2026:DHC:7430

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

% ***Reserved on : 27th July 2026***
Pronounced on : 02nd September 2026
Uploaded on : 03rd September 2026

\# **CNR No. DLHC011610612013**

\+ **MAC.APP. 1023/2013 & CM APPL 17797/2013**

SHIBEET PRASSANA .....Appellant
Through: Mr. Himanshu Gupta, Advocate

versus

JAGROOP & ORS. .....Respondents
Through: Mr. A.K. Soni, Advocate

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

%

ANISH DAYAL, J.

1. This appeal has been filed by appellant/claimant seeking enhancement of compensation awarded by judgment dated 19th March 2013 passed by the Motor Accident Claims Tribunal [‘***MACT/Tribunal***’], Central District, Tis Hazari Courts in Suit No. 44/2012, whereby compensation of *Rs. 3,01,603/-* along with interest *@9%* per annum from the date of filing of the petition was awarded on account of injuries sustained by *Shibeet Prassana.*

The accident

2. On 13th November 2011, at about 2:20 p.m., the injured was travelling along with three other persons in a TSR from Shanti Van

towards Geeta Colony Flyover, Delhi, when the TSR was hit by Truck bearing registered No. HR-74-6438, driven by respondent no. 1 in a rash and negligent manner, resulting in grievous injuries to all the occupants. As a result of the injuries sustained in the accident, three persons were declared brought dead upon being taken to the hospital and injured suffered grievous injuries. FIR No. 247/2011 was registered under Sections 279/337/304A of the Indian Penal Code, 1860 ('***IPC***') at P.S. Kotwali, Delhi, against the driver of the offending vehicle.

The impugned award

3. The MACT noted that discharge summary of injured dated 14th November 2011, wherein the nature of injury has been stated to be '*traumatic C-6 fracture with cervical compressive myelopathy; titanium cage with plate was implanted*' thereafter, injured was readmitted on 28th November 2011 for treatment of '*fracture of distal end radius with fracture of C-6 vertebra; open reduction with 'K' wire fixation*'. Thereafter the injured was discharged on 30th November 2011 and since then has continued physiotherapy.

4. The injured sustained *43%* temporary disability in relation to spine and left upper limb, which was non-progressive, likely to improve with recommendation of reassessment in one year. The injured was a Flute performer and was earning *Rs. 10,000/-* per month as was evident from salary certificate and same has been corroborated by the testimony of **PW-3.**

5. **PW-1** stated that due to fracture of wrist bone he was unable to flute and due to cervical fracture was unable to keep his head in one

position for long time. The MACT noted the testimony of **PW-18**, member of disability board stated that there is possibility of further improvement in condition of injured. Further, he also stated that there was no restriction in shoulder and elbow movement but only restrictions of wrist movement. In view of the above, the MACT awarded compensation for a period of one year at *Rs. 1,50,000/-* on presumption that injured would not be able to use flute for his vocation.

6. Compensation was also awarded under the head of medical expenses at *Rs. 7,603/-*, physiotherapy charged was awarded at *Rs. 45,000/-* basis the bills/ vouchers and the testimony of **PW-20**, loss of income was awarded for 3 months at *Rs. 30,000/-, Rs. 9,000/-* was awarded on account of special diet and conveyance and compensation of *Rs. 60,000/-* was awarded on account of pain and suffering.

Proceedings before this Court

7. An application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 was filed on behalf of the claimant, seeking permission to lead additional evidence. It was contended that, *vide* Disability Certificate dated 18th October 2012, the Medical Board had assessed *43%* temporary disability in relation to the spine and left lower limb, with reassessment after one year. However, there was no improvement in the condition of the injured. This Court, *vide* order dated 14th October 2014, directed that the injured be subjected to a fresh medical examination at Hindu Rao Hospital and that a Medical Board be constituted to reassess his physical disability. As per the Disability Certificate dated 4th March 2015, the permanent physical disability of the injured was assessed at

32% in relation to the spine and left upper limb. The matter was admitted to the Regular List on 11th May 2016 and has remained on the Board since then.

