



2025:DHC:4997



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 19.06.2025

+ **MAC.APP. 663/2018 & CM APPL. 28787/2018**

**IFFCO TOKIO GENERAL INSURANCE
CO LTD**

..... Appellant

versus

RAJESH & ORS

..... Respondents

+ **MAC.APP. 233/2019**

RAJESH

..... Appellant

versus

**IFFCO TOKIO GENERAL INSURANCE CO
LTD & ORS**

..... Respondents

Advocates who appeared in this case:

For the Appellant(s) : Ms. Suman Bagga, Adv. for the appellant
in MAC.APP. 663/2018.

Mr. Manish Batra and Mr. Pawan Kumar
Kashyap, Advs. for the appellant in
MAC.APP. 233/2019.

For the Respondent(s) : Mr. Manish Batra and Mr. Pawan Kumar
Kashyap, Advs. for R-1 in MAC.APP.
663/2018.

Ms. Suman Bagga, Adv. for R-1 in
MAC.APP. 233/2019.



**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present cross-appeals are filed challenging the award dated 23.04.2018 (hereafter '**impugned award**'), passed by the learned Motor Accident Claims Tribunal, in MAC Petition No. 4548/16 (Old MACP No. 29T/14).
2. The brief facts of the case are that on 24.09.2013, when the motorcycle driven by Rustam (since expired), on which the injured Rajesh was riding as a pillion rider, reached at Traffic Intersection, Mahindra Park, heading towards Azadpur, Delhi, one Truck which was being driven in a rash and negligent zig zag manner came and hit the motorcycle. As a result of the collision, the victims fell down and the victim Rustam was crushed under the wheels of the offending vehicle. The victim Rajesh sustained grievous injuries. The offending vehicle was being driven by the respondent Shiv Bahadur and the same is said to be owned by the respondent Shyam Lal Katana. An FIR was registered for offences under Sections 279/337/304A of the Indian Penal Code, 1860 ('**IPC**') in relation to the incident.
3. The learned Tribunal, by the impugned award, disposed of the claim on behalf of the victim Rajesh as well as the claim filed by the parents of the deceased victim Rustam. After considering the FIR and filing of chargesheet as well as the testimony of the victim Rajesh, it was found that the victim Rajesh had sustained grievous injuries due



to the negligence on part of the driver of the offending vehicle. The learned Tribunal awarded a compensation of ₹18,51,100/- along with interest at the rate of 9% per annum with effect from the date of filing of the claim petition (that is, 27.11.2013) against the owner and driver of the offending vehicle jointly and severally. Out of the total amount, ₹1,91,090/- was awarded towards medical expenses, ₹2 lakhs was awarded towards pain and suffering and loss of amenities of life respectively, ₹25,000/- was awarded towards conveyance, special diet and attendant charges and ₹12,35,052/- was awarded towards loss of future income. It was further observed that since the insurance company had not adduced any material to show that the insurance policy was breached, it was liable to pay the compensation amount as it was liable to indemnify the insured.

4. Aggrieved by the same, the insurance company filed the appeal, bearing, MAC.APP. 663/2018, seeking reduction in the awarded compensation. In the said appeal, the victim filed a cross objection for enhancement of compensation, which was directed to be treated as a separate appeal by this Court by order dated 30.01.2019. The cross appeal was numbered as MAC.APP. 233/2019.

5. The learned counsel for the victim submitted that the learned Tribunal has awarded less amount under the heads of pain and suffering, loss of amenities of life, conveyance, special diet, attendant charges and loss of future income.

6. He submitted that the learned Tribunal has erred by computing loss of income on the basis of the minimum wages for a skilled worker



without considering the salary slips as well as identity card of the victim, which are part of the chargesheet and Detailed Action Report ('**DAR**').

7. He submitted that the compensation towards pain and suffering and loss of general amenities should be enhanced as the victim has suffered 77% disability in both his lower limbs. He submitted that the victim has undergone great mental shock on account of his injuries and his disability is extensive, which is bound to hinder his quality of life.

8. He further submitted that paltry sums have been awarded towards conveyance and special diet by the learned Tribunal, even after noting that the victim would have needed a rich protein diet and used conveyance for the duration of his treatment. He submitted that the commute was expensive for the victim as he can no more ride a two-wheeler like earlier. He further submitted that a meagre amount of merely ₹10,000/- has been awarded for attendant charges without appreciating the extent of injuries suffered by the victim as well as the special care required for the same.

