

14. A V Padma Vs Venugopal, (2012 (1) GLH 6 SC 442),

15. National Insurance Co. Ltd. Vs Mannat Johal & ors., 2019 (2) T.A.C. 705 (S.C.)

16. The Oriental Insurance Co. Ltd. Vs Chief Commissioner of Income Tax (TDS), (R/S Civil Application NO. 4800/2021 decided on 05.04.2022.

17. Bajaj Allianz General Insurance Company Pvt. Ltd. Vs U.O.I.& ors., vide order dated 27.01.2022

(Delivered by Hon'ble Ajai Tyagi, J.)

1. Heard learned counsel for the appellant and learned counsel for the respondents. Perused the record.

2. This appeal, at the behest of the claimant, challenges the judgment/award dated 08.07.2002 and decree dated 22.07.2002 passed by Motor Accident Claim Tribunal Agra/Additional District Judge, Court No.11, Agra (hereinafter referred to as 'Tribunal') in Motor Accident Claim Petition No.147 of 2000 awarding a sum of Rs.3,64,160/- with interest at the rate of 9% as compensation.

3. The brief facts as culled out from the record are that on 8.5.2000, appellant/claimant Satpal Singh was going from Delhi to Ghaziabad by Scooter No. DL 5 S 4011 with Dharamveer Singh at about 12 O'clock in the night when the scooter reached at Mohan Nagar, Sales Tax Check Post, a truck bearing UP 20 D 4827, which was being driven very rashly and negligently by its driver, came from behind and hit the aforesaid Scooterist. The wheel of the truck ran over the left leg (lower limb) of the appellant. The applicant was admitted to the nearest Hospital at Mohan Nagar, District Ghaziabad where he remained admitted from 9.3.2000 to 7.4.2000 and during his treatment his left leg (lower limb) was amputated from the hip.

4. The accident is not in dispute. The factum of negligence has attained finality. The issue regarding the driver of the truck having valid and effective driving licence has also been decided by the tribunal in favour of the appellant which is not challenged in this appeal. Hence only the issue of quantum of compensation is to be looked into by us.

5. Learned counsel for the appellant submitted that learned Tribunal has assessed the income of the appellant at Rs.1800/- per month (eighteen hundred only) which is very meagre because the appellant was aged 27 years old on date of accident. The applicant was a TV Mechanic and his income was not less than Rs.7,000/- per month in the year of accident, but learned Tribunal has equated his income with labourer. It is further submitted by learned counsel that no amount for future loss of income is awarded by the tribunal. Appellant was aged 27 years and he could have progressed in life and his income would have increased year by year, but learned tribunal did not consider this fact.

6. It is next submitted by counsel for the appellant that left leg of appellant was amputated from the hip and as per medical certificate, he has sustained permanent disability to the tune of 90%, but in fact the appellant has become 100% disabled so his permanent disability should be considered at 100%. It is also submitted that tribunal has applied multiplier of 14 while it should have been 17 keeping in view age being 27 years. It is next submitted that tribunal has awarded a very meagre amount of Rs.5,000/- for pain, shock and suffering, and no amount for future medicines, special diet and attendant charges, etc., have been awarded, learned Tribunal is not considered the loss of amenities.

7. Learned counsel for the Insurance Company submitted that the income of the appellant was not proved, he was Mechanic, but he has failed to prove his monthly income to be Rs.7,000/- per month. Hence, learned Tribunal has rightly assessed his monthly income at Rs.1800/- per month. It is next submitted by learned counsel that as per medical certificate, the permanent disability of the appellant was found to the tune of 90% and learned Tribunal has also considered 90% it cannot be 100%. Learned counsel for Insurance Company very fairly submitted that the multiplier should be in accordance with judgment of **Sarla Verma**

Vs. Delhi Transport Corporation, (2009) 6 SCC 121. It is also submitted that there is no evidence on record that appellant suffered any future loss of income. The amount under non pecuniary heads has been fairly awarded by the tribunal. It is submitted that Tribunal has awarded compensation with 9% rate of interest which is on higher side.

8. This is the case where a 27 year old man has lost his one limb from the hip joint on account of injuries sustained in road accident but the learned tribunal has awarded total compensation of Rs.3,64,160/- which cannot be said to be just compensation.

9. This is a case of injury which is very grave in nature. The wheel of the truck ran over the left leg of the appellant and during treatment his left leg was imputed from the hip joint which made him incapacitated from pursuing in good career in life though he was a TV Mechanic at the time of accident. He is not able to walk, run or even seat properly. He has lost amenities and pleasure of life it can safely be assumed that he had bleak prospects of marriage and family life. He is not able to live the normal life, his disability which is to the tune of 90% is permanent in nature, his normalcy of life can't be restored as it was before the accident, but Court should provide "just compensation".