Submissions on behalf of Appellant

8. On the basis of the reassessment of disability and the fresh Disability Certificate, whereby the permanent physical disability was assessed at *32%* in relation to the spine and left upper limb, it is submitted that the injured is entitled to compensation towards loss of future income. It is contended that the injured is a flautist belonging to the *Prasanna Musical Gharana of Banaras*. Considering his vocation and the fact that, owing to the implantation in the left wrist/forearm, he suffers from disability of the fingers, rendering him incapable of playing the flute, the functional disability, in terms of the judgment in ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, ought to be assessed at *100%,* or at a sufficiently higher percentage. It is submitted that the injuries sustained to the finger, wrist and neck have a grave impact on his vocation as a flautist, which requires precise finger control, grip, wrist movement, neck stability, posture and stamina.

9. As regards the income of the injured, reliance has been placed on the certificate issued by *Dhwani Audio & Visuals*, which states that the injured had been working with them as a flautist from July 2011 until the date of the accident and was being paid *Rs.10,000/-* for his services. It is further stated that he was kept on probation for six months, after which he would have been given a permanent designation and his salary would have been enhanced to *Rs.15,000/-*. It is also submitted that the injured

had variable and occasional income from performances at celebrations and prayer meetings, ranging from *Rs.5,000/-* to *Rs.15,000/-.* It is contended that, in the music profession, entry-level income is modest, whereas future earning prospects are substantially higher, and therefore, the income of the injured ought not to be assessed at the lowest level.

10. As regards the multiplier, it is submitted that the age of the injured at the time of the accident was 20 years, as evidenced by the Aadhaar Card placed on record. Accordingly, a multiplier of 18 ought to be applied for calculating the loss of future income. It is further submitted that future prospects ought to be awarded at *40%.*

11. It is further contended that the injured continues to undergo physiotherapy and should, accordingly, be awarded compensation towards future medical and physiotherapy expenses.

12. Furthermore, it is contended that inadequate compensation has been awarded under the non-pecuniary heads, namely, pain and suffering and loss of amenities of life.

Submissions on behalf of Respondent

13. *Mr. Shahi,* counsel for the Insurance Company, contends that the injured had claimed *Rs.45,000/-* towards physiotherapy charges, which was corroborated by the testimony of **PW-20.** Accordingly, the Tribunal awarded *Rs.45,000/-* under the said head, and there is no occasion for interference with the same.

14. It is submitted that the lump-sum compensation of *Rs.1,50,000/-* awarded by the Tribunal towards loss of future income for a period of one year, on account of the temporary disability, ought to be deducted

from any compensation that may be awarded upon reassessment of the disability and consequential calculation of loss of future income.

15. It is contended that the functional disability ought to be assessed at *50%* of the permanent physical disability sustained by the injured.

16. It is further contended that the matter ought to be remanded to the Tribunal for assessment of functional disability, as there is no evidence on record to determine, in terms of the judgment in ***Raj Kumar*** (*supra*), the extent to which the disability would affect the vocation and earning capacity of the injured claimant.

17. It is contended that adequate compensation has been awarded by the Tribunal towards pain and suffering and that no interference is warranted under the said head.

Analysis

18. This is a peculiar case where the vocation of an upcoming musician from an established musical gharana was brought to a halt by an injury sustained in an accident, which damaged the very physical faculties required for him to pursue his musical talent. The appellant was a flautist belonging to the reputed Prasanna family, a musical gharana of Banaras.

19. The accident occurred on 13th November 2011, when appellant was only 20 years of age and had a promising career ahead of him. The accident left him with *43%* temporary disability of the spine and left upper limb. Although it was stated that the said injuries were non-progressive and were likely to improve upon reassessment, the reassessment directed by this Court on 14th October 2014 reported a

permanent disability of *32%*. The testimony of the members of the Board who re-examined appellant therefore needs to be assessed to arrive at a conclusion regarding his functional disability, particularly since the functional disability was not taken into account by the MACT, which awarded only a lump-sum amount of *Rs. 1,50,000/-* towards loss of future income.

20. *Dr. Arun Yadav*, Senior Orthopaedic Surgeon, Hindu Rao Hospital, was examined as **AW-1** and was one of the members of the Board constituted for re-assessment, who stated that the disability of appellant was *32%* in relation to spine and left upper limb and "*it was permanent in nature*". He stated that "*there were restricted movement of the neck and the left wrist*". He further stated in the cross-examination that all members of the Disability Board were orthopaedic surgeons and the other two members had also signed the Disability Certificate in his presence and he reiterated that the disability was permanent in nature.

