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

Decided on 17.12.2025

+ MAC.APP. 808/2013

THE ORIENTAL INSURANCE CO LTDAppellant

Through: Mr. A.K. Soni, Advocate.

versus

KULDEEP KATYAL & ORSRespondents

Through: Mr. Vineet Mehta, Mr. Jogesh
Gupta, Mr. Prakhar Sharma, Mr.
Piyush Bansal, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J (ORAL)

1. The appellant – Oriental Insurance Company Limited [“Insurance Company”] assails an award of the Motor Accident Claims Tribunal [“Tribunal”] dated 05.07.2013 in MACT No. 984/2006, by which the Tribunal has awarded a sum of Rs.12,97,160/-, alongwith interest at the rate of 7.5% per annum, in favour of respondent No. 1 – claimant.

A. FACTS

2. The proceedings before the Tribunal arose out of a road accident which took place on 13.03.2006 at about 10:00 PM. The claimant was driving a motorcycle bearing registration No. DL-6SV-5516, near Chitra Vihar, Main Road, Delhi. The case of the claimant was that the motorcycle was hit by a truck bearing registration No. DL-1G-8003, which was been driven in a rash and negligent manner. As a result, both



the claimant and his pillion rider fell in front of the truck, and the claimant's right arm was crushed under the front wheel of the truck. At the time of the accident, the claimant was 20 years of age.

3. The claimant was first treated at Aditya Verma Medical Centre, Chitra Vihar, Delhi, and thereafter at Shri Ganga Ram Hospital, Delhi. He suffered permanent disability in respect of which a certificate dated 19.05.2011 was issued by Lal Bahadur Shastri Hospital, Khichripur, Delhi [Exhibit PW-1/19]. The certificate shows that he was assessed with permanent physical impairment of 21% in relation to his right upper limb. The condition has been characterised as “*not likely to improve*”.

4. An FIR was registered against the driver of the truck being FIR No. 202/2006 at P.S. Preet Vihar, under Sections 279 and 337 of the Indian Penal Code, 1860. A chargesheet was also filed.

B. IMPUGNED AWARD

5. The claimant instituted proceedings before the Tribunal seeking compensation, in which the driver, owner, and insurer of the truck were arrayed as respondent Nos. 1, 2 and 3 respectively.

6. In the compensation claim, the Tribunal, by the impugned award, returned a finding of rash and negligent driving against the driver of the truck, and proceeded to assess compensation payable to the claimant under the following heads:

Sr. No.	Heads	Amount (Rs.)
1.	Medical expenses	Rs.81,098/-
2.	Loss of income during treatment	Rs. 1,24,842/-
3.	Loss of future income	Rs.10,11,220/-
4.	Special diet	Rs.15,000/-
5.	Conveyance	Rs.15,000/-



6.	Attendant charges	Rs.15,000/-
7.	Pain and suffering	Rs.35,000/-
Total		Rs.12,97,160/-

C. SUBMISSIONS

7. The present appeal by the Insurance Company concerns the quantum of compensation. I have heard Mr. A.K. Soni, learned counsel for the Insurance Company, and Mr. Vineet Mehta, learned counsel for the claimant.

8. The principal ground articulated by Mr. Soni is that the Tribunal has proceeded on an erroneous basis as to the income of the claimant at the time of the accident, by considering an income tax return filed by him for the assessment year 2012-13 [Exhibit PW-1/42], whereas the accident occurred on 13.03.2006, when the claimant was a student. It is Mr. Soni's contention that this inflated figure has resulted in an erroneous computation of six months' income for the period of treatment, and also an inflation of the loss of future income to which the claimant was entitled.

9. As far as loss of future income is concerned, Mr. Soni also submits that future prospects have been granted at the rate of 50%, whereas the applicable rate of future prospects, in terms of the judgment of the Supreme Court in *National Insurance Company Ltd. v. Pranay Sethi*¹, should have been 40%.

10. Mr. Mehta does not dispute that the Tribunal's analysis, based upon the income tax return of the claimant for the assessment year 2012-13, is in error. However, he submits that at the time of the accident, the



claimant was pursuing a professional course [Bachelor in Physiotherapy], which he had commenced in the year 2004. The accident took place while he was in his second year of the 4-1/2 degree course. It is submitted that for students undergoing professional courses, the level of income is required to be adjusted to reflect the likely future income which they would have earned in their profession. Mr. Mehta draws my attention to the income tax return filed by the claimant in the assessment year 2011-12, which was also exhibited as PW-1/12, and submits that this was, in fact, the income of the claimant in his very first year of professional practice.