10. We have to keep in mind all the factors which are relevant for just and proper compensation as is the object of the Motor Vehicles Act, 1988 (for short, "the Act of 1988").

11. Section 168 of the Act, 1988, contemplates determination of 'just compensation'. 'Just' means fair, reasonable and equitable amount accepted by legal standards. 'Just compensation' does not mean perfect or absolute compensation. 'Just compensation' principle requires examination of particular situation obtaining uniquely in individual case. When compensation is to be determined on an application under Section 166 of the Act, 1988, various heads under which damages are to be assessed, have to be looked into by Tribunal.

12. The question of determination of compensation for injured directly came up before Supreme Court in **Raj Kumar Vs. Ajay Kumar and another, 2011(1) SCC 343** and **Anthony v. Managing Director, K.S.R.T.C. 2020 ACJ 1592** relied by applicant's counsel. Therein, claimant sustained fracture of both bone of left leg and fracture of left radius in a motor accident on 01.10.1991. Tribunal awarded compensation under the heads of loss of future earning, pain and sufferings, loss of earning during period of treatment, medical expenses, conveyance and special diet. He was awarded total compensation of Rs. 94,700/- and 9% interest. His appeal for enhancement was rejected by Tribunal and ultimately went in appeal to Supreme Court. It observed that scheme of Act, 1988 shows that award must be "just", which means that compensation should, to the extent possible, fully and adequately restore claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. A person is not only to be compensated for physical injury, but also for the loss which he suffered as a result of such injury. It 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. The heads under which compensation needs be awarded in "personal injury" cases are detailed in para 6 of the judgment titled Raj Kumar Vs. Ajay Kumar (supra) and it reads as under:

"6. The heads under which compensation is awarded in personal injury cases are the following:

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 disability.*

(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). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

13. "Disability" refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. "Permanent disability" refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of period of treatment and recuperation, after achieving maximum bodily improvement or recovery which is likely to remain for remainder life of injured. Permanent disability can be either partial or total. "Partial permanent disability" refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. "Total permanent disability" refers to a person's inability to perform any avocation or employment related activities as a result of the accident.

14. The percentage of disability certified in medical terms has been considered and Courts have observed that percentage of disability in respect of a part of body does not mean the same percentage with respect to whole body and it may be different. Para 9 of judgment in Raj Kumar Vs. Ajay Kumar (supra) said as under:

"9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%."

(emphasis added)

15. Court also castigated that Tribunals wrongly assume that percentage of permanent disability is same in terms of percentage of loss of future earning capacity. The two aspects are different. Relevant observations in para 10 of the judgment in Raj Kumar Vs. Ajay Kumar (supra) are reproduced as under:

"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation."

(emphasis added)

16. Court also held that in some cases evidence and assessment may show that percentage of loss of earning capacity as a result of permanent disability is approximately the same as percentage of permanent disability and in that case said percentage for determination of compensation may be adopted but it is not always. It is in this context Court further said that in order to determine, whether there is any permanent disability and if so the extent of such disability, a Tribunal should consider, and decide, with reference to evidence:

"(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person."

17. It was also observed that ascertainment of the effect of permanent disability on actual earning capacity involves three steps. First is to ascertain what activities claimant could carry on in spite of permanent disability and what he could not do as a result of permanent disability. The second is to ascertain claimant's avocation, profession and nature of work before accident, as also his age. The third step is to find out whether claimant is totally disabled from earning any kind of livelihood or despite permanent disability, claimant could still effectively carry on activities and functions, which he was earlier carrying on and whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

18. The role of Tribunal was elaborately discussed by observing that it is not a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Tribunal does not function as a neutral umpire as in a civil suit. It is an active explorer and seeker of truth who is required to hold an enquiry into the claim for determining 'just compensation'. Tribunal should take an active role to ascertain the true and correct position so that it can assess 'just compensation'. Court also observed that when a doctor gives evidence about percentage of permanent disability, Tribunal must find out whether such percentage of disability is functional disability with reference to whole body or whether it is only with reference to a limb. In para 19 of the judgment in Raj Kumar Vs. Ajay Kumar (supra) Court summarized the principles in respect of "permanent disability" and assessment of compensation and in para 20 it gives certain illustrations in regard to assessment of loss of future earning. Same are reproduced as under:

"19. We may now summarize the principles discussed above:

(i) All injuries (or permanent disabilities 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."*

19. A three Judge Bench considered the question of "just compensation" in a case of permanent disability in ***Sanjay Verma Vs. Haryana Roadways, 2014(3) SCC 210***. Court observed that besides determination of damages under the head "loss of income" and "medical expenses", Tribunal must also award compensation under the head "future treatment" and "pain and sufferings" and where there is requirement of an attendant, cost of attendant should also be included for award of compensation.

