



2025:DHC:9954



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on 11.11.2025*

+ MAC.APP. 723/2013

THE NEW INDIA ASSURANCE CO. LTD.Appellant
Through: Mr. Pankaj Seth, Advocate.

Versus

MASTER MUSTAFA & ORS.Respondents
Through: Mr. S.N. Parashar, Mr. Umesh
Kumar, Advocates for R-1.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J (ORAL)**

1. The appellant-Insurance Company assails an award passed by the Motor Accident Claims Tribunal ["the Tribunal"] dated 04.06.2013, by which the respondent No. 1-claimant was awarded a sum of Rs. 20,13,124/-, alongwith interest at the rate of 9% per annum.
2. The facts, as apparent from the impugned judgment, are that the claimant, who was then four years of age, was hit by the offending vehicle [Registration No. DL-1-PC-2325] on 24.06.2011 at about 08.30 AM. The Tribunal has returned a finding of rash and negligent driving against the driver of the offending vehicle [respondent No. 2 herein].
3. It is undisputed that the minor claimant sustained grievous injuries as a result of the accident, which was medically ascertained at 83% permanent disability in the left upper limb and left lower limb. The Tribunal also noticed that the claimant suffered multiple fractures all over



his body and, for the purposes of earning capacity, assessed his permanent disability at 100%.

4. The appellant contended in the appeal, that no loss of earning capacity could be awarded in favour of a minor claimant, relying upon *Mallikarjun v. Divisional Manager, National Company Insurance Limited & Anr.*¹ However, the legal position is now admittedly different. The Supreme Court, in a recent judgment in *Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari & Anr.*², was concerned with a claimant, who was eight years old at the time of the accident, and suffered permanent disability assessed at 30%. The Supreme Court affirmed the view of the High Court that the permanent functional disability should however have been fixed at 90%. While quantifying damages, after noticing the judgment in *Mallikarjun*, the Court held as follows:

*“9. On the aspect of monthly income of the minor appellant, we are inclined to interfere with the judgment and order of the Courts below. In the present case, it is evident that the Courts below have failed to take into account the monthly income of the appellant while determining the quantum of compensation. **It is now a well-entrenched and consistently reiterated principle of law that a minor child who suffers death or permanent disability in a motor vehicle accident, cannot be placed in the same category as a non-earning individual for the purposes of assessing the amount of compensation because the child was not engaged in gainful employment at the time of the accident. In such a case, the computation of compensation under the head of loss of income ought to be made by adopting, at the very least, the minimum wages payable to a skilled workman as notified for the relevant period in the respective State where the cause of action arises.** The said observation was rendered by this Court, in *Kajal v. Jagdish Chand and Ors.*³, and *Baby Sakshi Greola v. Manzoor Ahmad Simon and Anr.*⁴”⁵*

¹ (2014) 14 SCC 396 [hereinafter, “*Mallikarjun*”].

² Civil Appeal No. 10278/2025, decided on 08.08.2025 [hereinafter, “*Hitesh Nagjibhai Patel*”].

³ (2020) 4 SCC 413.

⁴ 2024 SCC OnLine SC 3692.



The Supreme Court thereafter assessed the compensation, including enhancement of 40% for future prospects, and applied the appropriate multiplier (18), thereafter adjusted by functional disability of 90%.

5. In view of the judgment in *Hitesh Nagjibhai Patel*, the only question now pressed by Mr. Pankaj Seth, learned counsel for the appellant, is that the Tribunal has erroneously accorded future prospects at 50%, instead of the maximum of 40%. Reliance is placed in this connection upon the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi & Ors.*⁶

6. Mr. S.N. Parashar, learned counsel for respondent No. 1—claimant, does not dispute this position. However, he points out that another error has crept into the computation, inasmuch as the Tribunal has assessed the permanent physical disability of 83% in both limbs at 100% for the purposes of loss of income, but ultimately computed the amount of compensation on the basis of 83% functional disability.

7. In paragraph Nos. 9 and 10 of the impugned award, the Tribunal has computed the compensation to be awarded on account of loss of income, as follows:

“9. It is the case, being represented by father / natural guardian of minor injured that minor injured suffered grievous injuries due to the accident having been caused on his person and treatment continued and during examination by the medical disability assessment board he was found to be 83% permanent physical disability having been caused consequent upon the accident in question. Minor injured is four years of age whose whole life has been ruined so keeping in view his age of four years I treat him to be liable to minimum wages amount persisting on the date of accident by arising legal presumption and legal fixation as to loss of future prospects of the minor whose whole life has been

⁵ Emphasis supplied.

