on the touchstone of preponderance of probabilities. On an overall appreciation of the evidence on record, this Court is satisfied that the involvement of the police jeep stands established. The finding of the Tribunal on this aspect, therefore, calls for no interference. Accordingly, this ground of challenge also fails.

16. Point No. (I) is answered accordingly.

17. Moving on to the second point for determination, the contention of the appellant that the medical disability of 60% cannot mechanically be equated with 60% functional disability is well founded. The Tribunal was required to assess the actual impact of the permanent disability on the claimant's earning capacity, having regard to his age, avocation and the nature of work performed by him. The principles laid down by the **Hon'ble Supreme Court** in **Raj Kumar v. Ajay Kumar, reported in (2011) 1 SCC 343**, require such an occupation-specific assessment.

18. The Medical Board, of which C.W.8 was a member, examined the claimant on 30.04.1998 and found post-traumatic palsy and deformity of the lower limb. Permanent disability was certified at more than 60% and was stated to be not likely to improve. The bed-head ticket of Sadar Hospital, Dumka (Ext. 13), the indoor register (Ext. 12), the prescriptions and discharge papers relating to treatment at Bhagalpur and Patna, and the oral evidence of C.W. 1, C.W. 2 and C.W. 6 establish that the claimant suffered compound fractures of the left femur and left tibia, underwent prolonged treatment and remained recumbent for a considerable period. The evidence further establishes that he continues to require crutches and has difficulty in walking.

19. The contention that the medical evidence was not properly proved cannot be accepted either. C.W. 8, a member of the Medical

Board, proved the disability certificate. C.W. 10 proved the writings and signatures of the treating orthopaedic surgeons and the discharge documents, while C.W. 7 and C.W. 9 proved the hospital register and the bed-head ticket. The medical records were thus brought on record through competent witnesses and form part of the evidence available for consideration.

20. At this juncture, it is apposite to observe that the concept of functional disability is not synonymous with the percentage of medical disability. It requires an assessment of the effect of the permanent physical impairment upon the claimant's capacity to earn in the occupation which he was pursuing.

21. The settled position of law is that the percentage of medical disability cannot be mechanically adopted as the measure of functional disability. What is required to be examined is the actual effect of the permanent disability upon the earning capacity of the claimant, having regard to his or her age, avocation, nature of work and the activities which the claimant was required to perform during such occupation. (**See: Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343; M. Paramesh v. VRL Logistics Ltd. & Anr., 2026 INSC 655; Shankar Dutt v. United India Insurance Co. Ltd., 2026 INSC 656 and R. Halle v. Reliance General Insurance Co. Ltd., 2026 SCC OnLine SC 433.)**

22. At the time of the accident, the claimant was 28 years of age, a post-graduate and working as a press correspondent. He had also

cleared the Civil Services (Preliminary) examination. His avocation involved field reporting and, therefore, mobility was an important component of his work. The residual palsy, deformity of the left lower limb and continued dependence upon crutches consequently have a substantial bearing upon his ability to pursue his avocation.

23. At the same time, the evidence does not establish that the claimant is incapable of undertaking every form of employment. The permanent disability has a serious impact upon his earning capacity, but it cannot, on the evidence available, be equated with complete incapacity to earn. The plea for assessment of functional disability at 100% is, therefore, not warranted. Conversely, reducing the assessment mechanically to 60% or treating the disability as having no substantial impact merely because some form of sedentary employment may remain possible would also fail to account for the claimant's actual occupation and the permanent restrictions proved on record.

24. As noted earlier, the claimant was working as a press correspondent at the time he met this accident and suffered 60% permanent medical disability. He was a postgraduate and had already cleared the preliminary examination. The disability affected his vocation as a press correspondent and rendered it most difficult, if not impossible, to pursue his further civil service examinations. The claimant underwent a prolonged medical

treatment during which it was not possible for him to pursue this course or even attend to his vocation. As a result, the claimant became ineligible for several positions that stress physical requirements as a precondition.

25. Upon a cumulative consideration of all the above factors and the law on the subject, and having regard to the nature and extent of the injuries, the permanent physical disability of more than 60%, the post-traumatic palsy and deformity, the prolonged period of recumbency, the continued dependence on crutches, and the mobility requirements of the claimant's avocation, this Court assesses the functional disability at 70%.

