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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 15.11.2025

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MAC.APP. 870/2016

MASTER MUKUL

(THR FATHER PRADEEP KUMAR)

.....Appellant

Through: Mr. Manish Maini, Ms. Anjali Singh
& Ms. Aastha Chauhan, Advocates.

versus

SURENDER KUMAR & ORS (UNITED

INDIA INSURANCE CO LTD)

.....Respondents

Through: Ms. Shruti Jain for Mr. Pankaj Seth,
Advocate for R3/Insurance Company.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. This is an appeal filed by the claimant for enhancement of the compensation awarded by the Motor Accident Claims Tribunal ["Tribunal"] in Suit No. 73/2014.
2. The appellant was five years old at the time of the accident in question, on 01.04.2013. While crossing the road, he was hit by a tempo bearing registration No. DL-1LE-0147, which was being driven by respondent No. 1 herein. As a result of the accident, his left leg was crushed, and he had to undergo amputation of the left leg below the knee. His disability has been assessed at 60%.
3. The Tribunal returned a finding of rash and negligent driving against respondent No.1 and, by the award dated 02.06.2016, granted compensation



of Rs.10,14,000/- to the appellant. The award was subsequently modified by an order dated 22.07.2016, increasing the amount of compensation to Rs.10,55,000/-, alongwith interest at the rate of 9% per annum from the date of filing of the claim petition.

4. Mr. Manish Maini, learned counsel for the appellant, raises the following three grounds in support of the appeal:

- a. That the Tribunal has erroneously assessed the loss of earning capacity based upon notional income of Rs.15,000/- per annum, whereas the loss of earning capacity of a minor claimant should be assessed on the basis of the minimum wages of a skilled worker. The Tribunal has also failed to account for future prospects.
- b. That the Tribunal has awarded a lump sum amount of Rs.3,00,000/- towards the appellant's prosthetic limb, including its replacement and maintenance, which is wholly inadequate, and contrary to the evidence.
- c. That the Tribunal has awarded an inadequate sum towards non-pecuniary damages, particularly for pain and suffering, and failed to award compensation for loss of amenities and disfiguration.

5. I have heard Mr. Maini and Ms. Shruti Jain, learned counsel for respondent No. 3 – United India Insurance Company Limited [“Insurance Company”], on each of the above points, which are dealt with below.

A. Loss of Earning Capacity

6. On the first ground of challenge, Mr. Maini submits that it is now settled law that loss of earning capacity of a minor child is to be assessed on the basis of the minimum wages of a skilled worker, and not on the basis of



notional income.

7. Reference to two judgments of the Supreme Court, both delivered in the last one year, would suffice in this connection. In *Baby Sakshi Greola v. Manzoor Ahmad Simon & Anr.*¹, the Court was considering a claim of a seven year old child who had suffered 75% permanent disability. Relying on its earlier judgments in *Kajal v. Jagdish Chand*², *Master Ayush v. Branch Manager, Reliance General Ins. Co. Ltd.*³, and *K.S. Muralidhar v. R. Subbulakshmi*⁴, the Court held as follows:

“28. The learned Tribunal on appreciation of the medical evidence came to a conclusion that since the appellant was only seven years at the time of the accident, it would be appropriate to take notional income as per the MV Act to be Rs. 15,000 per annum. The learned Tribunal applied multiplier of 15 which was taken up to the age of fifteen years. Therefore, an amount of Rs. 15,000 x 15 x 75/100 = Rs. 1,68,750 was awarded by the learned Tribunal. The High Court did not enhance the amount awarded under this head.

29. This court in the case of Kajal (supra) has held that taking notional income is not the correct approach. Instead, the minimum wages payable to a skilled workman in the concerned State has to be taken into consideration because that would be the minimum amount which she would have earned on becoming a major. In this case, the minimum wage payable to a skilled workman in the State of Delhi at the time of the accident, i.e., 2.6.2009, was Rs. 4,358 per month.”⁵

8. In *Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari & Anr.*⁶, the Court once again followed *Kajal* and *Sakshi Greola*, to hold 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

¹ 2024 SCC OnLine SC 3692 [hereinafter, “*Sakshi Greola*”].

