



\$~11

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

% ***Decided on: 16.12.2025***

+ MAC.APP. 671/2013

BHAWNA

.....Appellant

Through: Mr. Manish Maini & Ms. Aastha
Chauhan, Advocate.

versus

RAMBEER & ORS

.....Respondents

Through: Mr. R.K. Tripathi, Advocate for
R3.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The appellant, who was the claimant before the Motor Accident Claims Tribunal [“the Tribunal”], has preferred the present appeal, assailing an award dated 02.12.2011, passed in MACT Suit No. 573/09/08. She seeks enhancement of the compensation granted to her by the Tribunal, which was for the sum of Rs.5,30,400/-, alongwith interest at the rate of 7.5% per annum.

A. FACTS

2. The facts of the accident, as narrated in the award, are that on 03.08.2008, the appellant was travelling on a motorcycle bearing registration No. DL-5SZ-6505, being driven by her uncle, when they were hit by an RTV bus bearing registration No. DL-1VA-1876 [“offending vehicle”], driven by respondent No.1. The appellant sustained grievous injuries as a result of the accident, for which she was



first treated at Guru Teg Bahadur Hospital, Shahdara, New Delhi, and subsequently at Sushruta Trauma Centre, New Delhi, and Lok Nayak Hospital, New Delhi. At the time of the accident, the appellant was about 15 years of age.

3. The accident resulted in criminal proceedings against the driver of the offending vehicle. FIR No. 365/2008, dated 03.08.2008, under Sections 279 and 338 of the Indian Penal Code, 1860, was registered against respondent No.1 at P.S. Nand Nagri, New Delhi.

B. IMPUGNED AWARD

4. The appellant filed a claim petition before the Tribunal, alleging rash and negligent driving by the driver of the offending vehicle [respondent No.1 herein]. The owner of the offending vehicle and the insurer thereof [respondent Nos. 2 and 3 herein] were also arrayed as respondents before the Tribunal. The Tribunal, after considering the evidence on record, returned a finding of negligence against respondent No.1, and awarded compensation under the following heads:

Sr. No	Heads	Amount
<u>Pecuniary Heads:</u>		
1.	Medical expenses	Rs.4,356/-
2.	Conveyance	Rs.10,000/-
3.	Special diet	Rs.10,000/-
4.	Attendant charges	Rs.18,000/-
5.	Loss of earning capacity	Rs.2,43,000/-
6.	Loss of studies during treatment period	Rs.25,000/-
<u>Non-Pecuniary Heads:</u>		
7.	Pain and suffering	Rs.1,00,000/-
8.	Loss of amenities of life	Rs.1,00,000/-



9.	Loss of expectation of life	Rs.20,000/-
Total		Rs.5,30,356 (Rounded off to Rs.5,30,400/-)

C. SUBMISSIONS

5. I have heard Ms. Aastha Chauhan, learned counsel for the appellant, and Mr. R.K. Tripathi, learned counsel for respondent No.3 – Oriental Insurance Company Limited [“Insurance Company”].

6. Ms. Chauhan submits that the compensation ought to be enhanced on the following grounds:

- a. That the Tribunal has erroneously assessed the loss of earning capacity based on notional income of Rs.15,000/- per annum, whereas loss of earning capacity of the appellant ought to have been assessed on the basis of the minimum wages of a matriculate, i.e., at Rs.4,131/- per month, in terms of the judgments of the Supreme Court in *Baby Sakshi Greola v. Manzoor Ahmad Simon & Anr.*¹ and *Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari & Anr.*².
- b. That the Tribunal awarded non-pecuniary damages only to the extent of Rs.1,00,000/- each for pain and suffering and loss of amenities of life, which is wholly inadequate, and failed to grant compensation for mental and physical shock, loss of marriage prospects, and disfigurement.
- c. That the Tribunal awarded insufficient compensation under the heads of conveyance, special diet, and attendant charges.

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

² SLP No. 14444/2025, decided on 08.08.2025 [hereinafter, “*Hitesh*”].



7. Mr. Tripathi, on the other hand, submitted that the Tribunal's assessment of functional disability of the appellant, to the extent of 60%, is overestimated, having regard to the nature and extent of her disability.

8. Each of the above aspects is dealt with below.

D. APPLICABILITY OF MINIMUM WAGES

9. On the first ground of challenge, Ms. Chauhan submits that the issue is no longer *res integra*. The 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. Reliance in this regard is placed on the recent decisions of the Supreme Court in *Sakshi Greola* and *Hitesh*. The Tribunal, on the other hand, has assessed compensation based on notional income of only Rs.15,000/- per annum.

10. In *Sakshi Greola*, the Court was considering a claim of a 7 year old child who had suffered 75% permanent disability. Relying on its earlier judgments in *Kajal v. Jagdish Chand*³, *Master Ayush v. Branch Manager, Reliance General Insurance Company Limited*⁴, and *K.S. Muralidhar v. R. Subbulakshmi*⁵, 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 a multiplier of 15 which was taken up to the age of fifteen years. Therefore, an amount of $15,000 \times 15 \times 75/100 =$ 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

³ (2020) 4 SCC 413 [hereinafter, “*Kajal*”].