26. Point No. (II) is answered accordingly.

27. Insofar as the third point for determination is concerned, it is pertinent to note that, during the final hearing of the present case, this Court was apprised of the fact that no earlier speaking order had been passed by this Court condoning the delay in filing the cross-objection.

28. At the outset, it is also necessary to state that the delay in filing the cross-objection had not been identified as a defect by the Registry, and the cross-objection had, accordingly, been shown as defect-free.

29. The learned Advocate appearing for the claimant-respondent has, therefore, submitted that, in these circumstances, no separate application for condonation of delay was filed. The submission, to

this limited extent, cannot be said to be without substance, particularly when the record itself did not disclose any objection having been raised by the Registry about the delay.

30. In this regard, it is apposite to notice that Order XLI Rule 22 of the Code of Civil Procedure, 1908, requires a cross-objection to be filed within one month from the date of service upon the respondent of notice of the day fixed for hearing of the appeal, or within such further time as the appellate Court may allow. The provision thus contemplates that, where a cross-objection is filed beyond the prescribed period, the appellate Court may permit its reception upon sufficient cause being shown for the delay.

31. Moreover, it is well settled that the filing of a formal application for condonation of delay is not a sine qua non for exercise of the Court's discretion under Section 5 of the Limitation Act, 1963. **In Sesh Nath Singh & Anr. v. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr., reported in (2021) 7 SCC 313**, the Hon'ble Supreme Court has held that S. 5 does not prescribe the filing of any application and that there is no bar upon the Court or Tribunal condoning delay in the absence of a formal application, provided sufficient material disclosing sufficient cause is available on record.

32. The same principle is applicable to a cross-objection under Order XLI Rule 22 of the Code of Civil Procedure. In the case of **Mahadev Govind Gharge & Ors. v. Special Land Acquisition**

Officer, reported in (2011) 6 SCC 321, the Hon'ble Supreme Court emphasised the discretion vested in the appellate Court under Order XLI Rule 22 to permit a cross-objection to be filed beyond the prescribed period. The provision itself contemplates that the appellate Court may, in an appropriate case, allow further time for filing the cross-objection. The exercise of such discretion is ultimately guided by the interests of justice and the explanation available from the record.

33. Thus, neither the absence of a formal application under S. 5 of the Limitation Act nor a rigid insistence upon a particular form of application would, by itself, preclude the appellate Court from considering whether the delay deserves to be condoned. What is material is whether the circumstances available on record, considered as a whole, furnish sufficient cause for exercising such discretion.

34. In the case at hand, the delay in filing the cross-objection appears substantial. However, the appeal was subsequently dismissed for non-prosecution on 03.08.2012 and remained dismissed for nearly twelve years, until a coordinate Bench of this Court restored it on 14.06.2024. The cross-objection was thereafter filed on 08.07.2025.

35. The aforesaid procedural history assumes significance while considering the prayer for condonation of delay. Though the claimant entered appearance in the appeal in 2009, the appeal

ceased to remain pending upon its dismissal for non-prosecution on 03.08.2012 and remained so until its restoration on 14.06.2024. It was only upon restoration of the appeal that the proceedings were revived and the question of enhancement of compensation again arose for consideration at the appellate stage.

36. The delay, therefore, cannot be viewed in isolation, merely with reference to the claimant's initial appearance in the appeal. It must be considered against the backdrop of the subsequent dismissal and restoration of the appeal and the peculiar procedural history of the proceedings.

37. Having regard to these circumstances, coupled with the nature of the claim, the permanent disability suffered by the claimant and the fact that the proceedings concern determination of just compensation, this Court considers it appropriate to adopt a liberal approach rather than non-suit the claimant solely on the ground of delay.

38. Accordingly, the delay in filing the cross-objection is condoned. The cross-objection is taken up for consideration on merits.

39. Even otherwise, the power of this Court on the Appellate side under Order XLI Rule 33 of the Code of Civil Procedure is sufficiently wide to enable this Court, in an appropriate case, even in the absence of a cross-appeal or cross-objection, to grant such relief as may be necessary to do complete justice between the parties.

