



§ 4 & 5

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

% **Decided on: 19.11.2025**

+ MAC.APP. 966/2015, CM APPLs. 30458/2015 & 30460/2015
ORIENTAL INSURANCE CO. LTD.Appellant

versus

RAVI JAIN & ORS.Respondents

+ MAC.APP. 395/2016
RAVI JAINAppellant

versus

THE ORIENTAL INSURANCE CO LTD & ORSRespondents

Appearances:- Ms. Shruti Jain on behalf of Mr. Pankaj Seth, Advocate,
for Insurance Company in Item Nos. 4 & 5.
Mr. Navneet Goyal, Advocate, for Claimant in Item
Nos. 4 & 5.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. These are cross-appeals filed by the claimant, Mr. Ravi Jain, and Oriental Insurance Co. Ltd. [“the Insurance Company”], arising from an award dated 28.04.2015 passed by the Motor Accident Claims Tribunal [“the Tribunal”] in MACT No. 1077/2010, whereby a sum of Rs. 5,62,806/-, alongwith interest at the rate of 9% per annum, was granted in favour of the claimant. The Insurance Company also challenges a subsequent order dated 08.10.2015, whereby the Tribunal rejected its application seeking reduction of the awarded amount. Both appeals are confined to the issue of the quantum of compensation.

2. By way of the impugned award, the Insurance Company was given liberty to recover the award from the driver and owner of the insured vehicle



[Bus bearing registration No. DL-1-PB-0112] [“the offending vehicle”], jointly and severally. The driver and owner of the offending vehicle have been impleaded as respondents Nos. 2 and 3 respectively, in both appeals. They have also been duly served in both appeals by way of publication, as recorded in order dated 16.11.2017 in MAC.APP. 395/2016, and order dated 15.11.2018 in MAC.APP. 966/2015, but nevertheless have not entered appearance.

3. The facts, as recorded in the judgment of the Tribunal, are that, on 01.06.2010, while the claimant was boarding the offending vehicle, it suddenly moved, as a result of which the claimant fell and sustained injuries.

4. I have heard Ms. Shruti Jain, learned counsel for the Insurance Company, and Mr. Navneet Goyal, learned counsel for the claimant.

5. The ground urged on behalf of the Insurance Company is that the Tribunal has failed to consider a reimbursement on account of a mediclaim policy availed by the claimant, while assessing the compensation for actual medical expenses incurred.

6. The claimant, on the other hand, submits that the Tribunal has failed to award any amount towards future loss of income, including for the post-retirement period. A claim is also raised for enhancement of the non-pecuniary awards on the ground of pain and suffering and loss of amenities, having regard to the nature of injury suffered by the claimant.

7. The nature of the injuries is not in dispute. The treating doctor [PW-2] gave the following evidence before the Tribunal, against which he was not cross-examined:

*“PW-2 Dr. Ajay R. Sharma, s/o. Sh. Roshan Lai Sharma, Consultant Orthopedic Surgeon, Saroj Hospital, Delhi, aged about 48 years, Delhi.
ON SA*



I have brought the summoned record through my record clerk who has accompanied me. I have treated the patient Sh. Naveen Jain with fracture penis with dislocation with visceral injuries abdomen with fracture ribs multiple with liver injury with pyothorax with hypo volumic shock with hyper pyrexia with bed sores with pus discharge from anus. He was admitted in our hospital on 01.06.2010 and was discharged on 09.06.2010 during the first admission and was readmitted again on 29.06.2010 and discharged on 07.07.2010. This patient had orthopedic injury, injury of the abdomen and chest with hypo volumic shock. These patients are very serious and are high risk cases. To manage such patients team of doctors of orthopedicians, general surgeons and critical care anesthetist are required visiting them daily to manage the things like fall in BP, Bleeding, Soakage etc. I place on record original treatment paper (entire file) pertaining to treatment and bills paid by injured. Initially he was treated by Dr.P.K. Gambhir, Dr. Rawat and their team. Subsequently he was treated by me and my team. Collectively the record is marked as Ex.PW2/C (colly). We have retained the photocopy of entire record for future reference, if any.”

