



2025:DHC:3664



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on:13.05.2025

+ **MAC.APP. 343/2023 & CM APPL. 34719/2023**

**MUKUL RATHORE**

..... Appellant

versus

**VIRENDER PRATAP SINGH AND ORS.**

..... Respondents

**Advocates who appeared in this case:**

For the Applicant : Mr. Varun Sarin, Ms. Parul Dutta, Ms. Babita Rawat, Advs.

For the Respondent : Mr. Aminesh Sinha, Mr. Subham Budhiraja & Mr. Shivang Singhal, Advs. through V.C. for R-3.

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present appeal has been filed challenging the Award dated 01.12.2022 (hereafter '**impugned award**') passed by the learned Motor Accident Claims Tribunal- 01, Central District, Tis Hazari Courts, Delhi (hereafter '**Tribunal**') in MACT No. 352/ 2021, pursuant to which the appellant was awarded a sum of ₹19,89,000/- along with interest at the rate 6% p.a. from the date of filing the Detailed Accident Report ('DAR') till the date of realization.



2. Briefly stated, the facts of the case are that on 02.09.2020 at about 8:30 pm, when the appellant was boarding an orange colored bus having Route No. 623 and Registration No. DL-1PD-0199, at IP Marg, Near ITO Bus Stand, Delhi, the bus driver/ Respondent No. 1 suddenly started moving the bus, due to which the appellant could not climb the bus and fell down on the road, when the rear wheel of the bus ran over the leg of the appellant due to which he received grievous injuries. During treatment, the right leg of the appellant below the knee was amputated.

3. Pursuant to the accident, FIR No. 176/2020 under Sections 279/338 of the Indian Penal Code, 1860 was registered at Police Station I.P. Estate. The Detailed Accident Report was filed on 16.03.2021, and the same was registered as Motor Accident Claims Petition, in relation to the grievous injuries sustained by the appellant.

4. The learned Tribunal while passing the award held that the accident had taken place on account of the rash and negligent driving of Respondent No. 1, however since the vehicle was insured with the insurance company/ Respondent No. 3, the learned Tribunal held Respondent No. 3 liable to pay compensation to the appellant. The present appeal has been filed seeking enhancement of compensation and modifying the impugned award.

5. The learned counsel for the appellant submitted that the learned Tribunal erred in taking the functional disability as 35% when he had suffered 70% permanent disability in relation to his right lower leg



which was amputated from below the knee, which has ruined his earning capacity and future prospects.

6. He submitted that 40% towards future prospects has also been granted on a lower side, despite the fact that the appellant is unable to carry on with his vocation, where he may have had good future prospects.

7. He submitted that the income of the appellant has wrongly been taken as per minimum wages applicable for unskilled workmen, whereas the same should have been taken for a skilled workman, as the appellant was working as a peon in Dayal Singh Library, DDU Marg, ITO, Delhi, as the time of the accident. It is further prayed that loss of income be taken for 8 months instead of 3 months.

8. He placed reliance on the judgement passed by this Court in ***United India Insurance United India Insurance Co. Ltd. v. Rakesh Kumar* : 2023 SCC OnLine Del 4737** and submitted that the learned tribunal erred in granting only ₹1,50,000/- towards the cost of artificial limb.

9. He placed reliance on the judgement passed by the Hon'ble Apex Court in ***V. Mekala v. M. Malathi* : (2014) 11 SCC 178** to state that the amount of ₹50,000/- towards mental shock, pain and suffering is on the lower side. He submitted that the learned Tribunal also erred in not granting any compensation towards the loss of amenities of life on account of disability as well as attendant charges, while considering the nature of disability suffered by the appellant. [Ref:



***National Insurance Co. Ltd. v. Pawan Kumar : 2023 SCC OnLine Del 4964]***

10. He further prays that the nominal compensation of ₹10,000/- towards conveyance and special diet be enhanced, since the appellant incurs high expenses owing to the nature of injuries suffered by the him.

11. Submissions made on behalf of the parties were heard and the record is perused.

12. It is undisputed that the right leg of the appellant, below the knee is amputated as a result of the accident. As per MLC No. E-146707/ 2020 the appellant sustained grievous injuries. The DAR suggests that the appellant was required to undergo surgery and has suffered permanent disability. The Disability Certificate suggests that the appellant sustained 70% permanent disability in relation to his right lower limb.

**Functional Disability**

13. The appellant is aggrieved by the fact that for the determination of loss of future income, the learned Tribunal calculated the functional disability of the appellant as 35%, whereas he states that 100% of the permanent disability should have been taken as functional disability as the appellant is not able to pursue his job and carry on prior functions, on account of his disability, as mentioned in the Affidavit filed by him before the learned Tribunal.



