



2026:DHC:2387



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

Date of decision: 19th March 2026.

+ **MAC.APP. 43/2016 & CM APPL. 15272/2017**

ROHIT KUMAR

.....Appellant

Through: Ms. S.N. Parashar, Advocate with
Mr. Ritik Singh, Advocate.

versus

SUKHDEV SINGH & ORS (UNITED INDIA INSURANCE CO
LTD)

.....Respondents

Through: Ms. Suman Bagga, Advocate with
Ms. Mouli Sharma, Advocate for R-
3/Insurance Company.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

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ANISH DAYAL, J: (ORAL)

1. This appeal has been filed seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal ('*MACT*'), Karkardooma Courts, Delhi (hereinafter, '*Tribunal*') in *MAC Petition No. 572F/2012* by an award dated 16th October 2015 (hereinafter, '*impugned award*'). Tribunal awarded compensation of *Rs.9,44,280/-* with interest at the rate of 12% per annum from the date of filing to appellant/injured claimant who suffered grievous injuries.

2. The accident occurred on 21st September 2012 at 12:30 am, when



appellant/injured claimant was going towards *Ghaziabad* from *Akshardham Temple* and his motorcycle was hit by a truck bearing registration no. HR-39A-0085 (*'offending vehicle'*) from behind being driven rashly and negligently by respondent no.1.

3. *Mr. S. N. Parashar*, counsel for appellant/injured claimant seeks enhancement on *three* counts: *firstly*, functional disability ought to have been assessed at more than 50% considering that permanent disability was certified at 88% with respect to his right lower limb; *secondly*, future prospects ought to have been granted which have been completely omitted and; *thirdly*, amount awarded towards *non-pecuniary damages* were highly depressed.

4. Disability Certificate of appellant/injured claimant certifies that he had a permanent locomotor impairment of 88% in his right lower limb. In the cross-examination of *PW-2*, Senior Resident (Orthopaedics) from Guru Tegh Bahadur Hospital, who had been summoned with regards to the Disability Certificate, stated, that he could not state the percentage of disability in relation to the whole body, but “*given 88% of disability as in the present case, I can say that his right lower limb is rendered nearly non-functional and without external support the patient cannot be mobilized. He cannot walk, cannot climb stairs, cannot squat, and cannot stand properly*”.

5. On this basis, *Mr. Parashar*, counsel for appellant/injured claimant contends that, considering his vocation as a lift mechanic, he would have been rendered completely non-functional for his job and for other similar jobs. Appellant/injured claimant was 21 years of age on the date of accident and was allegedly employed as a lift mechanic at *M/s Start Magicman Private Limited*.



6. Tribunal had personally examined appellant/injured claimant at the final stage of proceedings, and observation of the Tribunal is noted in *paragraph 16* of the impugned award, which is extracted as under:

*“16. This Court has looked into the statement of PW-2 as well as the entire medical record of the claimant. The claimant was personally examined by the Court at the final stage of proceedings. The claimant had appeared with urinary bag in his hands and was feeling immense difficulty to even stand. He stated that he was working as a Lift Mechanic with M/s. Start Magicman Pvt. Ltd. I assess that due to the disabilities sustained, his capacity has been considerably reduced, restricting him from carrying out his work in a normal manner. Considering the evidence on record and keeping in view the facts and circumstances, the functional disability of claimant is taken as 50% in relation to his whole body, in view of dictum of “**Raj Kumar v. Ajay Kumar & Anr.**, (2011) 1 SCC 343”.*

7. As per the testimony of appellant/injured claimant (**PW-1**), he was working in a private company and earning Rs. 15,000/- per month. Tribunal does note that when he was examined, he stated that he was working as a lift mechanic.

8. Considering that there was no proof of his employment, minimum wages applicable of an unskilled worker were taken at Rs.7,020/- per month.

9. *Ms. Suman Bagga*, counsel for respondent no.3/Insurance Company, states that in these circumstances, the claim of enhancement of functional disability may not be correct, since no proof of employment has been placed.



10. To that extent, the Court agrees with the view put forth by respondent no.3/Insurance Company that there is nothing on record, except for the statement made before the Tribunal that he was employed as a lift mechanic.

11. However, assuming that he was employed in a similar job, which required certain functionality and considering that he was 21 years of age at that time, along with the testimony of *PW-2*, which notes severity of the impediment that will be caused to him due to the disability, the Court is inclined to enhance assessment of functional disability to 70%.

12. Reliance in this regard may be placed on *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343, where the Supreme Court held that the Tribunal must assess not merely the extent of permanent disability but its actual impact on the claimant's earning capacity, which may differ from the medical percentage of disability. This requires evaluating the claimant's pre-accident vocation, the functions affected, and whether livelihood can still be earned despite the disability. The Court emphasised that disability and loss of earning capacity are distinct concepts, except in cases where evidence shows they coincide. Relevant paragraphs are 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])
12. Therefore, the 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:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(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 added)

13. In ***Raj Kumar v. Ajay Kumar*** (*supra*), the Court summarized the principles, which are extracted as under:

“19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

(emphasis added)



14. As regards *future prospects*, same has to be aligned with the principles enunciated in *National Insurance Co. Ltd. v. Pranay Sethi. 2017 (16) SCC 680*, therefore, 40% towards *future prospects* will have to be awarded, considering that the Tribunal did not grant any *future prospects*. Relevant observation of the Supreme Court is extracted as under:

“59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(emphasis added)

15. *Thirdly*, as regards *non-pecuniary losses*, reliance may be placed on the decision of Supreme Court in *K.S. Muralidhar v. R. Subbulakshmi and Anr.* 2024 SCC Online SC 3385, where the Supreme Court observed that “*pain and suffering*” cannot be captured by any fixed definition, drawing on legal, medical, and philosophical sources to emphasise its deeply subjective and life-altering nature. It recognised that translating such profound human loss into money is an inherently artificial exercise, yet courts must ensure fairness, consistency, and sensitivity to the victim’s lifelong deprivation. The Court stressed that in cases of severe or 100% disability, compensation must meaningfully reflect the permanent rupture in the victim’s physical, emotional, and existential well-being. Relevant paragraphs are extracted as under:

“13. While acknowledging that ‘pain and suffering’, as a concept escapes definition, we may only refer to certain



authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.

13.1 The entry recording the term ‘pain and suffering’ in *P. Ramanatha Iyer's Advanced Law Lexicon* reads as under:—

“Pain and suffering. The term ‘Pain and suffering’ mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.

This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The, [1900] A.C. 113, 116]”

...

13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in *Heil v. Rankin*, as referred to in *Attorney General of St. Helenav. AB* as under:—

“23. This principle of ‘full compensation’ applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in *Andrews v. Grand & Toy Alberta Ltd.*, 83 DLR (3d) 452, 475-476, this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of ‘full compensation’ for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has



sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in *H West & Son Ltd. v. Shephard*, [1964] A.C. 326 when he said:

'The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.'

24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the damages he receives because of the injury which he has sustained. Lord Clyde recognised this in *Wells v. Wells*, [1999] A.C. 345, 394H when he said: 'One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant.'

...

14. In respect of 'pain and suffering' in cases where disability suffered is at 100%, we may notice a few decisions of this Court:—

14.1 In *R.D Hattangadi v. Pest Control (India) (P) Ltd.* It was observed:

"17. The claim under Sl. No. 16 for 'pain and suffering' and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs. 3,00,000 each under the two heads. The High Court has allowed Rs. 1,00,000 against the claims of Rs. 6,00,000. When compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered,



the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs. 1,50,000 in respect of claim for 'pain and suffering' and Rs. 1,50,000 in respect of loss of amenities of life. We direct payment of Rs. 3,00,000 (Rupees three lakhs only) against the claim of Rs. 6,00,000 under the heads "pain and suffering" and "Loss of amenities of life".

14.2 This Judgment was recently referred to by this Court in Sidram v. United India Insurance Company Ltd reference was also made to Karnataka SRTC v. Mahadeva Shetty (irrespective of the percentage of disability incurred, the observations are instructive), wherein it was observed:

"18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident through out his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned..."

(emphasis added)

16. Therefore, in view of the above decision, Rs. 1,50,000/- is given on account of *pain and suffering and loss of amenities of life.*

17. Accordingly, the revised computation is as under:



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| Sr. No. | Heads | Awarded by the Tribunal | Awarded by this Court |
|---------------------------|--|-------------------------|----------------------------------|
| PECUNIARY LOSS | | | |
| 1 | Expenditure on Medical Bills (A) | Rs. 5,000/- | Rs. 5,000/- |
| 2 | Expenditure on conveyance (B) | Rs. 7,000/- | Rs. 7,000/- |
| 3 | Expenditure on special diet (C) | Rs. 7,000/- | Rs. 7,000/- |
| 4 | Expenditure on nursing attendant (D) | Rs. 5,000/- | Rs. 5,000/- |
| 5 | Income of injured (E) | Rs.7,020/- | Rs. 7,020/- |
| 6. | Add: Future prospects (F) | - | Rs. 2,808/- |
| 7. | Multiplier (G) | 18 | 18 |
| 8 | Functional disability (H) | 50% | 70% |
| 9 | Loss of income/Wages (I) [Rs.7,020 x 6] | Rs. 42,120/- | Rs. 42,120/- |
| 10 | Loss of future income/future earnings [(E+F) x 12 x G x H] = (J) | Rs.7,58,160/- | Rs. 14,85,995/- (rounded off) |
| NON-PECUNIARY LOSS | | | |
| 11 | Pain and suffering (K) | Rs. 60,000/- | Rs. 1,50,000/- |
| 12 | Loss of amenities of life (L) | Rs. 60,000/- | Rs. 1,50,000/- |
| 13 | Total compensation (A + B + C + D + I + J+ K + L) = M | Rs. 9,44,280/- | Rs. 18,52,115/- |
| 14 | Interest awarded | 12% | 12% |

18. Enhanced compensation of Rs. 9,07,835/-, along with interest at the rate of 12% per annum from the date of filing will be deposited before the Tribunal within 4 weeks.

19. An amount of Rs. 2,00,000/- will be released from the enhanced amount deposited. The balance enhanced amount along with accrued interest, shall be kept in Fixed Deposit Receipts (**FDRs**) of Rs. 15,000/-



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each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. The interest accruing on the said FDRs shall be credited to the designated Savings Bank Account of appellant/injured claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of appellant/injured claimant upon due verification.

20. In view of the above, appeal stands allowed.

21. Appeal is, accordingly, disposed of. Pending applications, if any, are rendered infructuous.

22. Order be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

MARCH 19, 2026/RK/sp