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

% ***Reserved on : 13th January 2026***
Pronounced on : 10th March 2026
Uploaded on : 11th March 2026

\+ **MAC.APP. 1095/2014**

CHOLAMANDALAM MS GENERAL INSURANCE CO.LTD

.....Appellant

Through: Ms. Suman Bagga and Ms. Mouli Sharma, Advs.

versus

PALAK SHARMA & ORS .....Respondents

Through: Mr. Bhupesh Narula, Mr. Yogesh Narula and Mr. Abhin Narula, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the impugned award dated 09th September 2014 passed by Motor Accident Claims Tribunal, North-West District (MACT), in Case No.330/2010.

The incident

2. On 12th March 2010 at about 6.30 a.m., *Sh. Palak Sharma* along with his friend *Sh. Sanjay Bansal* was going to *Maharishi Dayanand Park, Keshavpuram, Delhi*, for yoga on a two-wheeler bearing registration No. DL-8SV-3616 driven by *Sh. Sanjay Bansal* and the petitioner was riding on

the pillion. When they reached the T-point in front of *Maharishi Dayanand Park*, it is alleged that an *Innova* bearing registration no. HR-55HT-3382, driven by *Mr. Amit Kumar* in a rash and negligent manner and at a high speed, came from the side of *Hathora Ram Park*, and hit the scooter.

3. It was noted by the MACT that at the time of the filing of the petition the injured/*Sh. Palak Sharma* was still in coma since the day he sustained injuries, and later on came out of the coma, but has remained in a vegetative state.

4. The owner of the offending vehicle was *M/s Top Wheels Tours and Travels,* and the vehicle was insured with *Cholamandalam MS General Insurance Company*, the appellant herein.

5. FIR No. 97/2010 under Sections 279/337 of the Indian Penal Code, 1860 was registered at PS Keshav Puram, Delhi.

The impugned award

6. Driver, owner and the insurance company filed their written statements, and denied their liabilities.

7. *Sh. Ajay Sharma*, father of the petitioner, was examined as **PW1**; *Sh. Chandan Kumar*, the attendant, was examined as **PW2**; *Dr. Nimit Gupta*, neurosurgeon from Dr. BSA hospital, Delhi, was examined as **PW3**; *Sh. Praveen Kumar*, physiotherapist, was examined as **PW4**; and *Sh. Lakshmi Narayan Gupta*, an eyewitness, was examined as **PW5**.

8. MACT after assessing the evidence was of the opinion that *Sh. Amit Kumar* was driving the offending vehicle in a rash and negligent manner and had caused the accident and, therefore, the respondent no.1/claimant had sustained injuries.

Compensation

9. Considering that *Sh. Palak Sharma* had suffered from permanent disability to the extent of *100%* and clearly was not able to work, the l*oss of earning capacity* was assessed at *100%* with addition of *50%* towards *future prospects*.

10. Reliance was, therefore, placed on Income Tax Return (‘***ITR’***) of respondent no.1 for the year 2009-2010, taken as duly proved on record by **PW1**. The said ITR showed that the gross income was *Rs.3,24,811/-* and *Rs.17,539/-* had been paid towards tax. Therefore, the income was taken as *Rs.3,07,272/- per annum*.

11. Applying the *multiplier* of *18* with *50% future prospects* (respondent no.1 being 22 years on date of accident), the amount arrived at was *Rs.82,96,344/-*.

12. Towards *attendant charges*, considering the condition of the injured and the testimony of **PW2**/attendant, that he was being paid *Rs.20,000/-* per month by way of a cheque and that claimant’s condition would require an attendant throughout life, an amount of *Rs.20,000/-* per month calculated over a period of a year and using a multiplier of *18* was taken, amounting to

Rs.43,20,000/-. However, MACT recorded the submission of counsel of petitioner that even if *50%* of the said amount is awarded as attendant charges and would be kept in FDR, then it may fetch an amount equivalent to approximately *Rs. 20,000/-* per month and would serve the purpose towards the payment to attendant. Accordingly, an amount of *Rs. 22,00,000/-* was awarded towards attendant charges which would also include future attendant charges.