² (2020) 4 SCC 413 [hereinafter, “*Kajal*”].

³ (2022) 7 SCC 738.

⁴ 2024 SCC OnLine SC 3385.

⁵ Emphasis supplied.

⁶ SLP No. 14444/2025, decided on 08.08.2025 [hereinafter, “*Hitesh*”].



*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.*, and *Baby Sakshi Greola v. Manzoor Ahmad Simon and Anr.*”⁷*

9. Mr. Maini also drew my attention to the judgments of this Court in *The United India Insurance Co. Ltd v. Baby Raksha & Ors.*⁸, and *The Oriental Insurance Co. Ltd. v. Master Anshu Kumar @Bhola & Ors.*⁹, which are to the same effect.

10. The medical evidence in the present case shows that the appellant suffered a 60% permanent disability, and loss of earning capacity was also calculated on the basis of 60% functional disability. This aspect is not under challenge. However, Mr. Maini submits that the Tribunal has failed to add any amount for future prospects, which, in terms of the judgment passed by the Constitutional Bench of this Court in *National Insurance Co. Ltd. v. Pranay Sethi*¹⁰, would be to the extent of 40%.

11. Ms. Jain has drawn my attention to the earlier judgment of the Supreme Court in *Mallikarjun vs. Divisional Manager, National Insurance Company Limited & Anr.*¹¹, wherein the Court considered notional income to be the correct measure to assess loss of earning capacity of a minor. She

⁷ Emphasis supplied.

⁸ 2023 SCC OnLine Del 4548.

⁹ 2023 DHC 6241 [hereinafter, “*Master Anshu Kumar*”].

¹⁰ (2017) 16 SCC 680 [hereinafter, “*Pranay Sethi*”].

¹¹ (2014) 14 SCC 396 [hereinafter, “*Mallikarjun*”].



submits that the contrary view taken in later judgments of the same strength must be regarded as *per incuriam*.

12. I am of the view that this submission cannot be accepted. The judgment in *Mallikarjun* was noticed by the Supreme Court in *Hitesh*, which reads as under:

“6. In view of the decision rendered by this Court in *Mallikarjun v. Divisional Manager, National Insurance Company Limited and Anr.*, the High Court modified the award rendered by the Tribunal and enhanced the compensation by Rs. 4,75,000/-, in the following manner :

S.No.	PARTICULARS	AMOUNT
1.	Loss of amenities in life on account of disability	Rs.5,00,000/-
2.	Pain and Suffering	Rs.75,000/-
3.	Loss of earnings to parents	Rs.30,000/-
4.	Future medical expenses	Rs.30,000/-
5.	Medical Bills	Rs.30,000/-
6.	Artificial Limb	Rs.2,00,000/-
	Total	Rs.8,65,000/-

”

When an earlier judgment has been referred to in a later judgment of the Supreme Court, the latter judgment cannot be considered to have been made in ignorance of the earlier one. This Court is, therefore, bound by the later judgments of the Supreme Court.

13. The loss of earning capacity of the appellant must, therefore, be recalculated on the above basis. The minimum wages of a skilled worker in Delhi on the date of the accident was Rs. 9,386/- per month. This figure is not in dispute. The loss of earning capacity is, therefore, recomputed as follows:

- i. Applicable monthly income: Rs. 9,386/-
- ii. Addition for future prospects: 40%
- iii. Applicable multiplier: 18
- iv. Extent of disability: 60%



14. Applying the above factors to the present case, the compensation for loss of earning capacity comes to Rs.17,03,000/-.

B. Cost of Artificial Limb and its Maintenance

15. This ground has been urged on the basis that the appellant was only five years old at the time of the accident. The life of a prosthetic limb is typically only four to five years, and it also requires considerable maintenance. The claim on this account is supported by the decision of the Supreme Court in *Mohd. Sabeer v. Regional Manager, U.P. State Road Transport Corporation*¹², which has been followed by this Court in *Master Anshu Kumar*.