20. In ***Kajal Vs. Jagdish Chand reported in 2020 (0) AIJEL-SC 65725***, the Apex Court has quoted pertinent observations from a very old case Philips Vs. Western Railway Company (1874) 4QBD 406 as under:

"You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered." Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure."

21. Hon'ble Apex Court has further quoted pertinent observations from H. West & Son Ltd. v. Shephard 1963 2 WLR 1359 as under:

"Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.

In the same case Lord Devlin observed that the proper approach to the problem was to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", which should be kept in mind by the court in determining compensation in personal injury cases."

22. Section 168 of MV Act stipulates that there should be grant of just compensation. Thus, it becomes challenge for a Court of law to determine just compensation which should not be bonanza for the claimant/victim and at the same time it should not be too meagre. Hon'ble the Apex Court in ***Rajkumar Vs Ajay Kumar and others (2011) 1 SCC 343*** has laid down the heads under which compensation is to be awarded for personal injuries which is as follows:

"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 disability.

(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). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

23. In **K. Suresh v. New India Assurance Company Ltd. and Ors.**, Hon'ble the Apex Court has held as follows :

"2...There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity the Act) stipulates that there should be grant of just compensation. Thus, it becomes a challenge for a court of law to determine just compensation which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance."

24. Hence, keeping in mind the above contours of "just compensation", we proceed to determine the quantum of compensation. It is not disputed that appellant has submitted the bills for medical expenses and treatment worth Rs.87,000/-. As far as disability of the appellant is concerned, Doctors have issued disability certificate to the tune of 90% for body as a whole and the Tribunal has also considered the same percentage. Hence, we do not disturb the percentage of permanent disability.

25. Perusal of judgment shows that despite holding that the appellant was a T.V. Mechanic, the learned Tribunal has considered his monthly income at Rs.1800/- on the ground that he could not adduce any evidence in this regard. We are even fortified in our view by the following authoritative pronouncements.

(i) Sanjay Kumar Vs. Ashok Kumar and another, (2014) 5 SCC 330;

(ii) Syed. Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735;

(iii) V. Mekala Vs. M. Malathi and another, (2014) 11 SCC 178; and

(iv) Hari Babu Vs. Amrit Lal and others, 2019 (2) T.A.C. 718 (All.).

(v) Uttar Pradesh Motor Vehicles (Eleventh Amendment) Rules, 2011.

26. Learned tribunal has assessed income at Rs.1800/- per month of injured appellant on the basis of The Minimum Wages Act, the said finding is bad. Learned tribunal could not have equated the appellant with labourer because before learned tribunal the appellant led evidence and opined that he was a T.V. Mechanic meaning thereby, that he was a technical and skilled person. The accident took place in the year of 2000, hence, we hold the income of the appellant at Rs.4,000/- per month.

27. The Hon'ble Apex Court in the judgment of *Jithendran v. New India Assurance Company Ltd and another, 2021 ACJ 2736* has held that in case of injury, 40% would be added towards future prospects, considering the fact that injured would be incapacitated for life, the same would be applicable to the facts of this Case.

28. Keeping in view the aforesaid decisions 40% would be added for future loss of income of the appellant, it is the result of his permanent disability and that too to the tune of 90%. The age of appellant was 27 years at the time of accident, hence, multiplier of 17 shall be applied, Rs.87,000/- were spent on medical expenses which are rightly granted by the tribunal. Learned tribunal has granted a meagre amount of Rs.5,000/- for pain and suffering. This is a case of amputation of one leg, hence Rs.1,00,000/- is granted for pain, shock and suffering as held by the Apex Court in *Syed Sadiq Etc. Vs. Divisional Manager United India Insurance Company Ltd., (2014) 2 SCC 735*. Learned tribunal has not granted any amount for future medical expenses hence, we grant Rs.40,000/- for future medicines, Rs.10,000/- (lumps sum) for special diet and Rs.5,000/- for attendant charges are also granted.

29. We can take judicial notice of the fact that in some of the cases, the injured as the case in hand requires artificial limb for betterment in movement, where leg is amputated. Purpose of social welfare legislation is to find out ways and means to help the sufferer in all possible fields. If Tribunal finds with medical advice that artificial limb can procure his self-dependency, all possible efforts should be made to get it executed and whatever necessary expenses, it requires, must be treated to be a part of compensation, which should be allowed against the persons liable to pay compensation. Hence, the appellant would be entitled to get Rs.1,00,000/- for procuring artificial limb.