21. Appellant himself was examined as **AW-2**, post reassessment and he stated that he had spent a sum of *Rs.48,000/-* on his treatment after the decision of the Trial Court and he annexed six receipts for the physiotherapy payments. He had also annexed photographs of himself playing flute prior to the incident as **Ex.AW2/2.** In his cross-examination, he stated "*I am still under treatment and taking physiotherapy till date*".

22. The issue, therefore, arises with regards to the assessment of functional disability with respect permanent physical disability being certified at *32%* in relation to the spine and the left upper limb, basis the

principles enunciated in ***Raj Kumar v. Ajay Kumar & Anr***., (2011) 1 SCC 343. The Supreme Court has categorically stated that triple test needs to be applied, focusing on the vocation that the injured has and the effect on the said vocation. The relevant paragraph is extracted as under:

> "***11.*** *What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])*
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> ***12.*** *Therefore, the <u>Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence</u>:*
>
> *<u>(i) whether the disablement is permanent or temporary;</u>*
>
> *<u>(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;</u>*

(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.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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.*"

(emphasis supplied)

23. In fact, the aspect of functional disability and the aspect of vocation has been recently considered by the Supreme Court in ***M Paramesh v VRL Logistics ltd.*** 2026 SCC OnLine SC 1188. The relevant paragraph is extracted as under:

> "*From the above observations in Raj Kumar(supra), it becomes crystal clear that though the physical disability may be assessed at a particular percentage, the functional disability affecting earning capacity may, depending upon the nature of avocation carried on by the injured, be assessed at a higher percentage including 100%. The assessment of compensation in cases of permanent disability cannot be undertaken by mechanically applying the percentage of physical disability as the percentage of economic loss.*
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> *23. There is no dispute with regard to the fact that the appellant was working as a mason at the time of the accident. The work of a mason is essentially a physical and manual avocation requiring continuous use and support of both legs. The material on record further reveals that on account of the injuries suffered in the accident, the appellant underwent amputation of his right leg above the knee.*
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> *24. By virtue of the aforesaid amputation, the appellant has effectively lost his capacity to continue the work of a mason which was admittedly the sole avocation being pursued by him for earning his livelihood. It is not even the case of the respondents that the appellant was engaged in any other sedentary occupation or that despite the amputation suffered by him, his earning capacity remained unaffected.*

25. The amputation of the right leg above the knee has not merely caused physical disability to the appellant but has rendered him incapable of effectively carrying on the manual and physical work which constituted his only source of livelihood. In such circumstances, restricting the loss of earning capacity to 70% merely on the basis of physical disability would not be justified."

24. Playing the flute requires not only a stable and erect posture but also dexterity and refined movement of both hands. Certainly, the aspect of functional disability, insofar as it relates to his profession and musical talent, would have been substantially affected. It may be presumed that, with extensive physiotherapy, he might eventually have been able to play the instrument; however, on an assessment of the facts and circumstances, such a possibility appears unlikely. Appellant has specifically stated that the little finger of his left hand has remained unresponsive, rendering him unable to properly hold and play the flute, which requires precise finger control, grip, wrist movement, neck stability, posture, stamina, and continuity of performance. The other aspect that has to be considered, in terms of the principles of the triple test laid down in ***Raj Kumar*** (*supra*), is whether appellant would nevertheless be able to pursue a vocation other than that of a flautist.

25. This possibility cannot be ruled out, particularly considering that appellant was only 20 years of age at the time of the accident and could have pursued other forms of employment, including occupations connected with the field of music, other than performing as a flautist. It cannot, therefore, be said that he is *100%* functionally disabled.

However, the permanent physical disability certified at *32%* may reasonably be assessed as *50%* functional disability, having regard to appellant's profession as a flautist. Accordingly, the loss of future income would have to be assessed on that basis.

26. Appellant stated that he was earning *Rs. 10,000/-* per month from an entity known as *Dhwani Audio and Visuals*, which had also issued a certificate in this regard. His income was stated to be *Rs.10,000/-* per month, with the possibility of an increase to *Rs. 15,000/-* per month. It was further stated that he had variable and occasional income from performances at celebrations, prayer meetings, and other events, ranging from *Rs. 5,000/-* to *Rs. 15,000/-* per month at the relevant time. It is contended that, in the music profession, entry-level income is modest, whereas future earning prospects are substantially higher, and therefore, the income of the injured ought not to be assessed at the lowest level.

