



2026:DHC:2696



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 30th March 2026***+ **MAC.APP. 220/2026 & CM APPL. 19842-19844/2026**

INDUSIND GEN INS CO LTDAppellant

Through: Mr. Pankaj Gupta, Adv.

versus

BABY SRISTHI AND OTHERSRespondent

Through:

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

1. This appeal has been filed against impugned award dated 03rd December 2025 passed by Motor Accidents Claims Tribunal [**‘MACT’**], North-West, Rohini Courts in MACT No.288/2022 whereby Rs. 74,54,467.4/-alongwith interest at the rate of 9% per annum from the date of filing of detailed accident report (**‘DAR’**) was awarded.

2. The accident in question occurred on 18th September 2021 when respondent no.1/injured claimant, who was a minor child aged 2 years on the date of the accident, went with her mother to a nearby Hanuman Mandir and when they were returning home, a vehicle bearing registration no. DL-1ZD-



1980 (hereinafter, '*offending vehicle*') driven by respondent no.2/driver in high speed suddenly took a sharp turn, as a result of which, respondent no.1/injured claimant came under the offending vehicle and sustained injuries over her head and her left eye was badly injured. She suffered 77% multiple disabilities. Criminal proceedings were lodged and in the claim petition before MACT, *Shivangi (PW-1)*, mother and also the eye-witness was examined who tendered her evidence by way of affidavit *Ex.PW1/A*.

3. *Mr. Pankaj Gupta*, counsel for appellant/Insurance Company challenges the award of compensation *inter alia* on the grounds that functional disability was taken as 100%, despite medical evidence indicating 77% permanent disability.

4. In this respect, Court has examined the MACT's award at *paragraph 19*, which is extracted as under:

"19. As per the MLC and medical documents, injured suffered grievous injuries with 77% permanent multiple disability in the accident. As per disability certificate issued by Kalawati Saran Children's Hospital, Bangla Sahib Marg, New Delhi, injured is diagnosed with post traumatic brain injury with right hemiplegia with left side facial nerve palsy with left eye afferent visual pathway defect with ptosis with proptosis with ophthalmoplegia with leucomatous corneal opacity with left temporal bone fracture with left mild sensory neural hearing loss. It is not possible to quantify the compensation admissible to injured for the shock, pain and sufferings etc. which she actually suffered because of the above injuries, but as stated above, an effort has to be made to compensate her for the same in a just and reasonable manner. The petitioner is going to suffer the pain in her entire life. Hence, keeping in view the extent and nature of the injuries suffered by injured and duration of the treatment of her etc., an amount of Rs.3,00,000/- is being awarded to her towards pain and sufferings during the said



period of her treatment and immobility. Thus, she is awarded a total amount of Rs. 3,00,000/- under this head.”

(emphasis added)

5. Further, the issue of functional disability has also been considered in paragraphs 21 and 22, which are extracted as under:

“21. In view of the observation made by the Hon'ble Apex Court of India in case titled Sidram Vs. Divisional Manager, United India Insurance Company (supra) the effect of permanent disability of the injured has to be assessed in order to quantify the future loss of earnings due to disability. As per the disability certificate, petitioner has suffered 77% Permanent multiple disability. Disability certificate has been issued by Kalawati Saran Children's Hospital, Bangla Sahib Marg, New Delhi.

22. Admittedly, petitioner has suffered 77 % Permanent multiple Disability. Given the nature of disability, it is absolutely above, petitioner will ever be able to get any employment for gains. The above disability would definitely hamper her earning capacity in future also. Hence, it would be appropriate to hold that the functional disability of petitioner i.e 77% be considered as 100%. This Tribunal holds that the income of petitioner be treated as to be given to a skilled man in Delhi on the day of accident on 18.09.2021 i.e. Rs. 19,473/- per month at the relevant time. As far as the age of petitioner at the time of accident is concerned, DAR reflects that she was aged about 2 years at the time of accident. Therefore, in view of. the law laid down by the Hon'ble Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, which has also been upheld by the Constitution Bench of the Hon'ble Supreme Court in a recent judgment dated 31.10.2017 given in the case of National Insurance Company Ltd. vs. Pranay Sethi & Ors. SLP (Civil) No. 25590 of 2014, the multiplier of '18' is held applicable for calculating the loss of future earnings of petitioner arising out of the above disability. The petitioner is not entitled to



future prospects as per the observations made by Constitution Bench of Hon'ble Supreme Court in case of National Insurance Company Ltd. Vs. Pranay Sethi, SLP (CIVIL) 25590 of 2014 decided on 31.10.2017.”

(emphasis added)

6. MACT has taken a view that given the nature of disability, respondent no.1/injured claimant (*minor child*) would never be able to get any employment for gains and would have an impact on her earning capacity in the future. This Court is of the opinion that MACT's view is sustainable particularly with the severe nature of injuries that, respondent no.1/injured claimant (*minor child*) suffered disabling her permanently. She would have to struggle to eke out a decent living for her lifetime.

7. In *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343, 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)

8. 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)

9. Assessment of functional disability is an exercise, therefore, which must be done on a case-to-case basis and there is no “one size fits all”. No doubt, some subjectivity is involved, but the matrix of facts provide an objective basis.

10. *Mr. Gupta*, counsel for appellant/Insurance Company has also challenged the award on the grounds that Rs. 13,00,000/- have been awarded towards non-pecuniary damages, which is on the higher side.

11. In this regard, it would be pertinent to note the observations of the Supreme Court in *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, (1995) 1 SCC 551 where the Court has examined various heads under which pecuniary and special damages are awarded. The Court noted that no amount of compensation can restore the physical frame of the injured claimant and therefore, the object is to compensate such injury “so far as money can compensate”, since it is impossible to equate money with human sufferings or personal deprivations. Relevant observations of the Supreme Court are extracted as under:

“11. In the case Ward v. James [(1965) 1 All ER 563] it was said:

“Although you cannot give a man so gravely injured much for his ‘lost years’, you can, however, compensate him for his loss during his shortened span, that is, during his expected ‘years of survival’. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain



injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The judges have worked out a pattern, and they keep it in line with the changes in the value of money.

12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

...

14. In Halsbury's Laws of England, 4th Edn., Vol. 12 regarding non-pecuniary loss at page 446 it has been said: "Non-pecuniary loss: the pattern.— Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.

The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

(emphasis added)



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12. Considering the nature of injuries, which have been caused at such a young age, the Court is of the view that the assessment of the MACT was amiss in this issue.
13. Therefore, in view of the above observations, the appeal is accordingly, dismissed.
14. Pending applications, if any, are rendered infructuous.
15. Compensation awarded by the Tribunal stands confirmed and shall be deposited, along with the accrued interest, and disbursed, as per the terms fixed by the Tribunal.
16. Statutory deposit, if any, be refunded to appellant.
17. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 30, 2026/MK/sp