9. On the other hand, the learned counsel for the insurance company submitted that compensation should not be a source of profit for the injured victim and the learned Tribunal ought to have taken a more equitable approach.

10. He submitted that the learned Tribunal erred in awarding a compensation of ₹2 lakhs each under the head of pain and suffering



and loss of amenities of life. He submitted that the compensation under these heads is excessive and on the higher side.

11. He further submitted that the learned Tribunal assessed the functional disability on the higher side and the same should not have been more than 40% as the victim suffered no loss of income during the course of his treatment. He submitted that the minimum wage of unskilled worker ought to have been taken into account while computing loss of future income as the victim did not establish his employment as a technician.

12. He submitted that the documents annexed with the charge sheet cannot be read into evidence and the insurance company is only supposed to conduct cross-examination on the basis of evidence led by victim. He submitted that there is no mention of salary in the evidence by way of affidavit. He submitted that the said documents were not exhibited before the learned Tribunal and the employer of the victim was not summoned either.

13. He further submitted that the learned Tribunal has taken note of the submission on behalf of the counsel for the victim that the minimum wage be taken into account as no proof of salary was produced.

ANALYSIS

14. The short question before this Court is whether appropriate compensation has been awarded to the victim and if the same ought to be enhanced or reduced.



15. It is well-settled that the amount of compensation awarded under the MV Act should be just and, to the extent possible, should fully and adequately restore the claimant to a position as existed prior to the accident. The object being to make good the loss suffered as a result of the accident in a fair, reasonable and equitable manner. In cases of personal injury, compensation is normally categorised as :—

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).

16. In routine personal injury cases, compensation is 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 claim of the claimant, that compensation is 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 [Ref: **Raj Kumar v. Ajay Kumar : (2011) 1 SCC 343**].



17. By its very nature, when a tribunal or court is tasked with determining the amount of compensation in accident cases, it inevitably involves a degree of estimation, hypothetical assessments, and a measure of compassion related to the severity of the disability sustained. However, all these factors must be evaluated with objective standards.

18. In the present case, both the victim and the insurance company are aggrieved by the compensation awarded under the head of loss of future income. The insurance company is challenging both the assessment of the victim's income as well as the assessment of functional disability, while the victim is only challenging the computation of his income on the basis of minimum wages for a skilled worker. The insurance company and the victim have both challenged the compensation awarded towards pain and suffering as well as loss of amenities as well. Furthermore, the victim is aggrieved by the compensation towards conveyance, special diet and attendant charges as well.

19. Upon careful consideration of the rival submissions and perusal of the impugned award, this Court finds merit in the appeals of both the appellant and the insurance company to a limited extent.

Assessment of income

20. It is argued on behalf of the victim that his income should have been assessed on the basis of the victim's identity card that was part of the chargesheet and DAR. It is further argued that the salary slips of



the victim were also part of the record which show his monthly income as ₹21,053/-.

21. On the other hand, it is argued on behalf of the insurance company that the counsel for the victim had conceded before the learned Trial Court that in absence of any proof of salary, the salary of the victim be assessed on the basis of the minimum wages. It is further argued that the minimum wages of an unskilled worker ought to be considered instead.

22. This Court has perused the identity card of the victim which states that he is working at the designation of a “Technician” in Rajiv Gandhi Cancer Institute and Research Centre as well as the salary slips showing his income as ₹21,053/- which are a part of the Lower Court Record. The same lends credibility to the deposition of the victim’s evidence where he had stated that he was employed as a technician.

23. It is argued on behalf of the insurance company that the said material cannot be read as evidence and the same was never subjected to cross-examination.

24. Apart from the procedural anomaly in not exhibiting this evidence and not examining the employer of the victim, no other argument has been raised to contest the veracity of the same.

25. It is pertinent to note that the standard of proof in claim petitions is of preponderance of probability and it is not imperative for an employee to examine his employer to prove his employment. The salary slips of four months are sufficient in this respect.



26. It is pertinent to note that the victim had deposed that he was employed as a technician with Rajiv Gandhi Cancer Hospital and his salary was not deducted for his period of absence, although his leaves had been exhausted. The assertion in relation to his employment was only discarded on account of absence of evidence. The said material was clearly not brought to the notice of the learned Tribunal or perused by the learned Tribunal before assessing the income of the victim.