16. In *Mohd. Sabeer*, the Supreme Court was concerned with an adult claimant who had to be fitted with a prosthetic limb as a result of the accident. The Court found that the amount awarded to the appellant on this account was inadequate and ought to be enhanced, assuming that the limb would require replacement every few years until the appellant was seventy years of age.

17. This Court, in *Master Anshu Kumar*, relied upon the evidence before the Tribunal to determine the cost of the prosthesis and, having regard to the fact that the claimant therein was five years old, applied a multiplier of 11 to assess the number of changes to the limb required. A sum of Rs. 5,00,000/- was also awarded towards maintenance of the limb.

18. As far as this aspect is concerned, in the present case, an estimate from Otto Bock HealthCare India Pvt. Ltd., the suppliers of the prosthetic limb, was exhibited before the Tribunal as Ex.PW1/3. The document

¹² (2023) 20 SCC 774 [hereinafter, "*Mohd. Sabeer*"].



detailed the appellant's prescription, the need for replacement of the prosthesis, maintenance, etc. up to the age of seventy-one years, and provided an assessment of Rs. 37,92,064/- on this account. This amount was divided into system cost of Rs.23,02,064/-, socket change of Rs.3,90,000/-, and consumable expenses of Rs.11,00,000/-.

19. The representative of the service provider, Mr. Rajiv Kumar, also gave evidence as PW-3. He confirmed the issuance of the document at Ex.PW1/3. The witness was cross-examined on behalf of the Insurance Company, but the contents of the document were not controverted at all. The only cross-examination was as follows:

“20.02.2015

PW3: Mr. Rajiv Kumar, Clinical Prosthetic and Ortho. , Ottobock Health Care India Pvt. Ltd. Patel Nagar, Delhi

ON SA

I have seen document Ex. PW 1/3 . It is issued by our company . I have brought another copy from our record today . It is true that artificial limbs require repairs in between. Authority letter issued by our Centre Manager Ms. Shikha Shukla is Ex. PW 3/A.

XXXXXX by Sh. Neeraj Sharma, Adv. for respondent no. 3 Insurance Company;

We did not check medical record of a patient to see if he/she requires artificial limb. I did not check that personally.

XXXXXX by Sh. D. B. Goel Advocate for R-1 and R-2:

Nil. Opportunity given.”

20. The aforesaid requirement of repeated maintenance and changes of the prosthesis was also supported by medical evidence of Dr. Ajay R. Sharma, Senior Consultant (Orthopedics) Saroj Hospital, Madhuban Chowk, Rohini, Delhi, who had treated the appellant. His evidence was as follows:

“17.04.15

PW4: Dr. Ajay R. Sharma, Sr. Consultant (Orthopedics) Saroj Hospital, Madhuban Chowk, Rohini.

ON SA



Patient master Mukul who was admitted in our hospital on 01.04.13 was treated by me. His left leg was amputated due to injuries suffered by him in a road accident. Discharge summary of said patient is Ex.PW/1, signed by me at point A. OPD card of that patient is Ex.PW1/4 signed by me at point A. As the patient is a growing child. According to his age, the bone is likely to grow. It will require refreshning, may be 3-4 times till he gains height i.e., the age of 22 years. When the leg is amputated, due to the lack of foot movements, the muscles of the leg and knee goes to disuse atrophy which requires physiotherapy like exercises and nerve and muscles stimulations. Till the patient is gaining height, he will require adjustments and replacement of the prosthesis and sockets repeatedly according to gaining of height by him. The repairs of prosthesis and sockets will also be required even after 23 years of age to take care of wear and care. Each refreshning will require about Rs.50000/- approx.

xxxxx by Sh. D.K.Sharma, adv. for respondent no.3.

Said patient may require refreshning 2-3 times till he attains age of 22 years. In my opinion, life of the artificial limb depends upon the quality of the prosthesis, the material used and the body weight and activities of patient. Approx. the life an artificial limb is 3-4 years.”

