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**(2006) 05 J&K CK 0027**

**In the Jammu And Kashmir High Court**

**Case No :** CIMA No. 42 of 2004 and Cross Appeal (C) No. 9 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Sat Pal

RESPONDENT

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**Date of Decision :** 23-05-2006

**Acts Referred:**

**Citation :** (2006) 2 JKJ 499

**Hon'ble Judges :** J.P. Singh, J

**Bench :** Single Bench

**Advocate :** Ajay Sharma, CGSC in CIMA No. 42/2004 and D.S. Saini, in Cross Appeal C No. 9/2005, for the Appellant; Ajay Sharma, CGSC in Cross Appeal (C) No. 9/2005 and D.S. Saini in CIMA No. 42/2004, for the Respondent

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## **Judgement**

J.P. Singh, J.—Union of India, IG Frontier, Headquarter, BSF, Paloura Camp, Jammu, and Madan Lal, Head Constable, have filed this

appeal to question award dated 07-11-2003 in claim petition No. 642(Claim) titled Sat Pal v. Union of India and Anr., of Motor Accidents

Claims Tribunal, Jammu, which awards an amount of Rs. 4,70,000/- as compensation in favour of Sat Pal for the injuries suffered by him in a motor vehicle accident.

2. Sat Pal had lodged a claim petition saying that he was travelling in BSF vehicle No. 231340 of 162 Bn. on 24th of April, 1997, when it met with

an accident at Khandi on Rajouri-Budhal road, as a result whereof, he sustained multiple injuries. The injuries ultimately resulted in amputation of

his right arm and fracture of left leg.

3. The Claims Tribunal raised following issues to settle the disputed questions. The issues read thus:

1. Whether the accident resulting into injuries to the right upper limb occurred because of the rash and negligent driving of the offending vehicle by its driver respondent No. 2? OPP.

2. In case Issue No. 1 is proved what compensation if any the petitioner is entitled to? OPP.

3. Whether petitioner is not entitled to compensation under the Motor Vehicles Act and why? O.P. Parties.

4. Relief.

4. Sat Pal, claimant, besides appearing as his own witness, examined, Sudhan Singh, Arjun Singh and Dr. S.L. Tandan, as his witnesses; whereas

Union of India examined Krishan Rao and Sudhagran, as its witnesses.

5. After evaluating the evidence led by the parties, the Tribunal decided all the issues against Union of India and in favour of the claimant, awarding

an amount of Rs. 4,70,000/- as compensation, break-up whereof is as under:

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1. Prospective economic loss. Rs. 2,70,000/-

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2. Pain and suffering. Rs. 1,00,000/-

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3. Loss of amenities of life. Rs. 1,00,000/-

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Rs. 4,70,000/-  
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6. After the filing of appeal by Union of India, claimant-Sat Pal, too, filed his Cross Objections seeking enhancement in the amount of compensation awarded by the Tribunal

7. Shri Ajay Sharma, learned Central Government Standing Counsel appearing for Union of India, relies on Abdul Ahad Vs. State of Jammu and

Kashmir and Another, ; Imtiaz v. National Insurance Co. Ltd. and Ors. reported as 2001 ACJ 1033; J&K State Road Transport Corporation,

Vikram Chowk, Jammu, v. Joginder Pal S/o Lt. Chuni Lal, Village Sarore, Teh. Samba and Ors. reported as 1998 KLJ 167 and R.D. Hatangadi

v. Pest Control (India) Pvt. Ltd. and Ors. reported 1995 SC 755, to urge that the Tribunal has erred in assessing the quantum of compensation

payable to the respondent-claimant. Learned Counsel submits that quantum of compensation awarded under the heads Prospective economic loss

and Loss of amenities is on higher side. Shri Daljit Singh Saini, learned Counsel for the respondent, on the other hand, refers to National Insurance

Co. Ltd. v. Mohammad Sultan Asim and Ors. reported as 2004 (1) SLJ 96 and Ashwani Kumar Mishra Vs. P. Muniam Babu and Others, , to

urge that requisite compensation has not been awarded to the respondent constable whose promotional prospects have been marred and from his

position as a soldier with good physique, built and personality he has been rendered disabled from using his right arm. Learned Counsel submits

that in view of the pathetic physical and mental condition of the respondent, he deserved much more than what has been awarded to him.