11. Mr. Mehta also contends that the Tribunal's award on quantum may be adjusted with respect to the assessment of functional disability, as the claimant, having a permanent disability in his upper limb, is significantly impaired in the discharge of his functions as a Physiotherapist. He also seeks some enhancement of the non-pecuniary damages granted by the Tribunal towards pain and suffering and loss of amenities.

D. QUANTUM OF INCOME

12. The first question which calls for consideration is the quantum of income which should have been taken into account while computing the compensation payable to the claimant, for loss of income during the period of treatment, as well as future income.

13. The Tribunal's analysis in this regard considers his income as Rs.2,49,684/- per annum, based upon his income tax return for Assessment Year 2012-13, corresponding to Financial Year 2011-12. The

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



fact that this income has erroneously been taken into account, as it pertains to a period long after the date of the accident, is not seriously disputed.

14. The next question is with respect to the determination of the actual income which ought to have been considered.

15. The general principle, in the case of a student, is to consider the income on the basis of minimum wages. The claimant having already matriculated at the time of the accident, the minimum wages, if that is the yardstick, would be those applicable to a skilled worker. However, the undisputed factual position is that the claimant was, in fact, engaged in a professional course. In such cases, the Court has consistently held that the application of minimum wages is insufficient. Reference in this connection may be made to the judgment of this Court in *Raj Bala v. Sumit Dahiya & Ors.*², wherein this Court has cited several earlier judgments to this effect.

16. I have considered the possibility of remand to the Tribunal for a proper assessment on this aspect. However, having regard to the fact that the accident occurred almost 20 years ago, learned counsel for the parties have assisted me in arriving at a determination on the basis of the material on record, if possible.

17. Fortunately, the evidence in the present case includes the claimant's income tax return for the first year of his professional practice, which has been referred to above. After completion of the academic part of his degree, the claimant undertook an internship from 17.07.2009 to 16.01.2010 at Lal Bahadur Shastri Hospital, Khichripur, Delhi. The



internship certificate dated 28.01.2010, was exhibited before the Tribunal as Exhibit PW-1/15. He then commenced practice as a Physiotherapist, and his income tax return for the Assessment Year 2011-12 [corresponding to Financial Year 2010-11] was also produced before the Tribunal [Exhibit PW-1/12]. The Tribunal has unfortunately ignored this evidence, holding that no evidence, except for the year 2012-13, was placed on record. In fact, it is the income tax return for the assessment year 2011-12 which would provide a far more proximate and realistic idea of the claimant's potential earning capacity upon graduation. The said income tax return reflects total income of Rs.2,00,020/- in Financial Year 2010-11.

18. The claimant, who was examined as PW-1, also gave evidence with regard to his post-qualification income in his affidavit of evidence. He was cross-examined by learned counsel for the Insurance Company, in which the income tax return was not challenged at all. In fact, it was suggested that he had not suffered any loss of income due to the accident, which he denied. In the course of cross-examination, he reiterated that he was running his own physiotherapy clinic and filing income tax returns as on the date of cross-examination also.

19. Having regard to his evidence, which is stated above, pertaining to the first year of the claimant's professional practice, I am of the view that his annual income ought to have been taken as Rs.2,00,020/-. The income tax return also reflects a tax liability of Rs.1,650/-, which is required to be deducted from his total income, reflecting an annual income of Rs.1,98,370/-.

² 2018 SCC OnLine Del 12086.



E. LOSS OF INCOME DURING TREATMENT

20. The Tribunal has granted the claimant loss of income for six months during the period of treatment. However, as the claimant was admittedly a student during this entire period, such compensation is unjustified, and is accordingly set aside.

F. ASSESSMENT OF FUNCTIONAL DISABILITY

21. On the question of functional disability, I am of the view that Mr. Mehta's submission deserves consideration. The judgment of the Supreme Court in *Raj Kumar v. Ajay Kumar and Anr.*³ clearly prescribes that in injury cases, the Court is required to assess the impact of permanent disability upon the earning capacity of an injured claimant, having regard both to the nature and extent of the injuries and to the vocation of the claimant.

22. As far as the nature of the injuries in the present case is concerned, the disability certificate, as noted, states that the claimant has suffered 21% permanent disability in his right upper limb. The Chief Medical Officer of Lal Bahadur Shastri Hospital was also summoned to give evidence before the Tribunal as PW-2. His evidence was that the claimant had suffered grade – II open fracture of the right humerus with radial nerve palsy, and biceps and triceps rupture. In cross-examination, he was only asked to explain the various elements which went into the assessment of permanent disability.