21. Despite the above evidence, the contents of which were not challenged by the Insurance Company during cross-examination, the Tribunal has awarded a total sum of Rs. 3,00,000/- for the artificial limb and its maintenance. The reasoning of the Tribunal is as follows:

“No doubt, Ottobock is not the only company which provides artificial limbs. There may be some other companies also which could provide some cheaper limbs. Moreover, it is well settled that compensation provided to the victim of a motor- accident should be 'just', neither a pugil nor an exorbitant amount, to enrich victim of an accident. Considering the age and circumstances of injured, this tribunal thinks it proper to award a sum of Rs. 3 lacs (in lump-sum) for artificial limb as well as for its maintenance.”

22. I am not satisfied with the aforesaid analysis of the evidence. The Tribunal is right to the extent that the compensation awarded should be just and reasonable. However, the Tribunal has failed to appreciate that several changes of the prosthesis would be required over the course of a child's life,



from the age of five years. The uncontroverted evidence showed that the cost of the very first prosthetic was assessed at Rs.1,47,984/- with further cost of Rs.1,60,000/-, by the time the appellant attained the age of 11 years.

23. The compensation of Rs.3,00,000/-, thus, barely covers the very first prosthetic limb and does not account for the uncontroverted evidence that the limb would need to be changed several times during the appellant's lifetime. As in *Master Anshu Kumar*, in fact, the estimate of the service provider was that the claimant would require eleven further changes of the prosthesis until the age of seventy one years.

24. In *Master Anshu Kumar*, the cost of the limb was taken as Rs.2,15,000/-, which was thereafter multiplied by 11, and Rs. 5,00,000/- was granted towards maintenance. The Court balanced the equities between the speculative fluctuation in the cost of the limb and the fact interest was being granted on this amount, even though much of the expense would be incurred in the future. Having regard to the facts and circumstances of the present case, Mr. Maini submits that a similar approach may be adopted.

25. In the evidence of Ottobock, the cost of the limbs at the present has been assessed at Rs.1,47,984/-. Taking 11 changes, this amount would be Rs.16,27,824/-. An amount of Rs.5,00,000/- is added for maintenance, amounting to Rs. 21,27,824/-.

C. Non-pecuniary damages

26. Mr. Maini submits that the Tribunal has granted Rs.1,00,000/- towards pain and suffering, but has not granted any amount towards loss of amenities and disfiguration. Drawing sustenance from the judgment in *Mohd. Sabeer*, in which the Supreme Court granted Rs.2,00,000/- for each of the aforesaid heads, the non-pecuniary compensation in the present case



is also enhanced to the extent of Rs. 2,00,000/- each for loss of amenities, and disfiguration.

D. Conclusion

27. Resultantly, the appeal succeeds to the following extent:

Sr. No.	Heads	Awarded by the Tribunal	Awarded by this Court	Amount of enhancement
1.	Loss of Earning Capacity	Rs.2,55,317/-	Rs.17,03,000/-	Rs.14,47,683/-
2.	Cost of Artificial limb and its maintenance	Rs.3,00,000/-	Rs. 21,27,824/-	Rs.18,27,824/-
3.	Loss of amenities of life	Nil	Rs.2,00,000/-	Rs.2,00,000/-
4.	Disfiguration	Nil	Rs.2,00,000/-	Rs.2,00,000/-
Total enhancement				Rs.36,75,507/-

28. The appeal is, therefore, disposed of by enhancing the total awarded amount by Rs. 36,75,507/-. The Insurance company is directed to deposit the said amount, alongwith interest at the rate of 9% per annum, as awarded by the Tribunal, before the Registrar General of this Court within a period of 8 weeks from today. The amount will be disbursed in accordance with the directions of the Tribunal in the impugned award.

29. The appeal stands disposed of.

30. The statutory deposit of Rs. 25,000/- be refunded to the Insurance Company.

PRATEEK JALAN, J

NOVEMBER 15, 2025

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