13. As regards the compensation towards *physiotherapy*, taking the testimony of **PW4**, the physiotherapist, that he used to charge *Rs.400/-* per day, an amount of *Rs.3,80,000/-* was granted for expenses already incurred and the *physiotherapy* which would be required in the future.

14. Further, an amount at *Rs.6,000/-* per month was awarded towards special diet. Multiplier of *18* was applied and was calculated amounting to *Rs.12,96,000/-*. However, an amount of *Rs.7 Lakhs* was granted to the claimant towards *special diet* which also includes expenses of *future diet.*

15. Towards the *equipment* an amount of *Rs.2,30,000/-* was awarded. Towards *conveyance and ambulance charges* an amount of *Rs.8,64,000/-* was awarded and towards *medical bills* an amount of *Rs.23,23,000/-* was granted.

16. Other non-pecuniary damages were awarded. The tabulation of compensation awarded is given as under:

S. No.	Compensation under various heads	Amount awarded

1.	Loss of Income/Earning Capacity	Rs. 82,96,344/-
2.	Attendant Charges	Rs. 22,00,000/-
3.	Physiotherapy	Rs. 3,80,000/-
4.	Special Diet	Rs. 7,00,000/-
5.	Purchase of equipments	Rs. 2,30,000/-
6.	Conveyance	Rs. 8,64,000/-
7.	Medical Bills	Rs. 23,23,000/-
8.	Pain, agony and suffering	Rs. 3,00,000/-
9.	Loss of education	Rs. 2,00,000/-
10.	Loss of Amenities in Life	Rs. 3,00,000/-
11.	Loss of marriage prospects/ matrimonial discomfort	Rs. 3,00,000/-
12.	Disfigurement	Rs. 2,00,000/-
	Total	**Rs. 1,62,93,344/-**

Analysis

17. *Ms. Suman Bagga*, counsel for appellant/Insurance Company, contended that the Tribunal did not appreciate that the injured/respondent no.1 was a student of BBA final year and the business which he professed to be earning out of, was actually being carried out by the father and the grandfather of the injured. Moreover, the ITR of respondent no.1 was being filed in order to create capital of respondent no.1. No books of accounts were produced. The injured, the father and the grandfather were allegedly carrying out business from the same premises and the injured had joint bank account with the grandfather.

18. *Ms. Suman Bagga* further contended that since it was a family business, there was no loss of income after the accident. The Tribunal, therefore, erred in awarding huge amounts towards loss of income.

19. In this regard, it would be apposite to examine the testimony which was assessed by the Tribunal. *Ajay Sharma*, the father of the injured, testified as **PW1**. Regarding the educational status of the injured, he stated that *Sh. Palak Sharma* was a student of final year of BBA, had qualified the entrance examination for the MBA course and was a meritorious student. Further, he was working and earning *Rs.3,50,000/- per annum* and was an Income Tax payee and had a PAN card in his name. The ITRs filed forms part of the record as **Ex.PW1/F**.

20. The Tribunal notes that the driver and the owner of the offending vehicle (*Amit Kumar* and *M/s Top Wheels Tours and Travels,* respectively) had not disputed the educational qualifications of the injured, nor disputed that he was earning while studying, or that the ITRs were not genuine.

21. The Insurance Company could not produce any evidence to show that the injured was not in the final year of the BBA course or was not earning the amount as testified by **PW1**, or that the ITRs were fake, fabricated or manipulated in any manner. The only contention, which has subsisted, since the proceedings before the Tribunal, is that the injured was doing the same business as done by **PW1**, from the premises of **PW1** and, therefore, could not have a separate income.

22. To this, the MACT opined that this plea was not convincing, as it cannot be presumed that the son cannot carry on the same business or must be compelled to do something else merely because the business was being run from the same premises. Testimony of **PW1** cannot be considered unreliable, as it was entirely plausible that the father and the son were doing business independently from the same premises as it is natural for a father to help the son to start and sustain a business using the same infrastructure that they had.

23. The Tribunal further noted that although **PW1** was subjected to lengthy cross-examination by the Insurance Company, there was nothing on record to show that **PW1** had deposed falsely regarding the qualifications or income of the injured, or that the ITRs did not reflect the correct income, or that they were false or fabricated. Accordingly, the Tribunal held that the ITR of the injured for the year 2009-2010 was duly proved on record by **PW1** and ought to be taken into consideration. Reliance was placed on the judgment in ***Amrit Bhanushali & Ors. v. National Insurance Company & Ors.*** in Civil Appeal no. 3397/2012.