40. The Hon'ble Supreme Court, in **Nagappa v. Gurudayal Singh, (2003) 2 SCC 274,** held that a Motor Accidents Claims Tribunal can award compensation more than what may be claimed in the claim petition.

41. In **Surekha v. Santosh (2021) 16 SCC 467, the Hon'ble Supreme Court** has categorically recognised the Appellate Court's power to award just compensation even in the absence of a formal appeal or cross-objection.

42. Several High Courts have held that procedural hyper-technicalities can never deter the Courts from determining and awarding just compensation to the victims of motor accidents.

43. The MV Act provisions cast a duty upon the Tribunal to determine and award just compensation irrespective of whether it is claimed or not. An appeal against the Tribunal's award is, in a sense, a continuation of the original proceedings. This duty cannot be abandoned simply because no cross-appeal or cross-objections may have been filed. The powers of the appellate court are quite wide and, having regard to the purpose of enacting the beneficial provisions to ensure that victims are justly and quickly compensated, they must be liberally construed. The provisions in Order 41 Rule 33 support such a construction. Several precedents directly on this issue support such a construction.

44. Point No. (III) is answered accordingly.

45. Insofar as the last point for determination concerning just compensation is concerned, the contention that the compensation awarded by the Tribunal is excessive is without any substance. The question before this Court is whether the compensation awarded represents just and reasonable compensation, having regard to the evidence on record and the principles governing assessment of damages. The mere fact that the accident occurred in 1995 and the award was passed in 2005 cannot justify perpetuating an erroneous method of assessment when the matter is before this Court in appeal.

46. In the case at hand, the Tribunal adopted an annual income of Rs. 60,000/-, applied a multiplier of 18 and thereafter deducted 40% by treating the medical disability as loss of earning capacity. Apart from the incorrect arithmetic, the Tribunal committed a more fundamental error by treating medical disability as equivalent to loss of earning capacity. The compensation must instead be reassessed based on the functional disability determined hereinabove.

47. The claimant deposed that he was earning approximately Rs. 3,000/- per month as a press correspondent. This is well within the bounds of reasonableness. There is no contrary material on record to establish a lower income. The said assertion made by the claimant in his examination-in-chief also remained unrebutted in

cross-examination. The claimant's monthly income is, therefore, assessed at Rs. 3,000/-, equivalent to Rs. 36,000/- per annum.

48. The claimant was 28 years of age and was self-employed as a correspondent. Having regard to his age and the principles governing future prospects, an addition of 40% is warranted. The annual income for computation thus comes to Rs. 50,400/-. For a claimant aged 28 years, the appropriate multiplier is 17. Applying the functional disability of 70%, the loss of future earnings is computed as follows: Rs. 50,400/- × 17 × 70% = Rs. 5,99,760/-.

49. Accordingly, the claimant is entitled to Rs. 5,99,760/- towards loss of future earnings.

50. Towards medical expenses already incurred, the Tribunal awarded Rs. 1,00,000/-. C.W. 6 deposed that approximately Rs. 3,00,000/- had been spent, while the claimant stated that the expenditure was between Rs. 3,00,000/- and Rs. 4,00,000/-. However, the documentary evidence on record does not conclusively establish the entire expenditure claimed.

51. At the same time, the evidence establishes that the claimant underwent prolonged treatment at Dumka, Bhagalpur and Patna, including blood transfusion and surgical treatment. Having regard to the nature and duration of the treatment and the evidence available on record, this Court considers it just and reasonable to enhance the amount under this head by Rs. 100,000/-.

Accordingly, the claimant is awarded Rs. 2,00,000/- towards medical expenses already incurred.

52. Moving further, the claimant remained bed-ridden for a prolonged period. The claimant and his father, in their respective testimonies, have stated that he remained bed-ridden for about three years. Their testimonies remain unrebutted, and there is no material on record to disbelieve them. Having regard to the evidence on record and the prolonged nature of the treatment, this Court finds no reason to discard their testimony and accordingly assesses the period of loss of actual earnings at three years. At Rs. 3,000/- per month, the claimant is accordingly entitled to Rs. 1,08,000/- under this head.

