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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 17.09.2025***+ **MAC.APP. 327/2015 & CM APPL. 6325/2015**

RELIANCE GEN INS CO LTDAppellant

Through: Mr. A.K. Soni, Advocate.

versus

RASHID ALI & ORSRespondents

Through: Mr. Manish Maini, Ms. Moumita Mondal and Ms. Aastha Chauhan, Advocates for R-1.

+ **MAC.APP. 868/2015**

RASHID ALIAppellant

Through: Mr. Manish Maini, Ms. Moumita Mondal and Ms. Aastha Chauhan, Advocates.

versus

RELIANCE GENERAL INSURANCE CO LTD
& ORS

.....Respondents

Through: Mr. A.K. Soni, Advocate.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****JUDGEMENT****TARA VITASTA GANJU, J.:**

1. The present Appeals seek to challenge an award dated 08.12.2014 [hereinafter referred to as "Impugned Award"] passed by the learned Presiding Officer, MACT, Karkardooma Courts, Delhi. By the Impugned Award, compensation in the sum of Rs.15,78,928/- has been awarded along with interest at the rate of 9% per annum to the Claimant.

2. The Impugned Award has been challenged by both the Insurance Company, i.e., MAC.APP. 327/2015 [hereinafter referred to as "Insurance



Company's Appeal"], as well as by the Claimant i.e., MAC.APP. 868/2015 [hereinafter referred to as "Claimant's Appeal"], resulting in the filing of two separate Appeals. Since, no recovery rights have been granted against the Owner and the Driver, their presence has been dispensed with by the Court by its order dated 10.04.2015.

3. Briefly the facts are that on 07.12.2012 the Claimant, while riding his motorcycle, was hit from the rear side by a truck bearing no. HR-55J-2878, being driven by Respondent No.2/Driver in a rash and negligent manner, as a result of which the Claimant sustained grievous injuries. He was initially taken to GTB Hospital, New Delhi, and thereafter shifted to Orthonova Hospital, Safdarjung Hospital, and then to Sir Ganga Ram Hospital, where surgery was conducted and his right leg was amputated above the knee. He was discharged on 11.12.2012.

4. Learned Counsel for the Insurance Company submitted before this Court on 05.08.2025 that the only issue of challenge in their Appeal is that the calculation of Future Prospects at the rate of 50%.

4.1 Learned Counsel for the Insurance Company submitted that the injured was an employee of the Delhi Transport Corporation (DTC) and was working on a contract basis, thus, the Future Prospects, in terms of judgment of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi and Ors.*¹, should have been awarded at the rate of 40%.

5. This Court had briefly heard the parties and had, by its order dated 05.08.2025 passed the following directions:

"MAC.APP. 327/2015 & CM APPL. 6325/2015 /Stay/

¹ (2017) 16 SCC 680



4. The present Appeals seek to challenge an award dated 18.12.2014 [hereinafter referred to as “Impugned Award”] passed by the learned Presiding Officer, MACT, Karkardooma Courts, Delhi. By the Impugned Award, compensation in the sum of Rs.15,78,928/- has been awarded along with interest at the rate of 9% per annum to the Claimant.

5. The challenge to the Impugned Award has been raised both by the Insurance Company as well as by the Claimant. Since, no recovery rights have been granted against the Owner and the Driver, their presence has already been dispensed with.

6. So far concerns the Appeal by the Insurance Company, i.e., MAC.APP. 327/2015, learned Counsel for the Appellant/Insurance Company submits that the only issue of challenge in the Appeal is that the calculation of future prospects at the rate of 50%. Learned Counsel for the Appellant/Insurance Company submits that the injured was an employee of the Delhi Transport Corporation and was working on a contract basis, thus, the future prospects, in terms of judgment of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi and Ors.*; (2017) 16 SCC 680, should have been awarded at the rate of 40%.

6.1 **Learned Counsel for Claimant fairly concedes that, in terms of the *Pranay Sethi* case, the future prospects would be awarded at the rate of 40%.**

6.2 **In view of the concession given by the Claimant, no further orders are required in MAC.APP. 327/2015.**

6.3 Learned Counsel for the parties submit that they will file an Affidavit of their calculations of the amounts to be awarded. Let the needful be done within two weeks.”