24. Having perused the testimony of **PW1** and having heard the arguments of appellant, this Court does not see any reason to displace the conclusion drawn out by the Tribunal. The ITRs for three years were placed on record as **Ex.PW1/F** and have been examined by this Court. In the cross-examination, **PW1** stated that his son (the injured) used to sell metal scrap on commission basis from the same premises, from which he

operates/works. He further stated that he joined him in year 2007 and initially worked with him and filed his ITRs for the year 2007-2008.

25. **PW1** further stated that initially the injured was maintaining his bank account jointly with the grandfather; however, thereafter, the grandfather had retired. **PW1** denied the suggestion that the injured was not carrying on independent work and that the returns were filed merely to show income or to make his capital. He stated that the grandfather was an income tax payee as well and was declaring his income from the same business.

26. Suggestions from the Insurance Company that the income reflected in the ITRs was that of grandfather and that the affidavit was false and fabricated were denied. There is nothing suggested by the Insurance Company that the income tax records produced by PW-1 was false or fabricated. Nothing had been placed on record by the Insurance Company as well to controvert what was being stated **PW1**.

27. Counsel for the respondents stated that the injured had gone into a coma and remained in a vegetative state and continues to be under treatment suffering from fits at regular intervals. He has been certified with *100% permanent total disability*. It is quite evident that family was engaged in the business of scrap dealing, where earnings were made on a commission basis. It is also quite clear that from the evidence on record that the grandfather and the father were both in the same business and that the injured had started his business under the guidance and support of his father.

28. It does seem clear that in order to facilitate the professional education of the injured, the route taken was of doing the *Bachelors in Business Administration* followed by *Masters in Business Administration*. It is not uncommon in a business family to encourage a progeny to get a professional degree in business management and subsequently join the family business. Once having joined the family business, it is also not uncommon that a portion of the income is allocated to the progeny in order to ensure financial independence for that person. Even though the source of income might be a connected business or a joint business, it does not mean that the progeny would be considered as without any income.

29. The Insurance Company seems to suggest that anybody who is part of a joint family business, but files his ITRs, paying tax on the income that is declared, ought to be considered as a non-earning member of the family. This argument advanced by the Insurance Company is fallacious and completely oblivious of reality of the society and the circumstances which surround us. As the Supreme Court states repeatedly assessments of compensation cannot be divorced from realities. The very fact that the son had started to file his returns, declaring his own income, and paying tax on the same, to delve into the details of how the income was being allocated between the family members, would be unnecessary.

30. The ***core issue*** is whether the accident had occurred or not and had the injured not lapsed into a vegetative state, he would have enjoyed financial independence and would have earned income, *albeit* from the same family business. The answer is crystal clear.

31. The injured was *22 years old*, major in age, pursuing a professional qualification and working in the family business. He was entitled to be assessed on his own income. Besides, there was no contradictory evidence which had been placed by the Insurance Company, which could have enabled the Tribunal to discard the plea of loss of income for the injured. This assessment of the Tribunal is, therefore, upheld in this regard.

32. The ***second issue***, which has been raised is that *50%* future prospects were awarded, whereas the injured was self-employed, therefore, *40%* future prospect ought to have been awarded. In this regard, it would be apposite to align with the principles enunciated in ***National Insurance Company v. Pranay Sethi & Ors.*** (2017) 16 SCC, wherein in case of self-employment, (which is admittedly the case here, considering that he was part of the family business), the *future prospect* would be taken at ***40%***.

33. The ***third issue***, which has been raised by the Insurance Company, is that the injured/respondent no.1 did not examine the doctor who treated him for the injuries sustained by him regarding future medical treatment if required. No medical prescription had been filed to show that any physiotherapy in the future would be required.

34. To this, counsel for respondent no.1 stated that this argument has no merit as *Dr. Namit Gupta* was thoroughly examined before the Tribunal to prove the disability certificate. *Dr. Gupta* was a member of the Medical Board which consisted of 5 doctors who had examined the injured for a period of 2 years before issuing the disability certificate. The Board stated

that after lapse of 3 years from the date of injury, there are very little chances of the condition improving. There was no reason why all treating doctors would have to be examined since the injured was treated by a number of doctors for many years at various hospitals and continues to be under treatment.