8. The claimant has been assessed as having 33% locomotor disability in the pelvic region, with post-pelvic-fracture stiffness in both hips and an unstable gait.

9. The Tribunal returned a finding of rash and negligent driving against the Driver of the offending vehicle, and awarded the following compensation:

S.No.	Heads	Awarded by the Tribunal
1	Pain and suffering	Rs. 55,000/-
2	Medical expenses	Rs. 2,59,806/-
3	Future expenses	Rs. 50,000/-
4	Loss of income	Rs. 43,000/-
5	Loss of enjoyment of amenities of life	Rs. 1,25,000/-
6	Special diet, attendant and conveyance	Rs. 30,000/-
Total		Rs. 5,62,806/-



10. The heads under which the award has been challenged, are taken up in turn.

A. MEDICAL EXPENSES

11. With regard to the quantum of medical expenses, the claimant relied upon original medical bills, exhibited by him, amounting to Rs.3,17,325.90/-. After deducting claims for attendant charges and dressing charges, which were unsupported by bills, the Tribunal awarded a sum of Rs. 2,59,806/- towards reimbursement of medical bills.

12. The evidence on record shows that out of the aforesaid amount, Rs. 1,61,748/- was on account of a bill raised by Saroj Hospital & Heart Institute, where the claimant was admitted from 01.06.2010 until 09.06.2010. However, it is the accepted position, and also apparent from the face of the bill itself that, out of this amount, Rs. 1,25,000/- was recovered by the claimant under a mediclaim policy taken by him. He, thus, incurred actual expenditure of only Rs. 36,748/-, as against the bill of Rs. 1,61,748/-.

13. Mr. Goyal accepts that, in light of the judgment of this Court in *Jaswant Kaur Sethi v. Tamal Das & Ors.*¹, which relied on the Supreme Court's decision in *United India Assurance Co. Ltd. v. Patricia Jean Mahajan*², the claimant cannot receive compensation for medical expenses which were reimbursed under a mediclaim policy. Accordingly, the amount awarded towards medical bills is liable to be reduced by Rs. 1,25,000/-.

B. LOSS OF INCOME AND FUTURE INCOME

14. As far as loss of income for the period of treatment is concerned, the Tribunal awarded a sum of Rs. 43,000/- to the claimant, relying upon his

¹ MAC.APP. 352/2006, decided on 26.10.2009.

² (2002) 6 SCC 281.



income tax return for the year 2010-11, which showed an annual income of Rs. 1,71,887/-. The Tribunal accepted that in view of the nature of injuries suffered by the claimant, “*he would not have been able to work for about 3-4 months*”.

15. On this claim, the claimant’s evidence by way of an affidavit records as follows:

*“3. I state that in this accident I sustained fractures on pelvic bone and ribs besides blunt injuries on my body. Immediately after accident I was taken to Saroj Hospital where I was admitted in ICU of the hospital. I remained admit in Saroj Hospital from 1.6.2010 to 9.6.2010. During this period I was operated and plates-screws were affixed on the pelvic bone front side. At the time of discharge I was advised to get the wounds dressed. Thereafter I was again admitted in Saroj Hospital from 29.6.2010 to 7.7.2010 and during this period I was further treated as the pus was coming out of the wounds. I was discharged with advice to continue treatment in OPD of the hospital. Dressings thereafter continued on my right side groin and on anus. **My treatment continued for about four months. I remained bed ridden for about 3 months since the accident and was dependent on others.** Due to this accident I have become disabled permanently due to injuries sustained. Even today I am unable to run and walk fast. I still feel pain and stiffness in back bone.”³*

16. The claimant was cross-examined by learned counsel for the Insurance Company, but there was no cross-examination on the length of treatment.