⁴ (2022) 7 SCC 738.

⁵ 2024 SCC OnLine SC 3385.



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., 2nd June 2009, was Rs. 4,358/- per month.”⁶

11. In *Hitesh*, 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 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

12. In the present case, the appellant was about 15 years old at the time of the accident, and was studying in the 11th grade. In these circumstances, the minimum wages applicable in Delhi for a matriculate at the relevant time, i.e. Rs.4,131/- per month, ought to have been taken into account while computing compensation on account of loss of earning capacity.

E. ASSESSMENT OF FUNCTIONAL DISABILITY

13. Turning next to the question of assessment of functional disability, the medical evidence recorded in the award of the Tribunal was that the

⁶ Emphasis supplied.



appellant had suffered 69% permanent locomotor impairment in relation to her left upper limb, and her condition was stated to be non-progressive and not likely to improve. The Tribunal thus assessed her functional disability as 60% qua the whole body.

14. The judgment of the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr.*⁸, draws a clear distinction between the physical disability suffered by an injured victim and the resultant functional disability, which manifests in the assessment of loss of earning capacity. The Court has held that such determination must be guided by the nature of the claimant's avocation, which has to be correlated with the nature and extent of the injuries, so as to arrive at an appropriate assessment of functional disability.

15. Although no medical evidence was led before the Tribunal regarding the appellant's disability, the disability certificate dated 15.11.2010, issued by Guru Teg Bahadur Hospital, New Delhi, certifies that the appellant suffered a permanent locomotor impairment of 69% in relation to her left upper limb. The certificate further states that the condition is non-progressive, is not likely to improve, and that reassessment is not recommended.

16. In the affidavit of evidence filed by the appellant, she stated as follows:

“6. THAT the Petitioner possessed good health before the accident. The Petitioner was STUDENT and the accident has totally curtailed her working/STUDYING capacity the petitioner is unable of doing her job/work and after accident she is not able to work/study. The accident has totally curtailed her working capacity and therefore the entire

⁷ Emphasis supplied.

⁸ (2011) 1 SCC 343 [hereinafter, “*Raj Kumar*”].



family is suffering from huge financial crisis. In addition to mental and physical sufferings.

(7) That The Petitioner Has Not Been Able To Work/Study Since The Date Of Accident And Still Advised Rest And Will Not Able To Work Petitioner WAS A 11TH class Student Due To This Accident she IS Unable To Study And Cannot Go To Her School This Is A Valuable Year In Her Education AND A Question Mark Arises In Her Future Prospect Due To This Accident. PETITIONER HAS SUFFERED DISABILITY, THE PETITIONER IS UNABLE TO GO TO SCHOOL AND THIS IS GOING TO HARM Her IN Her FUTURE AND THE PETITIONER HAS TO LEAVE STUDY FOR THIS YEAR WHICH IS CAUSING Her GREAT MENTAL TORTURE AND LOSS OF FUTURE YEAR...”

17. The appellant was cross-examined by learned counsel for the Insurance Company, during which she stated as follows:

“I have not filed any document showing that I was studying in 11th class or any other document that I was unable to attend the school. It is incorrect to suggest that I was not student or suffered any educational loss because of this accident.....”

18. In the present case, though the Tribunal adverted to the judgment in *Raj Kumar*, the necessary assessment was not actually carried out. The Tribunal fell into error in treating 60% as the loss of earning capacity, solely on the basis of the disability certificate indicating disability in one arm. Such an approach runs contrary to the principles laid down in *Raj Kumar*. Having regard to the nature and extent of disability suffered by the appellant, I am of the view that the permanent disability of 69% in one arm, may appropriately be considered as functional disability or loss of earning capacity of 40%. The Tribunal’s award on this aspect is modified to this extent.

F. ADDITION OF FUTURE PROSPECTS

19. Having regard to the decision of the Constitution Bench in



*National Insurance Company Limited v. Pranay Sethi & Ors.*⁹, the Tribunal was required to grant enhancement towards future prospects, which it has failed to do.

20. For a person under 40 years of age, who does not have a permanent job, *Pranay Sethi*¹⁰ stipulates an enhancement of 40% towards future prospects. The said provision would be applicable to the appellant's case as well.

G. ASSESSMENT OF COMPENSATION FOR LOSS OF EARNING CAPACITY

21. The other element which affects the computation of loss of future income is the multiplier. It is not disputed that the Tribunal has applied the correct multiplier of 18 in this case.