8. I have considered the submissions of learned Counsel for the parties and gone through the records.

9. Judgments cited by both sides, do not lay down any law, as such, on the basis whereof the Tribunal may assess the quantum of compensation.

The judgments, on the other hand, are based on factual assessment of respective cases on which the judgments have been delivered. These

judgments lay down only broad principles which are required to be kept in view by a Tribunal in assessing the amount of compensation payable to

an injured and rightly so because assessment of compensation depends on various factors and facts of each case. No hard and fast rule can, thus,

be laid down for assessing compensation payable under the Motor Vehicles Act.

10. While assessing compensation to an injured in a motor vehicle accident, it will be profitable to keep in mind what was said in Ward v. James

1965 (1) ALL ER 563, which I reproduce hereunder:

Although you cannot give a man so gravely injured much for his lost years, you can, however, compensate him for his loss during his shortened

span, that is, during his expected years of survival you can compensate him for his loss of earnings during that time, and for the cost of treatment,

nursing and attendance. But how can you compensate him for being rendered a

helpless invalid? He may, owing to brain injury, be rendered

unconscious for the rest of his days, or, owing to back injury, he unable to rise from his bed. He has lost every thing that makes life worthwhile.

Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh

insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The judges have

worked out a pattern, and they keep it in line with the changes in the value of money.

11. In view of the aforesaid passage of the judgment, it may be safely concluded that the Tribunal is required to fix amount of compensation in

cases of accident on some guess work, some hypothetical consideration, some amount of sympathy, of course, keeping in view the nature of

disability caused and the agony, discomfort and the like which the injured would suffer life long. These elements, no doubt, have to enter the

judicial mind, but with only one caution that every thing needs to be looked at with objective standards.

12. Respondent, in the present appeal, was a Constable in a Disciplined Force and even after his retirement, was sure to get suitable employment

because of his having served in a Disciplined Force. He has been deprived of his future prospects because of his having lost his right arm in the

accident. This aspect of the matter appears to have escaped notice of the Tribunal. That apart, loss of limb affects the personality, attitude, thinking

and the physical capacity of a person manifold, and compels him to lead a life he had not contemplated.

13. The compensation for loss of limb/s and injury has, thus, to be awarded by keeping various factors in view. The amount awarded by the

Tribunal, under heads Prospective economic loss, Pain and suffering and Loss of amenities of life, thus, does not appear to me to be, in any way,

excessive, as projected by Shri Ajay Sharma. Award of an amount of Rs. 4,70,000/- to a Soldier, who has lost his right arm, cannot, by any

stretch of reasoning, be said to be, in any way, excessive. I, however, find that the Tribunal has not awarded any amount to the respondent for the

injuries suffered by him to his right leg, which too had to be operated upon and an iron rod had to be introduced into his leg to enable him to stand

and move, of course, with not so much speed and strength as he would have moved had he not suffered any injury on the leg. He needs to be

appropriately compensated for his this injury. I would, accordingly, award an additional amount of Rs. 20,000/- for this injury, to the respondent in

addition to the award made by the Claims Tribunal.

14. For all what has been stated above, the award of the Tribunal is, accordingly, modified to read as an award for an amount of Rs. 4,90,000/-

(Rupees four lac and ninety thousand) along with interest as awarded by the Tribunal.

15. Registrar Judicial is directed to release the deposited amount in favour of the respondent/claimant. Excess amount awarded in terms of this

judgment shall be paid by the appellants to the respondent/claimant within a period of one month from today.

CIMA No. 42/2004 and Cross Appeal (C) No. 9/2005 are, accordingly, disposed of.