27. Considering that there is no other assessment for considering the benchmark income on the basis that he was having a fixed income of *Rs.10,000/-,* the base monthly income could be considered on a broad estimate as *Rs.15,000/-* per month, taking into account that additional income he might have earned through extra performances.

28. Considering the age of the injured appellant as 20 years, future prospects are assessed at *40%*, and a multiplier of 18 is applicable in terms of the principles laid down in ***National Insurance Co. Ltd. v. Pranay Sethi,*** (2017) 16 SCC 680.

29. From the amount so calculated, a sum of *Rs. 1,50,000/-* shall be deducted, being the amount already awarded by the MACT as a lump-

sum compensation towards loss of future income for a period of one year.

30. Future medical and physiotherapy expenses have been claimed at *Rs. 5,00,000/-* on the basis of the affidavit filed by appellant. The evidence filed in 2015 records that he had already incurred an expenditure of *Rs. 48,000/-* towards physiotherapy. He also relied upon the report of *Dr. B.C. Jain*, Senior Consultant, Ortho. Surgery, Saroj Hospital and Heart Institute, Rohini, who stated that the X-ray report revealed that '*the disc space has been between cervical vertebra C6 and C7 has been reduced resulting in affecting nervous system and the movement of the hand*' and that he requires '*physiotherapy exercises for whole of his life*'. In these circumstances, and considering that only *Rs. 45,000/-* had been awarded towards future medical expenses, an additional amount of *Rs. 2,00,000/-* is awarded as compensation under this head.

31. Towards pain and suffering, the compensation awarded was *Rs. 60,000/-*. Considering the nature and extent of the injuries and the circumstances of the case, the same is enhanced to *Rs. 1,50,000/-*. As regards loss of amenities, since the injury has seriously affected the appellant's livelihood and his ability to enjoy his life as an artist, an amount of *Rs. 5,00,000/-* is awarded under this head. No further amount is warranted towards conveyance, special diet, or attendant charges, as claimed. Accordingly, no enhancement is required under those heads. Loss of marriage prospects has also been claimed; however, in the opinion of this Court, the same is adequately subsumed within the

compensation awarded towards loss of amenities and, therefore, no separate amount is awarded under this head.

32. The revised compensation is computed as under:

S. no.	Heads	Awarded by the Tribunal	Awarded by this Court
PECUNIARY LOSS			
1.	Expenditure on Medical Bills and medical treatment (A)	Rs.7,603/-	Rs.7,603/-
2.	Expenditure on special diet and conveyance (B)	Rs.9,000/-	Rs. 9,000/-
3.	Physiotherapy charges (C)	Rs. 45,000/-	Rs. 45,000/-
5.	Income of injured per month(E)	Rs.10,000/-	Rs. 15,000/-
6	Loss of income (L)	Rs.30,000/-	Rs. 45,000/-
7.	Add: Future prospects (F)	Nil	40% of Rs. 15,000= Rs. 6,000/-
8.	Multiplier (G)	Nil	18
9.	Functional disability (H)	Nil	50%
10.	Loss of future income/future earnings [(E+F) x 12 x G x H] = (I)	Rs. 1,50,000/-	Rs. 22,68,000/-
NON-PECUNIARY LOSS			
11.	Pain and suffering (J)	Rs.60,000/-	Rs.1,50,000/-
12.	Loss of amenities of life (K)	Nil	Rs. 5,00,000/-
14.	Total compensation (A + B + C + D + H + I+ J+ K+L+M) = (N)	Rs. 3,01,603/-	Rs. 30,24,603/-
15.	Interest awarded	9% per annum	9% per annum
16.	Enhanced compensation	**Rs. 27,23,000/-**	

33. For the aforesaid reasons, compensation has been enhanced by *Rs.27,23,000/-* [‘***enhanced amount***’].

34. It is therefore directed that the Insurance Company shall deposit enhanced amount along with *9%* interest per annum from the date of filing the petition before MACT within a period of four weeks. It is directed that a lump sum amount of *Rs. 2,00,000/-* shall be released to the claimant from the deposit of enhanced amount within a period of two weeks thereafter. Remaining enhanced amount, along with accrued interest, shall be kept in Fixed Deposit Receipts (***FDRs***) of *Rs. 20,000/-* each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant upon due verification.

35. Accordingly, the appeal is allowed and disposed of.

36. Pending applications, if any, are rendered infructuous.

37. Judgement be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

SEPTEMBER 02, 2026/MK/*zb*