27. While it is correct that the counsel of the victim had conceded to the calculation of income on the basis of minimum wages, it cannot be ignored that MV Act is a beneficial legislation and the Act is designed to relieve victims from ensuring strict compliance of provisions.

28. The veracity of the said documents has not been disputed by the insurance company before this Court and the only objection has been in relation to whether the Court can consider the said documents if they were not exhibited.

29. In its capacity as an Appellate Court, this Court is empowered to take note of additional evidence. This Court thus considers it apposite to take judicial notice of the aforesaid documents, especially considering they were part of the DAR, as the same have a direct bearing on the case and removes the need for any guess work by the Court on this aspect.

30. In view of the aforesaid discussion, this Court considers it apposite to direct the learned Tribunal to reassess the income of the



victim by considering the aforesaid documents and taking note of the observations made by this Court. Although the documents have not been disputed by the insurance company before this Court, in the interests of justice, it is open to the insurance company to seek cross-examination of the victim on the limited aspect of veracity of these documents, if so required.

Assessment of disability

31. The insurance company is aggrieved by the computation of the victim's functional disability as 50%.

32. 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.

33. 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.

34. 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...”

(emphasis supplied)

35. 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)

36. As noted above, the victim is employed as a technician in a Hospital. From the victim's deposition, it is clear that he has not lost his job on account of the accident.

37. It is undisputed that the victim had suffered 77% permanent disability in both his lower limbs. The victim had deposed that he underwent intensive care, including multiple surgeries on his right knee and surgical implants were embedded in the said knee. He further deposed that he had to move throughout his life with the support of a leg guard or orthopaedic stick as his left knee had been permanently paralysed. During cross-examination, no questions were put to the victim by the insurance company on this aspect and the deposition of the victim is thus unrebutted in relation to the extent and nature of the injuries suffered by him. The Disability Certificate of the victim (Ex. PW 1/C) also evidences that the victim had suffered 77% permanent disability in relation to both lower limbs which was not likely to



improve. It is also mentioned that the case of the victim was one of post traumatic weakness in left knee and stiffness in right knee.

38. The victim has further deposed that he had been working in the Hospital for 15 years and he was likely to be promoted, however, due to his physical deformity, his promotion had been altogether declined. It is important to note that the role of a technician requires significant movement around and across different locations. While no proof of loss of promotion has been adduced by the victim, however, considering the nature of his vocation and reduced mobility, it cannot be denied that the disability of the victim is permanent in nature and it will impact his employment and future prospects. The victim was only 37-38 years of age at the time of the incident and had the potential for significant growth.

39. In the present case, the physical disability of the victim is 77% in both his lower limbs. In the opinion of this Court, the functional disability will be lower than 50% as the victim will continue in his employment but in a lower grade owing to his disability.

40. It is pertinent to note that in the absence of clear evidence to indicate the impact of permanent disability on the earning capacity of the victim, Courts and Tribunals generally assess the functional disability of the victim to be approximately half of the permanent disability suffered by the victim. For this reason, the Hon'ble Apex Court in the case of *Raj Kumar v. Ajay Kumar* (*supra*) while noting that there existed no clear evidence to indicate the impact of permanent disability suffered by the victim on his functionality and



earning capacity, however, considering that the same would impede his smooth functioning, had assessed the functional disability of the body as 25% where the victim suffered a permanent disability of 45% with respect to the left lower limb.

41. This Court in a catena of decisions, including a recent decision in the case of *Rajender Singh v. Bajaj Allianz General Insurance Co. Ltd.* : 2024 SCC OnLine Del 8839, while noting that the victim had failed to lead evidence to show the impact of permanent disability on his earning capacity, had upheld the assessment of 33% functional disability where the victim had suffered permanent disability of 66% by considering the nature of injuries and the general impact of the disability on the functioning of the victim.

42. In the present case, as discussed above, the impact of the victim's injuries on the lower limbs on his mobility and earning capacity cannot be understated. Considering that the victim has suffered physical disability of 77%, in the opinion of this Court, it would be appropriate to assess the functional disability of the appellant as 40%.

Conveyance, Special Diet and Attendant Charges

43. The learned Tribunal has awarded a compensation for a sum of ₹5,000/- on account of conveyance charges and of ₹10,000/- each for special diet and attendant charges. It was observed by the learned Tribunal that since no definite evidence had been led by the victim in



this respect, it would be apposite to award notional amounts under these heads.