22. Applying the aforesaid modifications, the compensation on this ground, as awarded to the appellant, is re-computed as follows:

Heads	Amount
Monthly income (on the basis of minimum wages in Delhi)	Rs.4,131/-
Annual income [4,131 x 12]	Rs.49,572/-
Addition of future prospects [40% of 49,572]	Rs.19,828.8/-
Annual income after addition of future prospects [49,572 + 19,828.8]	Rs.69,400.8/-
Loss of future earnings after accounting for functional disability [69,400.8 x 40%] (per annum)	Rs.27,760.32/-
Loss of future income after applying the applicable multiplier [27,760.32 x 18]	Rs.4,99,685.76/- (Rounded off to Rs.4,99,686/-)

23. The Tribunal assessed compensation for loss of future income at Rs.2,43,000/-. This is enhanced to Rs.4,99,686/-.

⁹ (2017) 16 SCC 680 [hereinafter, "*Pranay Sethi*"].



H. NON-PECUNIARY DAMAGES

24. As noted above, the Tribunal has awarded non-pecuniary damages of Rs.1,00,000/- each, for pain and suffering and loss of amenities of life. However, the Tribunal did not grant any compensation for mental and physical shock, loss of marriage prospects, and disfigurement.

25. The evidence before the Tribunal reveals that the appellant was hospitalised at Sushruta Trauma Centre from 04.08.2008 to 12.08.2008 and, thereafter, at Lok Nayak Hospital from 29.09.2008 to 13.10.2008, and continued to receive treatment until April 2009. The medical records indicate that she sustained severe lacerations and a crush injury to the left forearm, resulting in a grade IIIB fracture of the left humerus, a fracture of the radial head, a fracture of the coronoid process of the ulna, and a dislocation of the left elbow. Furthermore, an external fixator was applied to stabilise the injuries.

26. In view of the fact that the appellant was only 15 years of age at the time of the accident, and has a long life ahead of her, the compensation awarded under the head of loss of amenities is enhanced to Rs.2,00,000/-. A further sum of Rs.2,00,000/- is awarded under the head of loss of marriage prospects.

27. Having regard to the nature and extent of the injuries suffered by the appellant, as well as the duration of treatment, Rs.1,00,000/- each is granted for disfigurement and for mental and physical shock. The compensation for pain and suffering, as granted by the Tribunal at Rs. 1,00,000/- is, however, maintained.

¹⁰ Paragraph 59.4.



I. ATTENDANT CHARGES, SPECIAL DIET AND CONVEYANCE

28. The Tribunal awarded a sum of Rs.10,000/- each for special diet and conveyance, and attendant charges of Rs.18,000/-, calculated at Rs.3,000/- per month for six months.

29. Having regard to the nature of the injuries sustained by the appellant, her hospitalisation, and the subsequent course of treatment spanning several months, including a plastic surgery and periodic OPD consultations, it is clear that the appellant required multiple hospital visits and assistance with daily activities during the rehabilitation period. It is well-settled that compensation for attendant services is payable even where such assistance is rendered gratuitously by family members, as the necessity of such support itself constitutes a compensable pecuniary loss.

30. Having regard to these factors, even bearing in mind that the accident occurred in the year 2008, when the value of money was higher than it is today, the compensation granted under these heads appears to be inadequate. Accordingly, taking into account the duration of treatment, the severity of the injuries, and the appellant's limited functional capacity during recovery, the compensation for attendant charges is enhanced to Rs.30,000/-, and the compensation for conveyance and special diet are enhanced to Rs.20,000/- each.

J. CONCLUSION

31. As a result of the above discussion, the compensation awarded to the appellant under the following heads stands enhanced:

Heads	Awarded by the Tribunal	Awarded by this Court	Difference
Loss of future income	Rs.2,43,000/-	Rs.4,99,686/-	(+) Rs.2,56,686/-



Loss of amenities	Rs.1,00,000/-	Rs.2,00,000/-	(+) Rs.1,00,000/-
Loss of marriage prospects	Nil	Rs.2,00,000/-	(+) Rs.2,00,000/-
Disfigurement	Nil	Rs.1,00,000/-	(+) Rs.1,00,000/-
Mental and physical shock	Nil	Rs.1,00,000/-	(+) Rs.1,00,000/-
Attendant charges	Rs.18,000/-	Rs.30,000/-	(+) Rs.12,000/-
Conveyance	Rs.10,000/-	Rs.20,000/-	(+) Rs.10,000/-
Special Diet	Rs.10,000/-	Rs.20,000/-	(+) Rs.10,000/-
Total	Rs.3,81,000/-	Rs.11,69,686/-	(+) Rs.7,88,686/-

32. In sum, the award of the Tribunal is enhanced by Rs.7,88,686/-. The Insurance Company is directed to deposit the same, alongwith up-to-date interest at the rate of 7.5% per annum from the date of filing of the claim petition, as awarded by the Tribunal, within eight weeks from today.

33. I am informed that the original amount awarded by the Tribunal has already been satisfied. The amount to be deposited in terms of this judgment, be released to the appellant forthwith.

34. The appeal is accordingly disposed of.

PRATEEK JALAN, J

DECEMBER 16, 2025

'pv/KA'