[Emphasis supplied]

6. As stated above, learned Counsel for Claimant conceded before this Court on 05.08.2025 that, in terms of the *Pranay Sethi* case, future prospects would be awarded at the rate of 40%.

6.1 in view of the foregoing concession given by the Claimant to reduce the future prospects from 50% to 40% in terms of the *Pranay Sethi* case, the insurance company’s appeal being MAC. APP. 327/2015 is allowed. The Impugned Award to the extent that it grants future prospects at the rate of 50% is modified to reduce the future prospects to 40% to calculate the loss of dependency.



MAC.APP. 868/2015

7. Learned Counsel for the Claimant submits that the challenge in the Claimant's Appeal [MAC.APP. 868/2015] rests primarily on three grounds.

7.1 Firstly, it is contended that as a consequence of the accident, the injured suffered amputation of his right lower limb above the knee, and the Medical Board assessed his permanent disability at 80%; however, the learned Tribunal erred in taking the functional disability to be only 40%, which finding is contrary to law and facts on record.

7.2 Secondly, it is contended that the sum of Rs. 2.5 lacs awarded towards artificial limb replacements and repairs is grossly inadequate and not in consonance with the settled principles governing such heads of compensation.

7.3 Lastly, it is contended that the compensation, by the learned Tribunal, was not awarded in terms of the wages of a matriculate.

8. Learned Counsel for the Claimant submits that the learned Tribunal has wrongly assessed the functional disability of the whole body at 40% instead of 80%. It is contended that the Claimant, in his Affidavit (Ex. PW1/A), has categorically deposed that he is unable to continue his work and has suffered total loss of earning capacity, which was not challenged in cross-examination by Respondents. It is further contended that PW-2, Subhash Chand, who was the conductor and who worked with DTC has deposed that no salary was paid to the Claimant after the accident as he was absent from his duties/work, thereby corroborating his claim of total loss of earnings.



8.1 Learned Counsel further relied on the statement of PW-4, Dr. Binod Kalita, Orthopaedic Specialist, who confirmed the disability certificate and testified that the Claimant cannot travel in buses or drive any vehicle. As PW-4's statement remained uncontroverted, it establishes the permanent and severe nature of the Claimant's disability.

8.2 It is further submitted that the Impugned Award under non-pecuniary heads is meagre, considering the Claimant's permanent disability, inability to use public transport, and loss of amenities of life, and therefore warrants enhancement for pain, suffering, and future conveyance charges.

9. Learned Counsel for the Claimant submits that he was compelled to purchase an above-knee prosthesis from Ottobock for Rs. 2,20,000/- (Ex. PW1/9), corroborated by PW-5. The prosthesis has a limited life of 5–6 years and requires regular maintenance. Being only 31 years old at the time of the accident, the Claimant will require at least six replacements with upkeep till the age of 70. A fresh quotation for Rs. 5,06,310/- dated 11.12.2023 has also been filed before this Court, justifying enhancement of compensation under this head.

9.1 Learned Counsel further contends that the Claimant has proved his variable salary for the months preceding the accident (Ex. PW1/7) and his educational qualification as a matriculate (Ex. PW1/5). Accordingly, the compensation ought to have been computed on the basis of wages of a matriculate, and the Tribunal's failure to do so has resulted in an inadequate award.

10. Learned Counsel for the Insurance Company, on the other hand, has contended that the Impugned Award does not suffer from any infirmity.



11. The record reflects that the Claimant had placed evidence in support of his contentions that after the accident, he is unable to work and that he has not received any payment. The Claimant further produced several witnesses including PW-2, who was the conductor and worked with the DTC. PW-2, at the time of his deposition had brought along with him the salary slips of the Claimant. PW-2 also deposed that he was a summoned witness and the Claimant did not get any salary after the accident as he was absent from his duties. The cross-examination conducted by the Insurance Company was only on whether the Claimant was getting ESI facilities and whether the Claimant got salary for the days he did not work. The relevant extract of the deposition of PW-2 is set out below:

*“PW-2: **Sh. Subhash Chand, Conductor in the Seemapuri Depot, Batch No. 22017, Token No. 48517.***

ON SA

I am the summoned witness and I have brought the summoned record i.e. copy of appointment letter which is mark A, attested copy of salary slip of Sh. Rashil Ali for the period from 12.07.2010 to 07.12.2012. The same is Ex. PW-2/1. The letter dated 10.02.2014 is Ex. PW-2/2 and the said letter is with regard to the transfer of Sh. Rashid Ali in the month of September'2013 from Dilshad Garden Depot to Yamuna Vihar Depot. The letter dated 07.02.2014, Ex. PW-2/3 is with regard to the current status of the record of the petitioner.