14. The learned Tribunal took note of the 70% permanent disability in respect of the right lower limb, however since the appellant had only completed education till 7<sup>th</sup> grade, and while considering that he worked as a Peon, determined the functional disability of the appellant as 35%.

15. The Hon'ble Apex Court, in the case of ***Raj Kumar v. Ajay Kumar : (2011) 1 SCC 343***, had considered the effect of permanent disability on actual earning capacity. It was held that the Tribunal should first ascertain the activities the claimant was carrying on prior to the accident and the effect of the disability on the activities he is likely to carry on in future. The nature of work before the accident and also the age of the victim were held to be relevant factors.

16. In ***Raj Kumar v. Ajay Kumar (supra)*** the Hon'ble Apex Court gave an example that where the injured is a driver and suffers a permanent disability in the nature of amputation of his hand, the functional disability of the injured should be taken as loss of earning capacity at 100% of the permanent disability.

17. In the present case, the appellant worked as a housekeeper/ peon at the Library which involves manual activities and has stated on his affidavit that he is unable to join work due to the amputation of his leg. It is stated that the appellant even finds it difficult to discharge his routine activities like using the washroom and is looked after by his family members. The Hon'ble Apex Court in ***Jagdish v. Mohan : (2018) 4 SCC 571***, while discussing the seriousness of the disability



in respect of the vocation of the injured, who is a carpenter, observed as under:

**“14. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing—at least in the facts of this case—can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.**

**15. The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90%. The disability is indeed total.** Having regard to the age of the appellant, the Tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on account of the loss of income, including future prospects, would be Rs 18,14,400. In addition to this amount, the appellant should be granted an amount of Rs 2 lakhs on account of pain, suffering and loss of amenities. The amount awarded by the Tribunal towards medical expenses (Rs 98,908); for extra nourishment (Rs 25,000) and for attendant's expenses (Rs 1 lakh) is maintained. The Tribunal has declined to award any amount towards future treatment. The appellant should be allowed an amount of Rs 3 lakhs towards future medical expenses. The appellant is thus awarded a total sum of Rs 25,38,308 by way of compensation. The appellant would be entitled to interest at the rate of 9% p.a. on the compensation from the date of the filing of the claim petition. The liability to pay compensation



*has been fastened by the Tribunal and by the High Court on the insurer, owner and driver jointly and severally which is affirmed. The amount shall be deposited before the Tribunal within a period of 6 weeks from today and shall be paid over to the appellant upon proper identification.”*

(emphasis supplied)

18. This Court in ***Cholamandalam MS General Ins. Co. Ltd. v. Ram Kishan*** : 2018 SCC OnLine Del 10001, assessed the percentage of functional disability of the injured claimant even more than the permanent disability sustained by him. It was held as under:

*“7. It has also come in the additional evidence of Dr. Adarsh Kumar that Injured is susceptible to frequent infection and he will frequently need medical consultation and due to the deformity appearing in the abdomen of the Injured, he is not likely to perform normal labour work. It is relevant to note that the Injured was a labourer and now due to this accident, he can only do desk job for which he is not qualified. It has also come in the additional evidence that there is a possibility of improvement of functional disability after the proposed surgery and Injured may not require the urine bag for his urine collection after the surgery. Although, the permanent disability of the Injured has now been re-assessed to be 27%, but in the face of additional evidence, the functional disability suffered by the Injured due to this accident is assessed as 70%.”*

(emphasis supplied)

19. It is observed that the appellant was working as a peon and will not be in a position to secure the same job. Moreover, the appellant does not seem to be well educated having only studied till the 7<sup>th</sup> grade. He is neither in a position to get a well meaning desk job, where he may be able to earn a decent amount. It is common



knowledge that the employment condition in the city is not so favourable that a person with such disability may acquire a desk job. In such cases it can safely be said that the earning capacity of the appellant will be affected by 100% of the physical permanent disability. The functional disability of the appellant is hereby assessed at 70% for the purpose of determination of the future loss of income.

### **Calculation of Loss of Income**

20. In regard to the assessment of the income, the appellant claimed that he was working as a housekeeper in Dayal Singh Library and was getting a salary of ₹15,000/- p.m.. The learned Tribunal noted that the appellant has not been able to produce any proof regarding the income and considered the minimum wages applicable for an unskilled labour, that is, ₹15,310/- as the income of the appellant. The argument of the appellant that the minimum wage of a skilled labour should have been taken into consideration, is without any merit. In terms of the notification issued by the Ministry of Labour and Employment bearing F. No. S-32017/01/2019-WC, the job of a peon comes under Schedule E as “unskilled” labour and would not qualify as skilled labour. Even otherwise, the appellant income has been assessed higher than claimed by the appellant. This Court finds no infirmity in the assessment of income of the appellant by the learned Tribunal.