35. Moreover, the Insurance Company had appointed a doctor from their panel to examine the injured and who visited the injured home 3 times, but the doctor has not provided his report.

36. In this regard, it is an admitted position that the injured is in a vegetative state even 14 years after the accident. The contention of the Insurance Company on the medical issue is completely unmerited and, in fact, frivolous. The Insurance Company after having appointed the panel doctor could have easily produced their report if they wish to controvert that he was not in a vegetative state. Even the Tribunal noted in detail the testimony of the father of the injured regarding the treatment which the injured had undergone throughout 2010 and 2011. In fact, it was also recorded there was no way it could have been assessed how much time and expense it would take to cure the injured and that he could have to be medicated for all his life. It was also noted that the injured was completely bedridden and was surviving through external support with the catheter, food pipe, special air bed, pillows, special mattresses, urine-toilet pots, oxygen cylinder etc. for which huge amounts of money had been spent. The details need not be replicated and are available in the Tribunal's award at *paragraph 18*.

37. Further, the Tribunal in *paragraph 23* notes the examination of *Dr. Namit Gupta,* who was a neurosurgeon at *Baba Saheb Ambedkar Hospital*.

38. The final disability certificate was issued on 11th June 2012, showing that the injured suffered *100% permanent disability*. He stated that the injured was neither mentally nor physically fit and needed special semi-liquid diet to be given through the mouth, and the chances of recovery were very less, and he required regular attendant and physiotherapy. There is nothing on record to suggest that the disability certificate was falsely procured or manipulated.

39. The other issue, which has been taken up by respondent no.1, is that the attendant charges should be twice but have been reduced to half.

40. Even the Insurance Company has taken up in the appeal, a ground relating to the attendant charges, stating that the payments made to the alleged attendant did not appear to be genuine since it was stated to be an engagement on a monthly basis and the cheques issued were infrequent, only sometimes for two or three months only.

41. As regards the attendant charges, the Tribunal notes in *paragraph 29* of the impugned award that since the injured was *100%* permanently disabled and bedridden one person was required around the clock to look after him. The testimony of **PW2,** *Chandan Kumar,* was considered who was the attendant at that point of time. *Chandan Kumar* stated that he was being paid *Rs.20,000/-* per month by way of cheque and had provided the proof of his payment in the passbook, exhibited as **Ex.PW2/1**.

42. It was noted that the Insurance Company could not produce any evidence on record to show that **PW2** was not engaged to look after the injured and was not charging *Rs.20,000/-* per month.

43. Before MACT, **PW2** had explained that he was working in *Sanjeevani Hospital* as a ward boy since 2006, where he used to work for 8 hours per day and used to get *Rs.7,000/-* per month and gave up his job and is working as an attendant for the injured.

44. Certain cross-objections were taken up in the written submissions and the arguments of the following:

i. Attendant charges ought to be *Rs. 64,80,000/- ([Rs.20,000 + 50%] x12 x18)*. Counsel for respondent no. 1 contends that future prospect of *50%* ought to be added to the attendant charges and a multiplier of 18 ought to have been applied by the Tribunal to calculate while computing the attendant charges. In support of this contention, he relied upon the decision of Supreme Court in ***Kajal v. Jagdish Chandra & Ors***. (2020) 4 SCC 413.

ii. Physiotherapy charges ought to have been awarded at *Rs. 39,42,000/- ([Rs. 400 + 50%] x 365 x 18)*, as allegedly an amount of Rs. 400/- per visit is being spent on physiotherapy and the injured requires physiotherapy each day for 2 hours in the morning and 2 hours in the evening.

iii. Compensation towards Special Diet ought to have been awarded at *Rs. 19,44,000/- ([Rs. 6,000 + 50%] x 12 x 18).*

iv. Compensation towards future requirements of special equipment ought to have been award at *Rs. 16,20,000/- [(Rs. 5,000 + 50%) x 12x 18]*, considering that the special equipment's require regular changing.

v. Compensation towards Conveyance charges ought to have been awarded after adding future prospects of 50% and applying the multiplier system.

vi. Future Medicine and charges for doctors ought to have been awarded at *Rs. 32,40,000/- [(Rs. 10,000/- + 50%) x 12x 13]*. Counsel for respondent no. 1 alleges that an amount of *Rs. 10,000/- to Rs. 15,000/-* per month is being spent on medicines.

vii. Pain and suffering ought to have been awarded at *Rs. 15,00,000/-* as awarded in ***Kajal*** (*supra*).

