



2025:DHC:11166



\$~5 & 6

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

%

Decided on: 08.12.2025

+ MAC.APP. 800/2013

GORAKH

.....Appellant

versus

NARESH KUMAR AND ORS.

.....Respondents

+ MAC.APP. 917/2013

IFFCO TOKIO GENERAL INSURANCE CO. LTD.Appellant

versus

GORAKH & ORS.

.....Respondents

Appearances: Mr. S.N. Parashar and Mr. Ritik Singh, Advocates for appellant in item 5 and for respondents in item 6
Mr. Pankaj Seth, Advocate for R-3 in item 5 and for appellant in item 6 (VC)

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. These two appeals - MAC.APP. 800/2013 filed by the claimant, and MAC.APP. 917/2013 filed by IFFCO Tokio General Insurance Co. Ltd. ["Insurance Company"] - are both directed against an award of the Motor Accident Claims Tribunal ["Tribunal"] dated 02.05.2013 passed in MACT No. 656/2011.

2. By the impugned award, the Tribunal disposed of two claims arising out of the same road accident, which took place on 30.03.2010 at about 3:00



P.M. The claimant in the present appeal was one of the passengers in a TSR bearing Registration No. DL-1J-2218. It is alleged that the TSR, being driven in a rash and negligent manner by Mr. Naresh Kumar (who is arrayed as respondent No. 1 in MAC.APP. 800/2013 and respondent No. 2 in MAC.APP. 917/2013), rammed into a motorcycle near Ganda Nala, Ranhola, Uttam Nagar, due to which the TSR overturned, resulting in grievous injuries to the claimant, for which he was hospitalised for a long period. The owner of the TSR is arrayed as respondent No.2 in MAC.APP. 800/2013 and respondent No.3 in MAC.APP. 917/2013.

3. The Tribunal returned a finding of rash and negligent driving against Mr. Naresh Kumar and proceeded to assess compensation to each of the claimants.

4. In the case of the claimant herein, who was 23 years of age at the time of the accident, total compensation of Rs.10,39,505/- was assessed under the following heads:

Sr. No.	Compensation under various heads	Awarded by the Tribunal
1.	Loss of Earning Capacity (Rs. 5278/- p.m. x 12 x 18 x 77/100)	Rs. 8,77,837/-
2.	Compensation towards medical expenses	Rs. 20,000/-
3.	Pain and suffering	Rs. 25,000/-
4.	Special diet and conveyance	Rs. 10,000/-
5.	Compensation towards loss income during treatment period	Rs. 31,668/-
6.	Loss of matrimonial prospects	Rs. 50,000/-
7.	Compensation towards loss of amenities of life	Rs. 25,000/-
	Total	Rs. 10,39,505/-

5. I have heard Mr. S.N. Parashar, learned counsel for the claimant, and



Mr. Pankaj Seth, learned counsel for the Insurance Company.

6. Although, by order dated 18.11.2013, notice in the claimant's appeal was issued only to respondent No. 3 – the Insurance Company, the other respondents have been served in MAC.APP. 917/2013 filed by the Insurance Company. Service upon respondent No. 2 therein (the driver) is recorded in the order of the Registrar dated 26.03.2014. Respondent No. 3 (the owner) was served by publication, pursuant to an order of the Registrar dated 17.11.2014. The order dated 15.05.2015 records that respondent No. 3 was deemed to be served by publication. No appearance has been entered in this appeal on behalf of the driver and the owner of the vehicle.

7. Mr. Seth urges two grounds in support of the appeal of the Insurance Company:

- a) That the Tribunal has erred in taking the claimant's loss of earning capacity at 77%, based only upon a disability certificate, which showed 77% permanent disability in the right lower limb. He submits that this approach is inconsistent with the judgment of the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr*¹.
- b) That the Tribunal has not considered the question of recovery rights against the driver and the owner of the offending vehicle.

8. Mr. Parashar raises two grounds in support of the claimant's appeal:

- a) That the Tribunal has erred in declining enhancement of income on account of future prospects, on the ground that the appellant was stated to be self-employed.

¹ (2011) 1 SCC 343, [hereinafter, "*Raj Kumar*"].



b) That the non-pecuniary damages awarded to the claimant - Rs. 25,000/- towards pain and suffering, Rs. 50,000/- towards loss of matrimonial prospects, and Rs. 25,000/- towards loss of amenities of life - are extremely inadequate, having regard to the nature and extent of the claimant's injuries.