21. The appellant is further aggrieved by the fact that the learned Tribunal only granted loss of income for three months, which amounted to a total sum of ₹45,930/-, whereas the appellant was under



treatment for a long period of time, during which he was unable to join his job on account of the amputation. Undisputedly, the appellant was receiving treatment at AIIMS Hospital, Delhi and was admitted in the hospital from 04.09.2020 to 18.10.2020 and thereafter he was in bed rest and was being taken care of by his family members. In such circumstances, the appellant is entitled to loss of income for atleast six months.

### **Future Prospects**

22. The learned counsel for the appellant argued that the learned Tribunal has erred in assessing the future prospects at 40%, whereas the appellant is unable to join his job where he was expecting good future prospects. The age of the appellant at the time of the accident was 22 years. The argument of the appellant is without any merit. This Court finds no infirmity with the assessment by the learned Tribunal of the percentage of future prospects of the appellant as 40% as the same is in consonance with the judgement passed by the Hon'ble Apex Court in *National Insurance Co. Ltd. v. Pranay Sethi : (2017) 16 SCC 680*.

### **Artificial Limb**

23. The appellant at the time of the accident was 22 years of age, and has a full life ahead. It has been held in a catena of judgements that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident, as best as possible. The appellant has produced a quotation dated 19.04.2022 for a sum of



₹2,68,800/- from M/s Fusion Rehab Clinic for the procurement of an artificial limb. The learned Tribunal has granted a sum of ₹1,50,000/-. The same is not sufficient to last a life time for the appellant, as the life of the artificial limb is usually 5-6 years, and the same is also required to be maintained from time to time. In this regard, the learned Tribunal is directed to re-asses the cost of artificial limb to be granted to the petitioner, in terms of the judgement passed in ***Mohd. Shabeer @ Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation : 2022 SCC OnLine SC 1701***, with the total amount towards Future Medical Expenses including Cost of Prosthetic Leg, maintenance and repair charges.

### **Mental Shock, Pain and Suffering & Non-Pecuniary Heads**

24. The learned counsel for the appellant has further argued that the amount granted by the learned Tribunal towards mental shock, pain and suffering, is only ₹50,000/- whereas the same should have been granted in terms of the judgment passed by the Hon'ble Apex Court in ***V. Mekala v. M. Malathi : (2014) 11 SCC 178***. The relevant paras of the judgement in ***V. Mekala v. M. Malathi (supra)*** are reproduced as under:

***“21. The compensation under the head pain and suffering and mental agony was awarded by the High Court after recording concurrent findings with the award passed by the Tribunal. However, the courts below have not recorded the nature of the permanent disablement sustained by the appellant, while awarding Rs 1,00,000 under this head which is too meagre an amount and is contrary to the judgment of R.D. Hattangadi [R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551 : 1995 SCC***



(Cri) 250] and Govind Yadav [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683 : (2012) 3 SCC (Civ) 1082 : (2012) 1 SCC (Cri) 82 : (2012) 1 SCC (L&S) 422] cases. The relevant paragraphs of Govind Yadav case [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683 : (2012) 3 SCC (Civ) 1082 : (2012) 1 SCC (Cri) 82 : (2012) 1 SCC (L&S) 422] read as under: (SCC p. 695, paras 25-26)

“25. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meagre. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the tribunals and the courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the tribunals and the courts should make a broad guess for the purpose of fixing the amount of compensation.

26. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs 1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.” Therefore, under this head the amount awarded should be enhanced to Rs 2,00,000 as the doctor PW 2 has opined that at the time of walking with support of crutches, the appellant claimant will be suffering pain permanently. Therefore, under this head it has to be enhanced from Rs 1,00,000 to Rs 2,00,000.”

(emphasis supplied)

25. The facts in *V. Mekala v. M. Malathi* (*supra*) are similar to the present case. Undisputedly, the right leg of appellant was amputated due to the injury for which he was admitted in the hospital from 04.09.2020 to 18.10.2020 and thereafter he was in bed rest and being assisted by his family members for even the basic human chores. The



appellant is 22 years of age, and will suffer the trauma of not being able to carry out his normal work for a long time.