*The petitioner Sh. Rashid Ali was working in Dilshad Garden Depot as a conductor on contractual basis. **The petitioner was not given any salary after the date of accident till date as the petitioner was absent from his duties. The petitioner is still on the roll of the company.***

XXXXX By respondent No. 1, 2 & 3 are taken nil as no representation.

XXXXX By Sh. Upender Kumar, counsel for insurance company.

*It is correct that the petitioner/ injured, in this case, **is entitled for ESI facility as per our department rules. I cannot say whether the petitioner had obtained any benefit under the ESI facility or not as I do** not have any record with me at present. It is wrong to suggest that the petitioner had obtained all the benefit from the ESI. It is wrong to suggest that all the documents filed by me are false. It is correct that the petitioner was getting salary for working as conductor with DTC only on the days on which he remains present. I cannot tell whether the petitioner had*



informed regarding his absent from duty after 19.09.2013. It is wrong to suggest that I am deposing falsely.”

[Emphasis supplied]

11.1 In addition, the Claimant also produced another summoned witness PW-4, who was an Orthopaedic Specialist, Dr. Binod Kalita. PW-4 deposed and confirmed the 80% disability of the right lower limb and the amputation as well. PW-4, Dr. Binod Kalita further deposed that the Claimant can neither travel in a bus, nor drive any vehicle. The relevant extract of the deposition is set out below:

“PW-4: Dr. Binod Kalita, Orthopaedic Specialist, Dr. Hedgewar hospital, Delhi.

ON SA

I am the summoned witness and I have brought the summoned record pertaining to the disability of the petitioner Sh. Rashid Ali. I was one of the member of the disability board. The disability certificate, already exhibited as Ex. PW-1/7 bears my signature at point A. The petitioner Sh. Rashid Ali has suffered 80% disability in relation to right lower limb. The petitioner has suffered fracture of shaft femur with fracture both bone of right legs with vasculer injury. The petitioner Sh. Rashid Ali has suffered above knee amputation (right limb). The petitioner was not treated in our hospital. The petitioner cannot travel in buses and cannot drive any vehicle. I cannot say how the petitioner had suffered Injuries.”

[Emphasis supplied]

11.2 The Claimant has also produced Ex. PW1/7, the certificate of permanent physical disability dated 31.10.2013 before the learned Tribunal.

12. In addition, the Claimant has also proved the cost of the knee prosthesis through the evidence of PW-5, Saurav Mahapatra, Prosthetist & Orthotist from Ottobock Healthcare India Pvt. Ltd. The relevant extract is below:

“PW-5 Sh. Saurav Mahapatra, Prosthetist & Orthotist, Ottobock Health Care India Pvt. Ltd., Office at : 19, South Patel Nagar, Delhi.



On S.A.

I am summoned witness. I have brought authorization letter issued by Sh. Dhananjay Kumar, Clinic Manager to me for depositing today in court. The same is Ex.PW-5/A. **I have brought the invoice book having carbon copy of invoice no. OBI/DEL/PC/0955, which was issued to Sh. Rashid Ali after selling the above knee prosthesis to Md. Rashid Ali.** The original of the same is already on record and the same is already Ex.PW- 1/9. **Our company has received the entire payment of Rs. 2,20,000/- from Sh. Rashid Ali.**

XXX by respondent no. 1, 2 and 3. Nil as no representation.

XXXX By Sh. Upender Singh counsel for respondent no. 4.

It is correct that such type of artificial limbs of other brands are also available in the market at cheaper rate. It is correct that it is not mandatory that patient has to purchase the artificial limb from our concern. It is correct that petitioner has not brought any prescription issued by any doctor to purchase the artificial limb from us. It is wrong to suggest that we have not sold any artificial limb to the said Rashid Ali. It is wrong to suggest that the documents produced by me are false and fabricated.”