9. Each of these grounds is discussed below.

A. ASSESSMENT OF FUNCTIONAL DISABILITY

10. Turning first to the question of loss of earning capacity, the medical evidence recorded in the award of the Tribunal, was that the claimant had suffered a fracture in the humerus and a compound fracture in the tibia. His disability was assessed at 77% permanent disability in relation to the right lower limb. It was also noted that he had suffered post-traumatic stiffness in the right knee and ankle following the fracture. Although, reference is made in the award to the evidence of the doctor (Dr. Navneet Rustagi who deposed as PW-4), the evidence is not a part of the Tribunal's record transmitted to this Court. However, learned counsel for both sides submit that the Court may proceed on the basis that the contents of the disability certificate and nature of injuries have been correctly summarised in the impugned award as follows:

*"36. As per the medical record, Ex. PW3/4, the petitioner in the second petition got fracture shaft humerus; compound fracture shaft tibia. The petitioner had filed the bills to the tune of Rs. 414/-. It is common knowledge that generally people during the treatment do not maintain the bills etc as they are not aware of this benevolent legislation having provisions for compensation. Keeping in view the overall circumstances, I hereby grant sum of **Rs. 20,000/-** towards medical expenses including the amount of bills file.*

xxx

xxx

xxx

COMPENSATION TOWARDS LOSS OF INCOME DURING TREATMENT PERIOD



38. The petitioner was stated to be doing private service/ labourer and was stated to be earning Rs. 7000/- p.m, but no income proof filed or proved on record. Considering all circumstances and nature of injuries, it appears to me that petitioner could not have worked for about 6 months. The Minimum Wages for the unskilled person for the relevant period were Rs. 5278/- p. m. Accordingly, I award Rs. 31,668/-(Rs. 5278/- x 6) towards loss of income during treatment period.

COMPENSATION ON ACCOUNT OF DISABILITY:

39. **PW-4 Dr Navneet Rustagi has proved the disability certificate, Ex. PW4/1 containing 77% permanent disability in relation to the right lower limb and it was a case of post traumatic stiffness right knee and ankle following fracture shaft femur and both bone leg.**

40. In view of the aforesaid case law discussed in first petition and in view the testimony of the petitioner in the second petition and further after gaining guidance from aforesaid judgment in Sanjay's case, it appears to me that 77% permanent disability will effect entirely on the working capacity of the petitioner...²

11. The judgment of the Supreme Court in *Raj Kumar* mandates a three-step process in assessing loss of earning capacity based on the disability certificate, as follows:

“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.

² Emphasis supplied.



14. *For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of “loss of future earnings”, if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.”*

12. In the present case, although the said judgment was noticed by the Tribunal, it appears that the Tribunal had not, in fact, undertaken the required assessment. The Tribunal was in error in taking 77% as the loss of earning capacity, merely on the basis of the disability certificate certifying disability in one leg to this extent. This is the approach that the judgment in *Raj Kumar* negates.

13. Instead of remanding the matter to the Tribunal for reassessment on this point, having regard to the fact that the accident occurred in the year 2010, I have examined the material on record with the assistance of learned counsel for the parties.

14. The claimant’s evidence was that he was working in “*private service*”, and that he was unable to work as a result of the injuries sustained



in the accident. The nature of his service has not been clearly established in evidence, but the Tribunal's assessment on the basis that he was doing "private service/labourer" is undisputed. Having regard to the undisputed status of the claimant as an unskilled labourer, I am of the view that the permanent disability of 77% in one leg, may appropriately be considered as functional disability or loss of earning capacity of 50%.

15. The Tribunal's award on this aspect is modified to this extent.

B. FUTURE PROSPECTS

16. However, while recomputing loss of income, the submission of Mr. Parashar with regard to future prospects also requires consideration. The Tribunal has rejected the claim for future prospects on the ground that the claimant was stated to be self-employed. This observation is contrary to the Tribunal's own finding that he was working in private service/as a labourer. In any event, the judgment of the Constitution Bench in *National Insurance Co. Ltd. v. Pranay Sethi*³, establishes that future prospects can be granted even to a self-employed person. Paragraph 59.4 of the said judgment reads as follows:

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.⁴

³ (2017) 16 SCC 680.