26. This Court in *Nandan Mukherjee v. Mohd. Rafiq* : 2024 SCC OnLine Del 9012 while granting compensation to a claimant whose leg was amputated in a motor accident, granted a sum of ₹2,00,000/- for loss of amenities. In the present case, no compensation for loss of amenities has been granted by the learned Tribunal. The relevant paragraphs in *Nandan Mukherjee v. Mohd. Rafiq* (*supra*) are reproduced hereunder:

*“Special Diet and Conveyance Charges:—*

**35. In view of the nature of injury and period of treatment of about 6 months, the sum of Rs. 18,000/- granted for compensation towards Special Diet and Conveyance charges, the amount is enhanced to Rs. 30,000/-, considering the nature of injury suffered.**

*Non-Pecuniary Heads:—*

**38. The Learned Tribunal has granted a total amount of Rs. 3,00,000/- i.e. Rs. 1,00,000/- each towards Pain and suffering, Loss of amenities of life & Loss of expectation of Life.**

**39. However, considering that the right leg of the injured was amputated, in light of Mhd. Sabeer @ Shabir Hussain (Supra), the same is re-calculated as under:—**

**a) Pain and Suffering = Rs. 2,00,000**

**b) Loss of Amenities of life = Rs. 2,00,000**

**c) Loss of Expectation of Life = Rs. 1,00,000/- (no change)”**

(emphasis supplied)

27. In view of the observations made in *V. Mekala v. M. Malathi* (*supra*) and *Nandan Mukherjee v. Mohd. Rafiq* (*supra*) the amount



of compensation granted by the learned Tribunal towards mental shock, pain and suffering, is enhanced to ₹2,00,000/-, and further the appellant is entitled to compensation with regard to loss of amenities to a sum of ₹2,00,000/-.

### **Special Diet & Conveyance Charges**

28. The compensation granted by the learned Tribunal towards conveyance and special diet is a sum of ₹10,000/-. In view of the aforesaid judgement, the compensation for special diet and conveyance charges is enhanced to a sum of ₹30,000/-.

### **Attendant Charges**

29. It is further observed that no attendant charges were granted by the learned Tribunal. The learned Tribunal noted that neither any bill/receipt had been placed on record nor the details of the attendant, if any, was disclosed by the appellant. This Court in *Sumer v. National Ins Co. Ltd. : 2023 SCC OnLine Del 5533*, wherein the physical disability was assessed at 50%, enhanced the compensation towards the cost of attendant charges. The relevant portion of the said judgement is reproduced hereunder:

*“33. The appellant challenges the Impugned Award in-so-far as it awards compensation of only Rs. 10,000/- to the appellant towards attendant charges.*

*34. The learned counsel for the appellant submits that looking into the nature of the injury suffered by the appellant, the appellant would require an attendant. He submits that the family members of the appellant are looking after the*



appellant, however, that cannot be a reason for denying the compensation to the appellant towards the attendant charges.

**35. On the other hand, the learned counsel for the respondent no. 1 submits that, in fact, the appellant had not claimed any amount towards the attendant charges in the Claim Petition, nor had the same been proved.** The appellant has also been granted Rs. 75,000/- for pain, suffering and trauma, and Rs. 50,000/- towards amenities. He submits that, therefore, there is no justification for enhancing the compensation payable towards the attendant charges.

36. I have considered the submissions made by the learned counsels for the parties.

**37. Keeping in view the nature of injuries suffered by the appellant, it cannot be said that the appellant would require a permanent attendant.** At the same time, he would certainly require some help on a regular basis, especially because of the amnesia suffered by him, as also because of hemiplegia suffered in his left upper and lower limb. **The compensation awarded to the appellant of only Rs. 10,000/- towards attendant charges, therefore, appears to be highly inadequate. Though, the appellant may be taking the services of his own family members, who may be performing the same gratuitously, compensation should still be awarded in favour of the appellant for the contribution made by the family members. Accordingly, the compensation on account of the attendant charges is enhanced to Rs. 2 lakhs.**”

(emphasis supplied)

30. In *National Insurance Co. Ltd. v. Pawan Kumar* (*supra*) it was observed as under:

**“15. The learned counsel for the appellant further submits that the learned Tribunal has erred in granting a sum of Rs. 5,00,000/- to the respondent no. 1 towards attendant charges, though there was no proof of the same placed on record by the respondent no. 1 before the learned Tribunal.** He further submits that, in any case, interest could not have been awarded under the said head, as interest cannot be awarded for compensation payable for the future. In support,



he places reliance on the judgment of the Supreme Court in *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*, (1995) 1 SCC 551; and of this Court in *IFFCO Tokio General Ins. Co. Ltd. v. Raja*, 2014 SCC OnLine Del 4375.