23. The claimant's profession, as a physiotherapist, is evidently dependent upon the use of his own physical faculties. For a physiotherapist to have such limitation in use of one of his arms is, in my



view, a significant impairment in the conduct of his profession. Having regard to the evidence, the nature of his disability, and to his profession, I am of the view that the functional disability ought to be enhanced from 15%, as granted by the Tribunal, to 20%.

G. FUTURE PROSPECTS

24. The Tribunal has awarded loss of future income, taking enhancement for future prospects at the rate of 50%. This is inconsistent with the judgment in *Pranay Sethi*⁴. For a self-employed person under the age of 40, the applicable rate is 40%. Future prospects will, therefore, be awarded at the rate of 40%.

H. ASSESSMENT OF COMPENSATION FOR LOSS OF FUTURE INCOME

25. In view of the above, for the purpose of computing future loss of income, the claimant's annual income will be considered as Rs. 1,98,370/-, enhanced by 40% for the future prospects, and functional disability shall be assessed at 20%. It is undisputed that the applicable multiplier in the present case is 18.

26. The loss of future income is, therefore, recomputed as follows:

Sr. No.	Heads	Awarded by this Court
1.	Annual income [after deduction of tax]	Rs.1,98,370/-
2.	Addition towards future prospects [40% of 1,98,370]	Rs.79,348/-
3.	Annual income after addition of future prospects [1,98,370 + 79,348]	Rs.2,77,718/-
4.	Loss of future income after accounting for functional disability [2,77,718 x 20%]	Rs.55,543.60/- per annum

³ (2011) 1 SCC 343.

⁴ Paragraph 59.4.



5.	Applicable multiplier	18
Total loss of future income [55,543.60 x 18]		Rs.9,99,784.8/- (Rounded off to Rs.9,99,785/-)

I. NON-PECUNIARY DAMAGES

27. This brings me to Mr. Mehta's submission with regard to compensation for pain and suffering and loss of amenities. As far as these aspects are concerned, the Tribunal has awarded Rs.35,000/- towards pain and suffering, and granted no compensation whatsoever towards loss of amenities.

28. Having regard to the medical evidence and the fact that the claimant was only 20 years of age at the time of the accident, with a long life ahead of him, I am of the view that the damages for pain and suffering are liable to be enhanced to Rs.75,000/-.

29. As discussed above, the physical disability suffered by him constitutes a significant impairment in the use of one limb. The Tribunal erred in failing to award any amounts towards loss of amenities. I am of the view that an award of Rs.75,000/- on this aspect is also justified.

J. CONCLUSION

30. As a consequence of the above discussion, the total compensation payable to the claimant is modified as follows:

Sr. No.	Head	Awarded by the Tribunal	Awarded by this Court	Difference
1.	Medical expenses	Rs.81,098/-	Rs.81,098/-	Nil
2.	Loss of income during treatment	Rs.1,24,842/-	Deleted	(-) Rs.1,24,842/-
3.	Loss of future income	Rs.10,11,220/-	Rs.9,99,785/-	(-) Rs.11,435/-



4.	Special diet, conveyance, attendant charges	Rs.45,000/-	Rs.45,000/-	Nil
5.	Pain and suffering	Rs.35,000/-	Rs.75,000/-	(+) Rs.40,000/-
6.	Loss of amenities	Nil	Rs.75,000/-	(+) Rs.75,000/-
Total		Rs.12,97,160/-	Rs.12,75,883/-	(-) Rs.21,277/-

31. The impugned award is thus reduced by Rs.21,277/-, i.e. from Rs.12,97,160/- to Rs.12,75,883/-.

32. By order dated 30.08.2013, the Insurance Company was directed to deposit the awarded amount, alongwith up-to-date interest, and 60% was released to the claimant. The Tribunal had directed some part of the compensation to be kept in a fixed deposit for a period of five years, which has now lapsed.

33. Having regard to these facts, the following directions are passed with regard to the amount lying in deposit:

- a. Rs.21,277/-, alongwith proportionate accrued interest, be released to the Insurance Company.
- b. The balance amount, inclusive of accrued interest, be released to the claimant.

34. The appeal is disposed of with the aforesaid directions.

35. The statutory deposit, if any, be refunded to the Insurance Company.

PRATEEK JALAN, J

DECEMBER 17, 2025

'Bhupi/KA'