⁴ Emphasis supplied.



17. The income of the claimant was, therefore, liable to be enhanced by 40% on account of future prospects.

C. LOSS OF FUTURE EARNING CAPACITY DUE TO DISABILITY

18. As a result of the above discussion, the computation of loss of earning capacity is modified as follows:

S. No.	Particulars	Awarded by the Tribunal	Awarded by this Court
1.	Monthly Income on the basis of minimum wages	Rs.5,278/-	Rs.5,278/-
2.	Addition for future prospects	Nil	40% of Rs.5,278/- = Rs. 2,111.20/-
3.	Income after addition of future prospects	Rs. 5,278/-	Rs. 5,278 + Rs. 2,111.20 = Rs. 7,389.20/-
4.	Functional impairment	77%	50%
5.	Annual loss of earning	Rs.5,278/- x 12 x 77/100 = Rs. 48,768.72/-	Rs. 7,389.20/- x 12 x 50/100 = Rs. 44,335.20/-
6.	Applicable multiplier [18]	Rs. 48,768.72/- x 18 = Rs.8,77,836.86/-	Rs. 44,335.20/- x 18 = Rs. 7,98,033.60/-
	Total compensation on account of loss of future earning capacity	Rs. 8,77,837/-	Rs. 7,98,034/-

D. NON-PECUNIARY COMPENSATION

19. The next question is of non-pecuniary damages on account of pain and suffering and loss of amenities of life. The Tribunal has awarded Rs. 25,000/- under each of these heads.



20. Although I am conscious of the fact that the accident in the present case occurred in the year 2010, when the value of money was much higher than it is today, these assessments appear, in my view, to be quite inadequate, having regard to the nature and extent of injuries and disablement suffered by the claimant, as recorded above. I am of the view that an award of Rs. 1,00,000/- on each of these accounts would be appropriate in the facts of this case. The compensation for loss of matrimonial prospects granted by the Tribunal at Rs. 50,000/- is maintained.

E. RECOVERY RIGHTS

21. Mr. Seth also argued on the question of recovery rights against the driver and the owner of the offending vehicle. As noted above, the said parties have not entered appearance in MAC.APP. 917/2013, despite service. Mr. Seth submits that the matter may be remanded back to the Tribunal for a decision on this aspect. The suggestion is accepted, in view of the contention of the Insurance Company that the driver did not possess a valid driving license at all.

F. CONCLUSION

22. As a result of the above discussion, the compensation awarded to the claimant stands modified under the following heads:

Heads	Awarded by the Tribunal	Awarded by the Court	Difference
Pain and Suffering	Rs. 25,000/-	Rs. 1,00,000/-	(+) Rs. 75,000
Loss of future earning capacity	Rs. 8,77,837/-	Rs. 7,98,034/-	(-) Rs. 79,803/-
Loss of amenities of life	Rs. 25,000/-	Rs. 1,00,000	(+) Rs. 75,000
Total	Rs. 9,27,837	Rs. 9,98,034	(+) Rs. 70,197



23. In sum, therefore, the award stands enhanced from Rs. 10,39,505/- to Rs. 11,09,702/-.

24. By order dated 09.10.2013 in MAC. APP. 917/2013, the Insurance Company was directed to deposit the entire awarded amount, alongwith accrued interest, in this Court and 70% was to be released to the claimant. The balance amount alongwith further interest accrued thereupon @ 7.5% per annum (the rate awarded by the Tribunal), be deposited in this Court within one month from today. Having regard to the age of the matter, the entire deposited amount, alongwith the amount to be deposited in terms of this judgment, be released to the claimant alongwith accrued interest.

25. The matter is remanded to the Tribunal, as between the Insurance Company and the driver and owner of the vehicle, to consider the issue of recovery rights. As the owner and the driver are not appearing in this Court, the Insurance Company will appear before the Tribunal on 23.12.2025, and the Tribunal will issue fresh process to the driver and the owner of the offending vehicle.

26. With the aforesaid directions, the appeals are disposed of.

27. Statutory deposits, if any, be released to the respective appellants.

PRATEEK JALAN, J

DECEMBER 8, 2025/dy/Jishnu/