



2026:DHC:1892



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

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**Date of decision: 25<sup>th</sup> February 2026**+ **MAC.APP. 798/2019**

RAKESH KUMAR

.....Appellant

Through: Mr. Pankaj Gupta, Mr. Akash Singh  
and Ms. Priyanka S. Aneja, Advs.

versus

SHRIRAM GENERAL INSURANCE CO LTD &amp; ORS

.....Respondents

Through: None.

**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J: (ORAL)**

1. The appeal has been filed by the claimant seeking enhancement of compensation awarded by the MACT by award dated 16<sup>th</sup> October 2018 in MAC.APP. 1061/2016, whereby compensation of Rs.54,51,000/- was awarded to the injured/claimant, *Rakesh Kumar*, who met with an accident on 13<sup>th</sup> June 2014 near Ashok Nagar flyover, when a Tata Tempo driven by respondent no.1 hit his motorcycle and crushed both his legs, causing grievous injuries.

2. The injured/claimant suffered bilateral amputation, where he lost both his legs and was certified with a permanent disability of 90%.



3. *Mr. Pankaj Gupta*, counsel for the claimant, states that, considering that both legs were amputated and the claimant was employed as a driver with *M/s Nobel India Overseas Limited* and was drawing a salary of *Rs.12,000/- per month*, his functional disability ought to have been awarded at *100%*.

4. Considering that no one has appeared on behalf of the Insurance Company and that the Insurance Company's appeal has been dismissed for want of prosecution, the Court is assessing the matter basis the submissions of the claimant and on perusal of the documents and evidence on record.

5. The Supreme Court in the case *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343, 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.

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)

6. In **Raj Kumar v. Ajay Kumar** (*supra*), the Court summarised 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)

7. Moreover, in **Chanappa Nagappa Muchalagoda v. New India Insurance Co. Ltd.** (2020) 1 SCC 796, the Supreme Court of India dealt with



similar circumstances. In that case, the claimant was a heavy vehicle driver aged 33 years at the time of the accident and was permanently incapacitated due to an injury to his right leg, resulting in complete disability from continuing his vocation. Considering that he required the support of a walking stick to walk, needed assistance to ensure mobility, and had lost the prospect of securing any other manual employment, the Supreme Court assessed the functional disability at 100%. The relevant part of the judgment is extracted below:

*“In K. Janardhan v. United India Insurance Co. Ltd. (2008) 8 SCC 518, this Court examined the loss of earning capacity in the case of a tanker driver who had met with an accident, and lost one of his legs due to amputation. The Commissioner for Workmen's Compensation assessed the functional disability of the tanker driver as 100% and awarded compensation on that basis. The High Court, however, referred to Schedule I to the Workmen's Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60% loss of earning capacity. This Court set aside the judgment of the High Court, and held that since the workman could no longer earn his living as a tanker driver due to loss of one leg, the functional disability had to be assessed as 100%.*

*In S. Suresh v. Oriental Insurance Co. Ltd. (2010) 13 SCC 777 this Court held that:*

*“9. We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving licence*



under the Motor Vehicles Act, 1988.”

*The aforesaid judgments are instructive for assessing the compensation payable to the appellant in the present case. As a consequence of the accident, the appellant has been incapacitated for life, since he can walk only with the help of a walking stick. He has lost the ability to work as a driver, as he would be disqualified from even getting a driving licence. The prospect of securing any other manual labour job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the appellant must be assessed as 100%.*

(emphasis added)

8. In the fact and circumstances of the present case, and taking into account the principles laid down in **Raj Kumar** (*supra*) and the judgment of Supreme Court in **Chanappa Nagappa Muchalagoda** (*supra*), this Court is inclined to increase the functional disability to **100%**, considering both legs of the claimant were amputated and that he was working as a professional driver, holding a commercial driving licence issued on 6<sup>th</sup> March 2014, and that his main vocation or for that matter, any other suitable vocation, would have been completely affected.

9. The **second issue** raised by counsel for claimant is with respect to the salary of Rs.12,000/- per month. As per the testimony of **PW4, Vijay Malhotra**, employer of claimant/injured, the claimant was paid Rs.12,000/- per month along with perks of Rs. 3,000/-, and, therefore, it is contended that the income of claimant/injured ought to be considered at Rs.15,000/- per month.

10. Counsel for claimant/injured points out the salary slip, exhibited as



**Ex.PW-1/5**, to show that claimant/injured was drawing a salary of *Rs.12,000/-* plus perks.

11. It is contended by counsel for claimant that in *paragraph 18* of the MACT award, the income, however, was taken at only *Rs.12,000/- per month*, not taking into account the perks of *Rs.3,000/-*.

12. While cross-examining **PW4**, the opposing counsel raised a suggestion regarding the perks, to which **PW4** stated that the word '*perks*' means the driver was moving outstation and would get bonus and late-night charges.

13. On this account, it is evident that these amounts were variable in nature and did not form a part of fixed component of salary. The assessment of the salary at *Rs.12,000/-* was, therefore, apposite, and is not being interfered with.

14. The *third issue* relates to the cost for future artificial limbs, for which only *Rs.4,50,000/-* was awarded, despite the testimony of **PW7**, *Dr. Rakesh Kumar, Proprietor of M/s Paras Artificial Limb Centre*. He deposed that the artificial limbs provided to the injured cost *Rs.3,40,000/-* and has a life of around 5 years. Furthermore, the maintenance for 5 years would amount to about *Rs.50,000/-* annually. He also stated that the cost of artificial limbs is not fixed and changes as per the market position, and at the time of the examination in 2018, the cost of limbs was around *Rs.4,50,000/-* and is expected to rise in the future.

