



2025:DHC:11052



§~4 & 5

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

% ***Decided on: 06.12.2025***

+ MAC.APP. 461/2015

THE NEW INDIA ASSURANCE CO. LTD.Appellant

versus

SAGAR KHERA & ORS.Respondents

+ MAC.APP. 417/2017

SAGAR KHERAAppellant

versus

THE NEW INDIA ASSURANCE CO. LTD. &
ORS.Respondents

Appearances:

Mr. JPN Shahi, Advocate for the appellant in Item No. 4 and respondent in Item No. 5.

Mr. Amitabh Sinha, Mr. Anupam Pandey, Advocates for respondent in Item No.4 and Appellant in Item No.5.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. These two appeals – one by New India Assurance Co. Ltd. [“Insurance Company”] and the other by Mr. Sagar Khera [“the



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claimant”] - are directed against an award of the Motor Accident Claims Tribunal [“Tribunal”] dated 10.04.2015 in MACT No. 861/2014, arising out of a road accident which took place on 17.07.2013.

2. The undisputed factual position, as it emerges from the impugned award, is that the claimant was riding his motorcycle, bearing Registration No. DL 4S CD 5107, on 17.07.2013 at about 11:30 P.M. At a point near Shiv Garden, Prem Nagar Road, Mundka, Delhi, his motorcycle was struck by a trolly/truck bearing registration No. PB-23E-6124. The claimant sustained grievous injuries, for which he was treated at Maharaja Agrasen Hospital from 18.07.2013 to 12.08.2013.

3. Before the Tribunal, a disability certificate dated 06.02.2015 was placed on record, showing that the claimant, who was then approximately 26 years of age, had suffered “*Post Traumatic Head Injury with Mild Mental Retardation*” leading to permanent mental disability of 50%.

4. Alleging that the accident was caused by the rash and negligent driving of the offending truck, the claimant filed proceedings before the Tribunal against the driver, the owner, and the insurer of the truck. The driver and owner are arrayed as respondent Nos. 2 and 3 in MAC. APP. 461/2015, respectively.

5. The Tribunal returned a finding in favour of the claimant on the question of negligence, and proceeded to assess compensation of Rs. 20,85,368/-, alongwith interest at the rate of 8% per annum under the following heads:



S.No	Particulars	Amount Awarded
1.	Treatment Expenses	Rs.3,55,000/-
2.	Pain and Suffering	Rs.2,00,000/-
3.	Conveyance, attendant charges & special diet	Rs. 50,000/-
4.	Loss of future earning capacity due to disability	Rs. 13,04,784/-
5.	Loss of Enjoyment of Life	Rs. 1,00,000/-
6.	Marriage Prospects	Rs. 50,000/-
7.	Loss of income during treatment	Rs. 25,584/-
	Total	Rs. 20,85,368/-

6. Both these appeals are in respect of quantum of compensation.

7. The only ground argued by Mr. JPN Shahi, learned counsel for the Insurance Company, is that the Tribunal has erred in computing loss of future earning capacity by applying an addition of 50% towards future prospects. Mr. Shahi refers me to the judgment of the Constitution Bench in *National Insurance Co. Ltd. v. Pranay Sethi*¹, which provides for addition of future prospects at 40%, unless the claimant was below 40 years of age, and shown to have a permanent job.

8. Mr. Amitabh Sinha, learned counsel for the claimant, on the other hand, submits as follows:

- a) The Tribunal erred in taking into account the functional disability of the claimant at only 50%. He states that, while the disability

¹ (2017) 16 SCC 680, [hereinafter "*Pranay Sethi*"].



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certificate produced before the Tribunal showed mental retardation to the extent of 50%, the claimant was subsequently re-assessed on 09.05.2022, at 75% permanent disability in relation to his brain, and suffering from mental illness.

b) The non-pecuniary damages assessed by the Tribunal were inadequate, having regard to the nature of the disability.

9. While a ground has been taken in the claimant's appeal with regard to the quantum of his income at the time of the accident, relying upon an income tax return for the Assessment Year 2013-14, the document in question was not exhibited before the Tribunal. I have put it to Mr. Sinha that, if the claimant wishes to prove the said income tax return, the matter can be remanded to the Tribunal to enable him to do so. Having regard to the length of time that has elapsed, Mr. Sinha does not press this ground, and submits that this Court may re-assess the level of functional disability as well as the non-pecuniary compensation.

10. Mr. Shahi accepts this suggestion, and specifically submits that the disability certificate dated 09.05.2022, which was produced before this Court, may be taken into account.

11. In view of the above submission, I have proceeded to re-assess the compensation payable to the claimant as follows:

A. FUTURE PROSPECTS

12. As far as future prospects are concerned, the Tribunal has added 50% on this account.

13. In this context, the relevant extract of *Pranay Sethi* reads as follows:



“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

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.”²

14. In the present case, the claimant was 26 years of age at the time of the accident. However, there is no evidence with regard to the claimant’s employment. Mr. Sinha, therefore, accepts that the addition on this ground is required to be reduced to 40%.

B. ASSESSMENT OF FUNCTIONAL DISABILITY

15. On the question of functional disability, reference must be made to the disability certificate dated 09.05.2022, which was proved before this Court. On an application of the claimant, Dr. Pravendra Singh (then in-charge of Disability Board, Head of Department of Janakpuri Super Speciality Hospital Society), who had assessed the claimant’s disability, was examined in this Court in MAC APP 417/2017, and his cross-examination was also conducted by Mr. Shahi on 15.04.2023.