**16. I am again unable to find any merit in the submission made by the learned counsel for the appellant.** The learned Tribunal, while awarding a sum of Rs. 5,00,000/- towards attendant charges in favour of the respondent no. 1, has observed as under:—

**“ATTENDANT CHARGES**

32. The contention of counsel for petitioner is that the petitioner has permanent disabled in the accident and he had incurred expenditure on attendant charges. **Petitioner during the course of his deposition has failed to substantiate the amount spent by him on attendant charges. Although the petitioner has not proved by cogent evidence as to who was hired by him as attendant, period of hiring attendant and the amount paid to attendant. However as per disability certificate the petitioner has suffered 95% permanent physical impairment in relation to his left upper limb and right lower limb.** PW2 Dr. Adarsh Kumar who was member of disability board has deposed that the petitioner can not squat and he will have difficulty in discharging his routine activities like using of washroom. **Thus looking at the nature of disability and deposition of PW2 notice can be taken of the fact that the petitioner will require assistance of attendant for his daily routine work. Moreover, the petitioner has to be compensated for the gratuitous services rendered by his family members.** Reliance is placed on *United India Insurance Company Ltd. v Rama Swamy*, MAC App, No. 328/11. **In view of the aforesaid, in my view, a sum of Rs. Five Lacs would be just and proper towards attendant charges and the same is awarded accordingly.”**

**17. The learned Tribunal has rightly held that taking into account the injury suffered by the respondent no. 1, he would require the assistance of an attendant for his daily routine work. This may be in the form of hired help or even in the form of gratuitous services rendered by his family members. Either way, the respondent no. 1 has to be compensated for the same.**

**18. In *Abhimanyu Partap Singh (Supra)*, the Supreme Court, in fact, determined the compensation payable for**



**attendant charges on the basis of the minimum wages notified and by applying the multiplier method. Judged by that standard, the Award of only Rs. 5,00,000/- towards attendant charges to the respondent no. 1 can by no stretch be said to be unreasonable or unwarranted.”**

19. As far as the award of interest on the said amount is concerned, as noted hereinabove, the accident had taken place on 14.10.2011. The Award was passed by the learned Tribunal on 01.04.2016, that is, almost after four and a half years thereafter. The respondent no. 1 would have required assistance all along, during this period. In my view, Rs. 5,00,000/- can be attributed to the pendente lite period alone. Therefore, the said amount is not for the future but for the past, and would, therefore, bear interest liability as well.

(emphasis supplied)

31. In view of the observations made in *Sumer v. National Ins Co. Ltd.* (*supra*) and *National Insurance Co. Ltd. v. Pawan Kumar* (*supra*), and the fact and circumstances of the present case, the appellant is also entitled to compensation towards attendant charges. Although it has been noted by the learned Tribunal that the appellant did not place on record any document showing that he had availed attendant services, it cannot be denied that the appellant would have required assistance of an attendant even for his daily routine work, as the leg of the appellant has been amputated. Moreover, in terms of the view taken in *National Insurance Co. Ltd. v. Pawan Kumar* (*supra*), the assistance of an attendant may be in the form of a hired help or of gratuitous services rendered by family members, as is the case in the present matter. In view of the same, the appellant is entitled to a sum of ₹5,00,000/- towards attendant charges.



32. Accordingly, the appeal is partly allowed and the compensation amount awarded by the learned Tribunal is enhanced in the aforesaid terms. The matter is remanded back to the learned Tribunal for the limited purpose of re-determining the compensation of the appellant under different heads– (i) award future loss of income while assessing the functional disability of the appellant as 70% (ii) award loss of income for a period of six months (iii) re-assess the cost of artificial limb in terms of para 22 of this judgment (iv) award a sum of ₹2,00,000/- as compensation towards mental shock, pain and suffering (v) award a sum of ₹2,00,000/- as compensation towards loss of amenities (vi) enhance the compensation for conveyance and special diet to ₹30,000/- (vi) award a sum of ₹5,00,000/- as compensation towards attendant charges, and finally compute the compensation of the appellant afresh.

33. The finding of the learned Tribunal on all other issues, including multiplier, future prospects, computation of income, treatment and interest rate, are affirmed and shall remain undisturbed.

34. The learned Tribunal shall undertake the re-computation expeditiously, preferably within a period of four weeks from the date of the first listing of the Claim Petition before the learned Tribunal on remand. The parties shall appear before the learned Tribunal on 20.05.2025.



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35. The compensation amount so determined, on remand, shall be disbursed in favour of the appellant as per the manner provided in the impugned award.

36. The appeal is partly allowed and disposed of in the aforesaid terms.

37. Pending applications, if any, also stand disposed of.

**AMIT MAHAJAN, J**

**MAY 13, 2025**