[Emphasis supplied]

13. The Claimant has in addition to the evidence also produced his certificate of matriculation from the National School of Open Schooling [Ex. PW1/5] which shows that he had passed the 10th grade.

14. It is the case of the Appellant that Appellant was working as a Bus Conductor in DTC when the accident happened and after the accident, the Appellant has not been able to work again due to the permanent nature of injuries which have been sustained. Thus, it is submitted that the learned Tribunal has erred in not awarding compensation for loss of future income in terms of his certificate of physical disability which is a permanent physical disability of 80% in relation to his right lower limb.

15. On the aspect of functional disability, the learned Tribunal while giving a finding conceded that the Claimant suffered from 80% permanent disability with respect to his right lower limb after amputation, however,



without giving a finding on functional disability, it has been held as 40% functional disability in relation to the entire body. The relevant extract of the Impugned Award is set out below:

*“22. The petitioner stated that he was working on contractual basis with the DTC and could not continue his work due to disability. The witness from the DTC, PW-2 Sh. Subhash Chand had stated that petitioner had remained on the roll of the company. **It is not disputed that the petitioner did not work as Conductor after the accident and has also not been paid the salary after the accident. The petitioner was not on permanent job and was on contract basis and was getting salary on day-to-day basis.** The facts remain that the petitioner had not worked with the DTC after the accident. The PW-4, Dr. Binod Kalita has clearly stated that petitioner cannot travel in buses and cannot drive. **Therefore, keeping in view the facts and circumstances, the functional disability in relation to whole body is taken to be 40%.** Therefore the loss of future earning due to disability can be calculated by multiplying the annual income with percentage of disability and with multiplier of 16. The total loss in future earning on account of disability comes to Rs. 8,01,331/- (10,434X12X16X0.4). The petitioner was more than 31 years of age at the time of accident. Bills are for Rs. 17,713/-.”*

[Emphasis supplied]

16. It is no longer res integra that a Court cannot give a finding on reduction of the disability without giving cogent reasons and in the absence of any contrary evidence available on record. The Supreme Court in the case of *Aabid Khan v. Dinesh and Ors.*², while relying on the *Raj Kumar v. Ajay Kumar and Another*³ case has held that where disability is reduced without any reasons, such a finding cannot be sustained. The relevant extract of *Aabid Khan* case is below:

“5. Perusal of the award passed by the tribunal as modified by the High Court, would reveal that claimant had sustained compound fracture in the left acetabulum and left rib. Dr. Alok Mehta (PW-5), who had examined the claimant had deposed that whole body disability suffered by the claimant was to the extent of 17% and this fact has been elicited in the cross-examination. However, the tribunal computed the compensation towards loss of future income by considering the whole body disability at

² (2024) 6 SCC 149

³ (2011) 1 SCC 343



10%. On surmises and conjectures the percentage of disability has been reduced. No reason whatsoever has been assigned by the tribunal for substituting its opinion to that of the expert opinion namely, the doctor who treated the claimant and examined as PW-5.

6. This Court in the case of *Raj Kumar v. Ajay Kumar and Another*, (2011) 1 SCC 343 has observed:

“16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident **that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation"**. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, *Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons*, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.”

XXX

XXX

XXX

XXX

9. In the light of the afore-stated position of law explained when the medical evidence tendered by the claimant is perused, **we are of the considered view that tribunal and the High Court committed a serious error in not accepting the said medical evidence and in the absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as against the opinion of the doctor (PW-5) certified at 17%. In that view of the matter the compensation awarded under the head 'loss of income' towards permanent disability deserves to be enhanced by construing the whole-body disability at 17%.**

[Emphasis supplied]

16.1 In the case of *Prakash Chand Sharma v. Rambabu Saini and Anr.*⁴, it was held by the Supreme Court that the Tribunal cannot unilaterally



question or reduce the disability percentage without following the proper procedure. The relevant paragraphs of the abovementioned case are extracted below:

“8. We find force in the submissions of the appellant. The duly constituted Medical Board has ascertained the permanent disability of the claimant-appellant to be 100%.

xxx

xxx

xxx

xxx

9. The Tribunal questioned the competence of the Medical Board to assess the permanent disability of the claimant-appellant, terming the certificate of the Medical Board as not completely reliable. If the Tribunal had reason to doubt the medical certificate, the option available before it was to have the disability re-assessed but it could not have gone into the details of the determination of disability. Since that course of action has not been adopted, the opinion of the Medical Board, being an opinion of the experts is to be treated as such. That apart, the comatose state of the claimant-appellant is not in dispute.”