16. The said certificate provides as follows:

*“(A) He is. a case of **Chronic Neurological Conditions***

*(B) The diagnosis in his case is **TBI WITH COGNITIVE***

² Emphasis supplied.



IMPAIRMENT

*(C) He has 75% (in figure) **Seventy Five** percent (in words) Permanent Disability in relation to his Brain, MENTAL ILLNESS (IQ), Mental Illness as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPwD Act, 2016 notified by Government of India vide S.O 76(E) dated 04/01/2018)."*

17. The vocation of the claimant has not been proved on record; in fact, it appears from the impugned award that the Tribunal proceeded only on the basis of the disability certificate, which was submitted to it.

18. The judgment of the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr*³. requires an exercise of correlation between the nature and extent of disability, and its functional effect on the claimant's future earnings, having regard to his vocation. In the present case, the nature of the claimant's vocation has not been proved, although the nature of his disability has been established as Chronic Neurological Conditions and Traumatic Brain Injury with cognitive impairment. Having regard to the fact that he has suffered 75% permanent disability in relation to his brain with mental illness, it is, in my view, quite evident that he would be hard-pressed to earn his living from any vocation or business. In such circumstances, I am of the view that functional disability of 80% may be taken into account for compensation of loss of future earnings.

C. LOSS OF FUTURE EARNING CAPACITY DUE TO DISABILITY

19. The Tribunal has proceeded on the basis that the claimant's case, that he was self-employed and doing private business earning Rs. 15,000 per month, remained unproved. It, therefore, assessed his monthly income on the basis of minimum wages for a non-matriculate (Rs. 8,528 per



month) as existing at the time of the accident. This aspect is not in dispute.

20. The multiplier of 17 applied by the Tribunal in terms of the judgment in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*⁴ is also accepted by both the parties.

21. In view of the above, the compensation on account of loss of future income is re-assessed as follows:

Sl. No.	Particulars	Quantum
1.	Monthly income on the basis of minimum wages	Rs.8,528/-
2.	Functional impairment	80%
3.	Loss of future earning (per month)	80% of Rs. 8,528 = Rs.6,822.40/-
4.	Income after addition of future prospects [40% of Rs.6,822.40 = Rs.2,728.96/-]	Rs.6,822.40 + Rs.2,728.96 = Rs. 9,551.36/-
5.	Annual loss of income [Rs. 9,551.36 x 12]	Rs. 1,14,616.32/-
6.	Application of multiplier (17) [Rs. 1,14,616.32 x 17]	Rs. 19,48,477.44/-
	Total compensation on account of loss of future earning capacity	Rs. 19,48,477/-

D. NON-PECUNIARY COMPENSATION

22. Turning now to non-pecuniary damages, the Tribunal has awarded damages for pain and suffering of Rs. 2,00,000, loss of enjoyment of life

³ (2011) 1 SCC 343.

⁴ (2009) 6 SCC 121.



of Rs. 1,00,000, and loss of marriage prospects of Rs. 50,000.

23. The claimant has apparently married during the pendency of the appeal. Mr. Sinha, therefore, accepts that the compensation on this account has to be deleted.

24. However, keeping in mind the medical evidence that has come on record before this Court, with regard to the extent and nature of the claimant's disability, I am of the view that the grant of compensation, both on account of pain and suffering and loss of enjoyment of life, is inadequate. The appellant was only 26 years of age at the time of the accident, and has a long span of life ahead of him. His prospects in virtually all aspects of life would have been severely diminished by the mental retardation, cognitive impairment, and mental illness, of the sort identified in the disability certificate dated 09.05.2022. I, therefore, grant compensation of Rs. 5,00,000 towards pain and suffering and Rs. 3,00,000 towards loss of enjoyment.

E. CONCLUSION

25. The result of the above discussion is that the award has been modified under the following heads:

Heads	Awarded by the Tribunal	Awarded by the Court	Difference
Pain and Suffering	Rs. 2,00,000/-	Rs. 5,00,000/-	(+) Rs.3,00,000/-
Loss of future earning capacity	Rs.13,04,784/-	Rs. 19,48,477/-	(+) Rs. 6,43,693/-
Loss of enjoyment of life	Rs.1,00,000	Rs. 3,00,000	(+) Rs.2,00,000/-
Marriage Prospects	Rs.50,000/-	NIL	(-) Rs.50,000/-
Total	Rs. 16,54,784/-	Rs. 27,48,477/-	(+) Rs. 10,93,693/-



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26. In sum, therefore, the award stands enhanced from Rs. 20,85,368/- to Rs. 31,79,061/-.

27. By virtue of the order dated 27.05.2015, the Insurance Company was directed to deposit 80% of the claimed amount alongwith proportionate interest in this Court, and Rs.5,00,000/- was directed to be released to the claimant. The Insurance Company is now directed to deposit the balance amount in terms of this judgment with up-to-date interest at the rate granted by the Tribunal, i.e., 8% per annum, within a period of eight weeks from today.

28. As far as disbursement is concerned, 25% of the total awarded amount, after adjusting for the amount of Rs.5,00,000/- already released, be released to the claimant forthwith. The balance 75% be kept in ten fixed deposit receipts of equal amounts for periods of 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 years, respectively. The amount of each fixed deposit, along with the interest accrued thereon, may be released to the claimant upon maturity of the respective deposit.

29. The appeals are therefore disposed of with these directions.

30. Statutory deposit in MAC.APP. 461/2015 be released to the appellant.

PRATEEK JALAN, J

DECEMBER 6, 2025
SS/Jishnu/