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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 30<sup>th</sup> March 2026**+ **MAC.APP. 77/2020**

SANTOSH BARAR

.....Appellant

Through: Mr. S.N. Parashar and Mr. Ritik  
Singh, Advocates

versus

SATPAL &amp; ORS (UNITED INDIA INSURANCE CO LTD)

.....Respondent

Through: Mr. Sankar N. Sinha, Advocate for  
R-3/United Insurance Co. Ltd.**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed challenging the MACT award dated 20<sup>th</sup> May 2019, passed by the Motor Accidents Claims Tribunal, North, Rohini Courts, Delhi (*'MACT/Tribunal'*) in *MACT No. 403/2018*, seeking enhancement of compensation. By the said award, a compensation of *Rs.14,46,599.48/-* was awarded; however, 20% was deducted on account of contributory negligence, on the basis that the injured claimant was under the influence of alcohol.

2. The accident occurred on 12<sup>th</sup> September 2017, when the appellant, a 32-year-old, sustained grievous injuries after his motorcycle was hit from



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behind by a Delhi Transport Corporation (*'DTC'*) bus bearing No. *DL-IPC-9810*, which was allegedly driven in a rash and negligent manner.

3. Post-hospitalisation, the appellant was certified to have suffered 60% permanent disability in his *right upper limb*. However, *functional disability* was assessed at 30%.

4. *Mr. S.N. Parashar*, counsel for appellant/claimant, seeks enhancement on three grounds:

- i. That 60% permanent disability in case of the claimant, who was working as a driver, ought to have been considered as much more, and even upto 100%, and not reduced to 30%;
- ii. Contributory negligence of 20% on account of contributory negligence, on the ground that the claimant was under the influence of alcohol, ought not to have been made, particularly when there was no proof that the alcohol content in the claimant's blood exceeded 30 mg per 100 ml. Reliance is placed on *Section 185* of the Motor Vehicles Act, 1988 (*'MV Act'*), to state that the permissible limit of 30 mg per 100 ml of blood has to be conclusively proven in order to reach the conclusion that a person has violated the MV Act provisions in respect of alcohol consumption
- iii. Compensation granted under non-pecuniary heads are on the lower side.

5. *Mr. Sankar N. Sinha*, counsel for the Insurance Company, however, draws attention to the Medico-Legal Certificate (*'MLC'*), where the doctor has noted that there was a smell of alcohol and that the claimant/injured was conscious but under the influence of alcohol. On this basis, he claims that



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the very fact that the alcohol was present in his blood is sufficient to establish contributory negligence, and that the MACT rightly assessed the same at 20%.

6. As regards the issue of *functional disability* being assessed at 30%, it is noted that the permanent disability certificate notes the diagnosis as “*post-traumatic, stiffness right wrist and hand with flex or contraction of right-hand muscles*”, on this basis, permanent disability was assessed at 60%.

7. There is no proof placed on record to show that the claimant was working as a driver earning Rs. 20,000/- per month. Though only a driver's license was exhibited as *Ex. PW1/5*, no further evidence had been provided.

8. It is also noted that no rebuttal evidence had been produced by the Insurance Company regarding the vocation of the claimant/injured. In this light, the MACT assessed the *functional disability* at 30%.

9. 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)

10. 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)

11. Keeping in view the principle laid down in ***Raj Kumar v Ajay Kumar*** (*supra*), this Court is of the opinion that though injuries do not seem to be so severe as to completely render him incapable of performing/undertaking any vocation which requires mobility, the *functional disability* could be enhanced to **40%**.

12. As regards the issue of *contributory negligence*, the presence of alcohol is specifically noted in the MLC; however, the nature of the accident as recorded in *paragraph 8* of the MACT award, shows that the claimant was hit from behind by the DTC bus.

13. Considering that it was a rear-end collision and there is no proof of the amount of alcohol being present in the blood beyond the permissible limit, and the assessment of *20% contributory negligence* seems an *ad hoc* assessment by the MACT, it warrants interference. There is nothing placed on record by the Insurance Company to show that he contributed to the accident, considering that it was a rear-end collision by the DTC bus. Accordingly, the assessment of contributory negligence at **20%** is, therefore, set aside.

14. The Court is not inclined to interfere as far as *non-pecuniary damages*



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is concerned, considering that there is no evidence has been placed on record for any special consideration to be given.

15. In view of the judgment of the Hon'ble Supreme Court in *Raj Kumar v. Ajay Kumar (supra)*, the compensation awarded towards *mental and physical shock* is liable to be deleted. As regards *loss of amenities*, this Court grants a sum of Rs. 15,000/-.

16. The revised computation, therefore, is provided as under:

Sr. No.	Heads	Awarded by the Tribunal	Awarded by this Court
<b>PECUNIARY LOSS</b>			
1	Expenditure on Medical Bills (A)	Rs. 3,137/-	Rs. 3,137/-
2	Expenditure on conveyance (B)	Rs. 15,000/-	Rs. 15,000/-
3	Expenditure on special diet (C)	Rs. 15,000/-	Rs. 15,000/-
4	Expenditure on nursing attendant (D)	Rs. 5,000/-	Rs. 5,000/-
5	Income of injured (E)	Rs. 16,182/- per month	Rs. 16,182/- per month
6.	Add: Future prospects (F)	40% of Rs. 16,182/- = 6,472.80	40% of Rs. 16,182/- = 6,472.80
7.	Multiplier (G)	16	16
8	Functional disability (H)	30%	40%
9	Loss of income/Wages (I)	Rs. 48,546/- (16,182/- x 3)	Rs. 48,546/- (16,182/- x 3)
10	Loss of future income/future earnings [(E+F) x 12 x G x H] = (J)	Rs. 13,04,916.48/-	Rs. 17,39,888.64
<b>NON-PECUNIARY LOSS</b>			
11	Pain and suffering (K)	Rs. 15,000/-	Rs. 15,000/-
12	Mental and Physical shock (L)	Rs. 15,000/-	-



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13	Loss of amenities of life (M)	-	Rs. 15,000/-
14	Disfiguration (N)	Rs. 25,000/-	Rs. 25,000/-
15	Total compensation (A + B + C + D + I + J+ K + L) = O	<b>Rs. 14,46,599.48</b>	<b>Rs. 18,81,571.64 (rounded off to Rs. 18,81,580.</b>
16	Interest awarded	9% per annum	9% per annum
17	Contributory Negligence	20%	NIL

17. Enhanced compensation along with interest at the rate of 9% per annum from the date of filing, will be deposited before the Tribunal within 4 weeks.

18. Enhanced amount, along with accrued interest, shall be kept in Fixed Deposit Receipts (**FDRs**) of Rs. 15,000/- 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.

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

20. The appeal, is, accordingly, disposed of. Pending applications (if any) are rendered infructuous.

21. Copy of the judgment be sent to MACT and the concerned bank.

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

**(ANISH DAYAL)**  
**JUDGE**

**MARCH 30, 2026/RK/bp**