[Emphasis supplied]

17. The Supreme Court in the case of **Raj Kumar** case while explaining functional disability and how it has to be assessed has held that there are three steps which have to followed for ascertainment of the effect of the permanent disability on the actual earning capacity. These include:

- (i) to ascertain what activities a claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability;
- (ii) to ascertain his avocation, profession and nature of work before the accident, as also his age;
- (iii) to find out whether (a) the claimant is totally disabled from earning any kind of livelihood, or (b) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (c) 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

⁴ 2025 SCC OnLine SC 276



functions so that he continues to earn or can continue to earn his livelihood.

17.1 The Supreme Court further explained that the actual loss of earning capacity depends on the nature of the Claimant's vocation and the impact of disability on that vocation, not merely on the percentage of physical disability. The relevant extract of the **Raj Kumar** case is set out below:

*"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. **The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) 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.***

*14. **For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry.** On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."*

[Emphasis supplied]



18. The undisputed facts in the present case show that the Claimant suffered an accident which led to the amputation of his right lower limb and has a permanent physical disability certificate at 80%. Although, the Claimant was employed on a contractual basis, he was being paid a salary as a DTC bus conductor at the Dilshad Garden Bus Depot in Delhi. The Claimant was also able to show that after the date of the accident, he was not able to work and did not receive a salary. PW-4, Dr. Binod Kalita from the hospital proved the certificate of disability of the Claimant. The Claimant has also contended that since the amputation was above the knee, he cannot even climb into a bus to perform the job he was doing earlier.

19. The evidence, thus, which has been brought on record and which is set out above does prove the permanent physical disability and also does prove that the functional disability of the Claimant, would be at least equivalent to his permanent physical disability. PW-4 who is and Orthopaedic Specialist had deposed that the Claimant can neither travel in a bus, nor drive any vehicle. Thus, the Claimant clearly would not be able to return to his vocation and it is likely that he would be required to find another vocation.

20. The law as settled in this behalf is that the physical disability percentage cannot be reduced by the learned Tribunal without actually giving reasons for such reduction. No such reasons appear in the Impugned Award. Thus, the finding of the learned Tribunal on functional disability cannot be sustained and is accordingly set aside.

21. On the calculation of the prosthesis, the Claimant proved the invoice of the prosthesis company Ottobock Healthcare India Pvt. Ltd. and that the



invoice for Rs. 2,20,000/-. The Claimant has also set out that the life of an artificial limb is limited and it requires replacement every 5 to 7 years. Each prosthesis also requires maintenance. The Claimant thus claimed that since the accident happened when he was 31 years old, he is entitled to be compensated for 6 prosthetic replacements up to the age of 70 years. Thus, the Impugned Award to the extent that it awards only Rs. 2.5 lakhs compensation for the prosthetic cannot be sustained and is accordingly set aside.

22. In addition and since the Claimant has been able to prove the fact that he is a matriculate, the learned Tribunal ought to have awarded compensation based thereon as well.

23. In view of the foregoing discussions, this Court deems it apposite to direct the parties to appear before the learned Tribunal to re-calculate the awarded amount based on minimum wages of a matriculate along with 40% future prospects and at a functional disability of 80%. In addition, the learned Tribunal shall also examine number of prosthetics that may be required during the lifetime of the Claimant which will include the cost of the prosthetic leg including its replacement(s) and maintenance.

24. The parties are accordingly directed to appear before the learned Tribunal on 13.10.2025 for a calculation of revised compensation.

25. It is clarified that the remit of the remand is only for the purposes of re-calculation of the amounts to be awarded to the Claimant. For this purpose, the learned Tribunal is at liberty to examine the evidence, already on record.



2025:DHC:8215



26. The Appeals are accordingly disposed of in the foregoing terms.
27. The parties will act based on the digitally signed copy of the order.

SEPTEMBER 17, 2025/r/ha

TARA VITASTA GANJU, J