⁶ (2017) 16 SCC 680.



ruined because one of his left leg and left arm being affected resulted in permanent disability of 83%. Keeping in view of his age of four years at the time of accident, future prospectus of 50% has to be added in his income as per *Rajesh & others Vs. Rajbir Singh etc.* judgment of Hon'ble Supreme Court's decision reported in Civil Appeal No. 3860/2013 arising out of SLP (Civil) No. 24825/2010 decided by Hon'ble Mr. Justice G.S.Singhvi, Hon'ble Mr. Justice Kurian Joseph and Hon'ble Mr. Justice Sharad Arvind Bobde on 12th April 2013. The minimum wages as on that day i.e. 24.06.2011 Rs. 6422/- is income i.e. 6422+50%. Hence the monthly income of injured comes to Rs. 9633/-. Hence in view of decision of Hon'ble Supreme Court of India in *Sarla Verma Vs. DTC 2009 ACJ 1298*, multiplier of 11 has to be applied to count loss of earning capacity. **I take the disability to 100% permanent physical disability as per the judgment of Hon'ble Supreme Court reported in 2012 STPL (Web) CC Cases 12 SC.**

10 As no deduction from notional income has to be taken towards personal expenses in case of injury as per decision of Delhi High Court in *Bimla Vs. Gopal MAC.APP No. 1028/2006* decided on 22.3.2010 **so the total loss of future income or earning capacity comes to Rs. (6422 +50%X12 X18X83%)** which comes to Rs. 17,27,004.24 in round figure it comes to Rs. 17,27,004/-.”⁷

8. Additionally, the Tribunal has awarded pecuniary damages on account of medical expenses, diet, and conveyance charges, as well as non-pecuniary damages for pain and sufferings, loss of amenities and loss of marriage prospects. The final compensation awarded by the Tribunal is summarized in the award, as follows:-

“Pecuniary damages (Special damages):

a) Loss of income	Rs. Nil.
b) Loss of future prospects	Rs.17,27,004/-.
c) Medical Expenses	Rs.11,120/-
d) Special diet expenses	Rs.18000/-
e) Conveyance charges	Rs. 7,000/-

Non-pecuniary damages (General damages)

f) Pain suffering, mental shock and trauma	Rs.1,00,000/-
g) Loss of amenities etc.	Rs.1,00,000/-

⁷ Emphasis supplied.



h) *Loss of marriage prospects*

Rs.1,50,000/-

Total

Rs.20,13,124/-”

9. There is an obvious error in the computation, to the extent that the Tribunal has failed to apply its own finding that the disability of the claimant was to be assessed at 100%. The question of whether this can be corrected in an appeal by the Insurance Company, without any cross-appeal or cross-objection, has been answered by the Supreme Court in *Ranjana Prakash v. Divl. Manager & Anr.*⁸. It is accepted by learned counsel on both sides that, in such circumstances, the appropriate course is as follows:

*“Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. **If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer.** Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/insurer for reduction. **The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.**”⁹*

10. Applying the aforesaid principles to the present case, we must first compute the amount in fact owed to the claimant on account of loss of income, applying the various factors from the Tribunal’s award, with the above modification in the extent of disability, and future prospects. The computation is as follows:

⁸ (2011) 14 SCC 639 [hereinafter, “*Ranjana Prakash*”].

⁹ Emphasis supplied.



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	Awarded by the Tribunal	Awarded by the Court
1. Monthly Income	Rs. 6,422/-	Rs. 6,422/-
2. Annual Income	Rs. 6,422 x 12 = Rs. 77,064/-	Rs. 6,422 x 12 = Rs. 77,064/-
3. Addition for future prospects	Rs. 77,064 + 50% x Rs. 77,064 = Rs. 1,15,596/-	Rs. 77,064 + 40% x Rs. 77,064 = Rs. 1,07,889.6/-
4. Multiplier	18	18
5. Extent of disability	83%	100%
6. Total amount awarded under this head	Rs. 1,15,596 x 18 x 83% = Rs. 17,27,004/- (approx.)	Rs. 1,07,889.6 x 18 x 100% = Rs. 19,42,012/- (approx.)

11. The calculation of loss of future income or earning capacity, thus, comes to Rs. 19,42,012/-, instead of Rs. 17,27,004/-.

12. Having regard to paragraph 8 of *Ranjana Prakash*, and the fact that the claimant has not filed cross-objections in the present case, the appropriate course in these circumstances is to uphold the award of the Tribunal as it stands.

13. For the aforesaid reasons, the appeal is dismissed.

14. The Insurance Company has deposited the awarded amount in this Court in terms of order dated 07.08.2013. The amount will be released to respondent No. 1 in terms of the directions of the Tribunal.

15. The Registry is directed to refund the statutory deposit to the appellant.

PRATEEK JALAN, J

NOVEMBER 11, 2025/'Bhupi'/AD