15. As per *paragraph 26* of the award, the MACT has only awarded *Rs.4,50,000/-* towards *artificial limbs*.

16. Considering that both the legs of claimant/injured were amputated, and that the claimant is using prosthetics, as evident from statement of **PW7** and invoice issued by *Paras Artificial Limbs Center* dated 12<sup>th</sup> October 2015



exhibited as **PW1/7 (colly)**, and considering inflation in the cost of prosthetic limb over the last decade, an amount of *Rs.5,50,000/-* towards *artificial limb* needs to be accommodated.

17. Considering the inflation in cost of prosthetic over the last decade, and an estimated life of about seven years would require periodic replacement and, therefore, needs to be accommodated

18. In *Mohd Sabeer Alias Shabir Hussain v Regional Manager, UP State Road Transport Corporation* 2022 SCC OnLine SC 1701, the Supreme Court assumed that a person would ordinarily live till he is 70-years-old if not more, and accordingly, awarded compensation keeping into account the estimated life of prosthetic. Relevant paragraph is extracted as under:

*“23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the prosthetic limbs alone, the appellant is to be awarded compensation of Rs 7,80,000 and for maintenance of the same he is to be awarded an additional Rs 5,00,000.”*

(emphasis added)

19. At the time of the accident, the claimant was 32 years of age. As per principle and estimation laid down by Supreme Court in *Mohd Sabeer Alias Shabir Hussain v Regional Manager, UP State Road Transport*



**Corporation** 2022 SCC OnLine SC 1701, he would have to be provided approximately for another 38 years. However, considering that the Tribunal awarded a sum of Rs. 4,50,000/- towards prosthetic limb, and since the claimant is now approximately 42 years of age, and the estimated life of prosthetic is about seven years, he would require prosthetic support for another 28 years, thereby, necessitating at least *four replacements*.

20. Accordingly, an amount of Rs.5,50,000/-, along with the maintenance costs of Rs.50,000/- over the life of the limb, is awarded, i.e. a total of Rs.6,00,000/- per artificial limb.

21. Therefore, total amount of Rs.28,50,000/- [Rs. 4,50,000/- (awarded by tribunal) + 24,00,000/- (enhanced compensation)] is awarded towards artificial limb and its maintenance.

22. The revised computation is as under:

Sr. No.	Heads	Awarded by the Tribunal	Awarded by this Court
1.	Reimbursement of medical expenses (A)	Rs. 2,43,947/-	Rs. 2,43,947/-
2.	Pain and Suffering	Rs. 2,50,000/-	Rs. 2,50,000/-
3.	Attendant charges for 52 months during pendency of this case + 5 years for future (Rs. 5,000/- pm) (B)	Rs. 5,60,000/-	Rs. 5,60,000/-
4.	Loss of Income during treatment period: (1 yrs as per income of Rs.1,44,000/- @ Rs.12,000/- pm) (C)	Rs. 1,44,000/-	Rs. 1,44,000/-
5.	Income of Injured (D) (less Income Tax)	Rs. 12,000/-	Rs. 12,000/-
6.	Add Future Prospects (E) @ 40%	40%	40%
7.	Multiplier (F)	16	16
8.	Functional Disability (G)	90%	100%
9.	Loss of earning capacity including	Rs. 29,03,040/-.	Rs. 32,25,600/-



	future due to disability [(Dx12) + E] x F= H)		
10.	Conveyance & special diet present and future (I)	Rs. 1,00,000/-	Rs. 1,00,000/-
11.	Compensation for mental and physical shock (J)	Rs. 2,00,000/-	Rs. 2,00,000/-
12.	Loss of amenities in life (K)	Rs. 2,00,000/-	Rs. 2,00,000/-
13.	Damages for inconvenience, hardship, discomfort, frustration and disfigurement (L)	Rs. 3,00,000/-	Rs. 3,00,000/-
14.	Loss of Expectation of Life (Shortening of normal Longevity) (M)	Rs. 1,00,000/-	Rs. 1,00,000/-
15.	For Artificial Limb (N)	Rs. 4,50,000/-	Rs. 28,50,000/-
16.	Total compensation (A+B+C+H+I+J+K+L+M+N)	Rs. 54,50,987/- Rounded of to Rs. 54,51,000/-	Rs. 81,73,547/- Rounded of to Rs. 81,73,550/-
17.	Interest awarded	9% per annum	9% per annum
	<b>Enhanced amount</b>	<b>Rs. 27,22,550/-</b>	

23. *Vide* order dated 08<sup>th</sup> February 2019 in MAC.APP. 219/2019 (connected appeal filed by Insurance Company), this Court directed the Insurance Company to deposit the entire awarded amount with interest with the Tribunal, subject to which stay was granted. Further, *vide* order dated 16<sup>th</sup> May 2019 in MAC.APP. 219/2019, this Court directed release of entire amount except for *Rs. 7.5 Lakhs*, in terms of scheme of the disbursement specified in the MACT award.

24. Accordingly, the enhanced amount be deposited by the Insurance company within a period of 6 weeks. An amount of *Rs. 6,00,000/-* be disbursed by the Tribunal each time a prosthetic limb is procured by claimant/injured. Such disbursement shall be made only upon production of bills issued by authorised seller and after due verification of the same by the Tribunal. In the event, the injured/claimant does not claim the said



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amount or fails to produce proof regarding procurement of the prosthetic limb, the unclaimed amount shall be returned to the Insurance Company. The balance amount (except amount awarded towards prosthetic limb) be disbursed as per the scheme directed by the Tribunal.

25. Accordingly, the appeal stands disposed of with the above directions.
26. Pending applications, if any, are rendered infructuous.
27. Judgment be uploaded on the website of this Court.

**ANISH DAYAL  
(JUDGE)**

**FEBRUARY 25, 2026/mk/bp**