17. In these circumstances, particularly having regard to the Tribunal’s duty to award just and reasonable compensation without being unduly governed by the strict rules of pleadings and evidence, I am of the view that 4 months loss of income ought to have been awarded.

18. As his income tax return for the year 2010-11 showed income of Rs. 1,71,887/-, the award on this account is therefore, enhanced to Rs. 57,295/-,

³ Emphasis supplied.



being the average income for four months.

19. However, as far as future income is concerned, the Tribunal has found that the claimant's income in the years following the accident, in fact, increased, and has therefore rightly not granted any compensation for this period.

20. I am also unable to accept Mr. Goyal's submission with regard to grant of post-retirement income. In the present case, the claimant was admittedly running his own business of a *Kirana* shop and service and repair of inverters. Mr. Goyal relied upon a judgment of a coordinate Bench of this Court in *Rajbir Singh v. National Insurance Co. Ltd. & Ors.*⁴. However, the said judgment deals with a case of a government employee with a fixed retirement age. It is in this context, that the Court has held that the claimant therein ought to have been compensated for the likely loss of earning capacity, in taking up a post-retirement job. For a person in the claimant's position, in contrast, the question of retirement and compensation for post-retirement loss of income does not arise. The Tribunal has, therefore, correctly not awarded any compensation towards post-retirement income.

C. NON-PECUNIARY DAMAGES

21. Mr. Goyal's final submission was that the Tribunal has not awarded adequate non-pecuniary damages, having regard to the nature of the injuries suffered by him.

22. I am of the view that the evidence tendered by the claimant, as well as his doctor, both of which were unshaken in cross-examination, justify some enhancement in the non-pecuniary component of compensation. The Tribunal assessed loss of enjoyment and amenities at Rs. 1,25,000/-, and



pain and suffering at Rs. 55,000/-. However, considering the finding of two rounds of hospitalization in intensive care, followed by a future surgery for removal of plates and permanent disability, as well as the nature of the claimant's wounds, including evidence with regard to discharge of pus from his rectum, the compensation for loss of amenities and pain and suffering, in the aforesaid circumstances, require to be enhanced, to Rs. 1,50,000/- on each of these heads.

Conclusion:

23. For the aforesaid reasons, the impugned award of the Tribunal is modified to the following extent:

S.No	Heads	Awarded by the Tribunal	Awarded by the Court	Enhancement/Reduction
1	Medical expenses	Rs.2,59,806/-	Rs.1,34,806/-	- Rs.1,25,000/-
2	Loss of income	Rs.43,000/-	Rs.57,295/-	+ Rs.14,295/-
3	Loss of enjoyment and amenities	Rs.1,25,000/-	Rs.1,50,000/-	+ Rs.25,000/-
4	Pain and suffering	Rs.55,000/-	Rs.1,50,000/-	+ Rs.95,000/-
Total		Rs.4,82,806/-	Rs.4,92,101/-	Rs.9,295/-

24. In sum, the award of the Tribunal is modified to Rs. 5,72,101/-, i.e. an enhancement of Rs.9,295/-. This will carry interest at the rate of 9% per annum, as granted by the Tribunal.

25. In terms of order dated 11.12.2015, the awarded amount was deposited with the Registrar General of this Court, and 50% was released to the claimant in accordance with the impugned award. The balance amount

⁴ MAC.APP. 19/2020, decided on 05.11.2024.



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be deposited with the Registrar General of this Court within eight weeks from today. The awarded amount be disbursed to the claimant in accordance with the directions contained in the award.

26. It is made clear that the Insurance Company reserves the right to recover the awarded amount from respondents Nos. 2 and 3 as directed by the Tribunal.

27. With the aforesaid directions, the appeals, alongwith pending applications, stand disposed of.

PRATEEK JALAN, J

NOVEMBER 19, 2025/Dy/AD/