45. The appeal filed by Insurance Company has been pending since 2014, and no cross-appeal has been filed so far. The Court is, therefore, not inclined to assess such large extensive claims for enhancement.

46. However, considering the peculiar facts and circumstances of the case, particularly that the injured was a young man aged *22 years* with a bright future ahead of him, which has been irreversibly affected due to accident, this Court is mindful of the pain and suffering endured by him and the lifelong assistance and hardships he is likely to face.

47. In the case of ***R.D. Hattangadi v. Pest Control (India) (P) Ltd.*** (1995) 1 SCC 551

> *9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*
>
> *10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become*

> *a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.*"
>
> (emphasis added)

48. Therefore, in the context of settled principles of just and reasonable compensation, this Court recognizes the tremendous suffering undergone by the injured, depriving him of opportunity to complete his professional education, of the vast incalculable loss of amenities of life including of marriage prospects. What would have been a regular prosperous life has been rendered meaningless for the injured/victim. Therefore, all non-pecuniary amounts are increased to *Rs.5,00,000/- each*.

49. The revised computation is as under:

S. No.	**Compensation under various heads**	**Amount awarded**	**Re-computed amount**
1.	Income of Injured (A) (less Income Tax)	Rs.3,07,272/-	Rs.3,07,272/-
2.	Add Future Prospects (B)	50%	40%
3.	Multiplier (C)	18	18
4.	Loss of Income/Earning Capacity [(A+B) x C]	Rs. 82,96,344/-	Rs. 77,43,254.40/-
5.	Attendant Charges	Rs. 22,00,000/-	Rs. 22,00,000/-

6.	Physiotherapy	Rs. 3,80,000/-	Rs. 3,80,000/-
7.	Special Diet	Rs. 7,00,000/-	Rs. 7,00,000/-
8.	Purchase of equipments	Rs. 2,30,000/-	Rs. 2,30,000/-
9.	Conveyance	Rs. 8,64,000/-	Rs. 8,64,000/-
10.	Medical Bills	Rs. 23,23,000/-	Rs. 23,23,000/-
11.	Pain, agony and suffering	Rs. 3,00,000/-	Rs. 5,00,000/-
12.	Loss of education	Rs. 2,00,000/-	Rs. 5,00,000/-
13.	Loss of Amenities in Life	Rs. 3,00,000/-	Rs. 5,00,000/-
14.	Loss of marriage prospects/ matrimonial discomfort	Rs. 3,00,000/-	Rs. 5,00,000/-
15.	Disfigurement	Rs. 2,00,000/-	Rs. 2,00,000/-
	Total	**Rs. 1,62,93,344/-**	**Rs. 1,66,40,254.40/-**
	Rate of Interest Awarded	7.5% per annum	7.5% per annum

50. *Vide* order dated 03.12.2014, this Court directed the appellant/Insurance Company to deposit *50%* of the entire awarded amount with proportionate up to date interest within six weeks with the Registrar General of this Court, subject to which stay was granted. Further, the Court directed release of *80%* of the said deposited amount in favour of claimant proportionately as per the directions in the Award through UCO Bank, Delhi High Court Branch and the balance deposited amount was directed to be kept in fixed deposit.

51. Accordingly, the balance amount along with interest @7.5% per annum from the date of filing of the petition be deposited by the Insurance company within a period of 6 weeks with the Registrar General of this Court

and be disbursed as per the scheme of the Tribunal. Accordingly, the appeal stands disposed of.

52. Pending applications, if any, also stand disposed of as being rendered infructuous.

53. The statutory deposit, if any, be refunded to appellant.

54. Judgment be uploaded on the website of this Court.

ANISH DAYAL
(JUDGE)

MARCH 10, 2026/*mk/bp*