30. Where the appellant has become disabled to the tune of 90% and that too by his leg, he is not able to seat properly and walk and he has lost pleasures of life because he cannot live a normal life after the accident. It is natural that he had bleak prospects of marriage and family life as he was a young man of 27 years of age only. It cannot be said that appellant lost amenities of life to the great extent which cannot be restored at all, therefore, we grant Rs.2,00,000/- for loss of amenities. On the basis of above discussion, the amount of compensation payable to the appellant is computed herein-below.

31. On the basis of above discussions, the amount of compensation payable to the appellant is computed herein-below.

i. Annual Income : Rs.4,000/- p.m.

ii. Percentage towards future prospects : 40% which would be Rs.1600/-

iii. Total income (i+ii) : Rs.5600/-

iv. Annual Income : Rs.5600 x 12 = 67,200/-

v. Multiplier applicable : 17

vi. Loss of dependency: (Rs.67,200 x 17)=Rs.11,42,400/-

- vii. Permanent disability at the rate of 90% = Rs.10,28,000/- (rounded figure)
- viii. Medical expenses = Rs.87,000/-
- ix. For Artificial limb = Rs.1,00,000/-
- x. For loss of amenities : Rs.2,00,000/-
- xi. For Special diet : Rs.10,000/-
- xii. For attendant charges = Rs.5,000/-
- xiii. For future medicines = Rs.40,000/-
- xiv. For transportation expenses = Rs.10,000/-
- xv. For pain, shock and suffering : Rs.1,00,000/-
- xvi. Total compensation (vii+viii+ix+x+xi+xii+xiii+xiv+xv) : **Rs.15,80,000/-** (in rounded figure)

32. The tribunal has awarded the rate of interest @ 9% but as far as issue of rate of interest is concerned, it should be 7.5% in view of the latest decision of the Apex Court in **National 7 Insurance Co. Ltd. Vs. Mannat Johal and Others, 2019 (2) T.A.C. 705 (S.C.)** wherein the Apex Court has held as under :

"13. The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court."

33. In view of the above, the appeal is **partly allowed**. Judgment and award passed by the Tribunal shall stand modified to the aforesaid extent. The respondent-Insurance Company shall deposit the additional amount within a period of 12 weeks from today with interest at the rate of 7.5% from the date of filing of the claim petition till the amount is deposited. However, for period of 22.7.2002 to 17.12.2003 no interest would be payable in view of decision of Apex Court reported in **Lakkamma and Others Vs. The Regional Manager M/s United India Insurance Co. Ltd., AIR 2021 SC 3301**. The amount already deposited be deducted from the amount to be deposited.

34. Learned Tribunal has awarded rate of interest as 9% per annum but we are award of interest at 7.5% on the enhanced amount in the light of the above judgment of the Apex Court.

35. On depositing the amount in the Registry of Tribunal, Registry is directed to first deduct the amount of deficit court fees, if any. Considering the ratio laid down by the Hon'ble Apex Court in the case of **A.V. Padma V/s. Venugopal, Reported in 2012 (1) GLH 6 (SC), 442**, the order of investment is not passed because applicants /claimants are neither illiterate nor rustic villagers.

36. Fresh Award be drawn accordingly in the above petition by the tribunal as per the modification made herein. The Tribunals in the State shall follow the direction of this Court as herein aforementioned as far as disbursement is concerned, it should look into the condition of the litigant and the pendency of the matter and judgment of A.V. Padma (supra). The same is to be applied looking to the facts of each case.

37. No other grounds were urged when the matters were heard.

38. Recently the Gujarat High Court in case titled *the Oriental Insurance Co. Ltd. v. Chief Commissioner of Income Tax (TDS), R/Special Civil Application No.4800 of 2021 decided on 05.04.2022*, it is held that interest awarded by the tribunal under Section 171 of Motor Vehicles Act is not taxable under the Income Tax Act, 1961.

39. The Tribunal shall follow the guidelines issued by the Apex Court in *Bajaj Allianz General Insurance Company Private Ltd. v. Union of India and others* vide order dated 27.1.2022, as the purpose of keeping compensation is to safeguard the interest of the claimants. As 10 years have elapsed, the amount be deposited in the Saving Account of claimants in Nationalized Bank without F.D.R.

40. We are thankful to learned counsels for the parties for ably assisting this court in getting this old appeal disposed of.

41. Record be sent back to tribunal below forthwith.