44. It has been rightly appreciated by the learned Tribunal that the victim would need a protein rich diet for recovery and he would have used the facility of conveyance for visiting the hospital from time to time. It was also noted that the victim would have also required help to perform daily activities and also while visiting hospital during his treatment. Despite the same, paltry amounts have been awarded under the aforesaid heads.

45. As noted above, the victim suffered 77% disability in both his lower limbs for which he had to undergo intensive care, including multiple surgeries on his right knee. The victim had deposed that he remained hospitalized for 6-7 days and he was unable to perform his daily chores. He deposed that he was absent from his duties till 16.01.2014. He further deposed that a domestic help had to be hired and he had to spend significantly towards special care. No question was put to the victim during his cross-examination to dispute that he lost normal movement and was unable to perform normal daily chores. As the victim has suffered disability in both his lower limbs and has to use a leg guard for his left knee, this Court is also inclined to accept the submission that he would find it difficulty in commuting *via* two-wheeler vehicles. The victim underwent a number of operations due to which he would have also required a nutritious diet for post-surgery recovery.



46. While there is no mention of any person being specifically being employed only to assist the victim, however, the victim has deposed that his wife had to quit running a beauty parlor from home as a result of the accident. The nature of the injuries suffered by the victim are such that the victim would have undoubtedly required assistance in performance of daily chores, for post-surgery care and also for frequenting the hospital for close to three and a half months, that is, till he was able to rejoin the office. Certain medical bills adduced by the victim also evidence that he was undergoing treatment for his injuries and physiotherapy till December, 2013. Thus, the attendant charges ought to be granted for three months during which the victim would have required assistance for performing basic chores.

47. A Coordinate Bench of this Court in the case of ***Sumer v. National Ins Co. Ltd.*** : 2023 SCC OnLine Del 5533, wherein the physical disability was assessed at 50%, had enhanced the compensation towards the cost of attendant charges by observing that compensation ought to be awarded towards contribution made by the family members in taking care of the claimant. 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)

48. Even though no proof regarding the expenses incurred for conveyance, special diet or attendant charges was placed on record in the present case either, considering the surgical procedures undergone by the victim, the nature and extent of his disability as well as the duration of time after which he was able to resume employment, in the opinion of this Court, the compensation amount needs to be increased. The compensation for conveyance is enhanced to ₹20,000/-, the



compensation for special diet is enhanced to ₹20,000/- and the compensation towards attendant charges is enhanced to ₹30,000/-.

Pain and Suffering & Loss of Amenities

49. It is argued on behalf of the victim that a meagre sum is awarded towards pain and suffering as well as loss of amenities. On the other hand, it is argued on behalf of the insurance company that the compensation awarded for the aforesaid heads is on higher side.

50. The learned Tribunal had essentially taken into account the extent of disability suffered by the victim and noted that the victim would have been confined to his residence due to the same.

51. It is pertinent to note that the victim has been disabled for life at the age of 37-38 years and he has suffered permanent disability of 77% in both his lower limbs. Due to the disability, the victim will be unable to enjoy his life freely as his mobility has suffered due to the incident. This Court thus finds no reason to reduce or enhance the awarded amount.

52. In the opinion of this Court, the compensation of ₹2,00,000/- as awarded by the learned Tribunal under the aforesaid heads is adequate and warrants no interference.

CONCLUSION

53. Keeping in view the facts and circumstances of the case, the appeals are partly allowed. The matter is remanded back to the learned Tribunal for the limited purpose of re-determining the compensation



by (i) recomputing the loss of future income by considering the victim's functional disability at 40% and reassessing the victim's income in line with the observations made by this Court; and (ii) enhancing the compensation for conveyance, special diet and attendant charges in view of the observations by this Court.

54. The findings of the Tribunal on all other issues are affirmed and shall remain undisturbed.

55. The learned Tribunal shall undertake this 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.

56. The parties shall appear before the learned Tribunal on 07.07.2025.

57. The compensation amount so determined, on remand, shall be released in favour of the appellant in accordance with the schedule of disbursement which will be stipulated by the learned Tribunal.

58. It is also directed that the amount lying deposited with this Court be transferred to the concerned Tribunal.

59. The present appeals are partly allowed in the aforesaid terms.

60. A copy of this judgment be placed in both the matters.

AMIT MAHAJAN, J

JUNE 19, 2025