53. Additionally, the Tribunal did not award any amount towards loss of amenities of life or loss of marriage prospects. The claimant was 28 years of age and unmarried at the time of the accident. The evidence on record establishes that, because of the accident, he suffered permanent deformity of the lower limb, restricted mobility and continues to remain dependent upon crutches. These permanent limitations have materially impaired his ability to enjoy the ordinary amenities and incidents of life and have also adversely affected his prospects of marriage.

54. Having regard to the age of the claimant, the nature and permanence of the disability and the continuing restrictions upon his mobility, this Court considers a consolidated sum of Rs.

2,00,000/- towards loss of amenities of life and loss of marriage prospects to be just and reasonable.

55. Having regard to the compound fractures of the left femur and tibia, repeated hospitalisation for over three years, blood transfusion, prolonged recumbency, surgical treatment and continuing dependence on crutches, compensation for pain, suffering and trauma is enhanced to Rs. 1,50,000/-.

56. The claimant continues to live with a permanent orthopaedic deficit which is not likely to improve. Having regard to the nature of the injuries and the likelihood of continuing medical needs, Rs. 100,000/- is awarded towards future medical expenses. A further sum of Rs. 50,000/- is awarded towards special diet, conveyance and attendant charges during the prolonged period of treatment and recovery.

57. Having regard to the foregoing discussion, the compensation payable to the claimant is required to be assessed under the heads of pecuniary and non-pecuniary damages.

58. Under the head of pecuniary damages, the claimant is entitled to Rs. 5,99,760/- [rounded to Rs. 600,000/-] towards loss of future earnings, Rs. 2,00,000/- towards medical expenses already incurred, Rs. 1,08,000/- towards loss of income during the period of treatment, Rs. 100,000/- towards future medical expenses and Rs. 50,000/- towards special diet, conveyance and attendant charges. The total pecuniary damages thus come to Rs. 10,58,000/-

59. Under the head of non-pecuniary damages, the claimant is entitled to Rs. 1,50,000/- towards pain, suffering and trauma, Rs. 2,00,000/- towards loss of amenities of life and loss of marriage prospects. The total non-pecuniary damages thus come to Rs. 3,50,000/-.

60. The total compensation payable to the claimant, therefore, comes to Rs. 14,08,000/-, which is rounded off to **Rs. 14,10,000/- (Rupees Fourteen Lakhs Ten Thousand only).**

61. Under S. 171 of the Motor Vehicles Act, interest is intended to compensate the claimant for being deprived of the compensation found payable. There is nothing on record to show any delay attributable to the claimant warranting denial of interest from the date of the claim petition. The claimant shall, therefore, be entitled to interest at the rate of 6 % per annum from the date of institution of the claim petition till actual realisation. Any amount already paid, if any, shall stand adjusted against the amount now determined.

62. The Tribunal's finding that the police jeep was not proved to be insured and that the owner is liable to satisfy the award is affirmed. The State of Jharkhand through the Superintendent of Police, Dumka, shall satisfy the enhanced compensation.

63. Point No. (IV) is accordingly answered by holding that the compensation awarded by the Tribunal is not just and reasonable and is liable to be enhanced to the extent indicated hereinabove.

64. M.A. No. 178 of 2006 is accordingly dismissed. The cross-objection bearing No. 05 of 2025 is allowed.

65. The compensation is enhanced from Rs. 9,58,000/- to Rs. 14,10,000/-, with interest at 6% per annum from the date of filing of Title Claim Case No. 37 of 1995 till actual realisation.

66. After adjusting any amounts already paid, if any, the enhanced compensation amount shall be deposited with this Court within eight weeks from today, with due intimation to the learned counsel for the claimant. Upon deposit, the learned Tribunal shall permit the claimant to withdraw the amount by transfer to his bank account through regular banking channels.

67. The learned counsel for the claimant shall furnish the identity and bank particulars of the claimant before the learned Tribunal for facilitating such transfer.

68. There shall be no order as to costs. Pending interlocutory applications, if any, stand disposed of.

(M. S. Sonak, C.J.)

August 24, 2026

A.F.R.

Manoj/Cp.2

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