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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Date of decision: 07<sup>th</sup> August 2026*

# CNR No. DLHC010447642025

+ MAC.APP. 438/2025

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.....Appellant

Through: Mr. Varun Sarin, Ms. Parul Dutta,  
Mr. Shantanu Sharma, Advocates.

versus

SHAILENDER KUMAR &amp; ORS.

.....Respondents

Through: Mr. Rajeev M. Roy, Advocate for  
Respondent no.3/ Insurance  
Company.**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed seeking enhancement of compensation awarded *vide* judgment dated 26<sup>th</sup> March 2025, passed by the Motor Accident Claims Tribunal, South District, Saket Courts, Delhi [*MACT/Tribunal*] in *MACT No.70/2021*, whereby compensation of Rs.21,02,327/- along with interest @ 9% per annum, was awarded.
2. The said compensation was awarded in relation to an accident which occurred on 28<sup>th</sup> September 2020, when appellant/injured, while riding his motorcycle, was hit by an auto, resulting in grievous injuries and 60% *permanent visual disability*.
3. *Mr. Varun Sarin*, counsel for appellant/injured, raises an objection to



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the MACT estimating the functional disability of appellant/injured at 40%, on the ground that appellant/injured was a private driver earning Rs.30,000/- per month, and was aged 31 years at the time of the accident.

4. He relies upon the decisions in ***Gurudev Singh v. Reliance General Insurance Company Ltd & Ors.***, Civil Appeal No. 3399/2023, ***Jakir Hussein v. Sabir***, (2015) 7 SCC 252, and ***Sumer v. National Ins Co. Ltd.***, 2023 SCC OnLine Del 5533, to contend that the functional disability ought to have been taken as 100%.

5. Further, it is contended that the wages of appellant/injured ought to have been considered on the basis of those applicable to *skilled* worker, that is Rs.18,563/-, instead of those applicable to an *unskilled* worker, considering that his driving licence was on record, and there was no material to rebut his testimony that he was working as a driver.

6. He additionally seeks enhancement of compensation on the account of attendant charges, which he contends, ought to have been granted as per the principles laid down by Supreme Court in ***Kajal v. Jagdish Chand***, (2020) 4 SCC 413.

7. ***Mr. Rajeev M. Roy***, counsel for Insurance Company, raises the issue that not only was the appellant/injured not wearing a helmet at the time of the accident but had also consumed alcohol, as has been stated in the MLC. Though they haven't filed a cross appeal in this matter, ***Mr. Roy***, counsel for Insurance Company, states that the Court ought to take the aforesaid aspects into account in order to arrive at a '*just and reasonable compensation*'.

8. The judgments which have been cited by ***Mr. Sarin***, counsel for appellant/injured, need to be appreciated, and are as under:

i. In ***Gurudev Singh*** (*supra*), the MACT assessed the injured's



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functional disability at 100%, despite the disability certificate certifying 30% permanent visual impairment in relation to the left eye, considering that the injured was a professional driver, and was driving a heavy goods vehicle. The High Court reduced the same to 30%; the Supreme Court, however, reinstated the assessment of functional disability at 100%.

- ii. In ***Sumer*** (*supra*), a Single Judge of this Court, while taking into account the fact that injured had suffered 50% permanent disability in relation to left upper and left lower limbs, along with 20% sensory loss to the left upper and left lower limb, noted that his combined physical (motor) and sensory disability was assessed at 59% in relation to the whole body. Relying upon the principle laid down by the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, in that where the claimant is a driver and suffers an impairment or a disability, permanent disability of injured should be taken as a *loss of earning capacity* at 100%. Moreover, under the head of *attendant charges*, this Court awarded consolidated compensation of Rs.2,00,000/-, noting that even though he did not require a permanent attendant, he would, at some time, require some assistance on a regular basis.
  - iii. In ***Jakir Hussein*** (*supra*), injured had suffered 30% permanent disability, and the functional disability was assessed as 100% having regard to the opinion of the Supreme Court in ***Raj Kumar*** (*supra*). Further, a sum of Rs.1,50,000/- was awarded towards *loss of amenities* and *pain and suffering*.
9. As regards the issue of appellant/injured being a professional driver, Mr. Varun Sarin, counsel for appellant/injured, points out to the MACT's



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finding in this regard, particularly *paragraph 40*, wherein it is stated that appellant/injured was working as a private driver at the time of the accident, and was earning Rs.30,000/- per month. However, appellant/injured failed to lead any evidence in this regard, except for placing his driving license on record.

10. In the absence of any proof, minimum wages of an *unskilled* worker had been taken into consideration. *Mr. Sarin*, counsel for appellant/injured, points out that during his cross-examination, appellant/injured yet again stated that he was working as a driver on daily wage basis; however, he admitted that he had not placed anything on record to confirm the fact that he was earning Rs.30,000/- per month.

11. As regards the plea of *Mr. Roy*, counsel for Insurance Company, that appellant/injured was intoxicated at the time of the accident, it is significant to consider the testimony of *Sh. Rohit Gupta, R2W3*, who instead stated that the driver of the alleged offending vehicle/auto was in an inebriated condition. During his cross examination, **R2W3** clearly stated that the auto driver [*driver of offending vehicle*] was fully drunk and that the accident had taken place due to his fault. He further stated that driver of the auto came out of the auto after the accident, started abusing him, and was smelling “*very badly of alcohol*”. He further stated that there was no smell of alcohol coming from the motorcyclist. He stated that he did not remember whether the motorcyclist was wearing a helmet or not. Upon being confronted, he denied the suggestion that driver of the alleged offending vehicle was not under the influence of alcohol. He stated, yet again, that driver of offending vehicle was heavily drunk when he came out of the offending vehicle, and was not even able to walk properly.

12. In these circumstances, and in the absence of a breath test being



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conducted on appellant/injured, arriving at a conclusion that he was intoxicated to such an extent that it contributed to the accident and, therefore, the same would serve as an impediment in awarding him compensation, is not tenable. Even otherwise, the Insurance Company has chosen to not file an appeal wherein these aspects could have been considered much more specifically.

13. Accordingly, plea of appellant/injured regarding functional disability has to be considered. Considering the evidence on record, it cannot be ascertained whether appellant/injured was a professional driver or was, at all, engaged as a private driver with any individual, company or entity. It is only a presumption being drawn on the basis of the testimony he had provided, and the Insurance Company not being able to rebut the same. Merely having a driving license certainly does not prove that appellant/injured was a professional driver.

14. The assessment of functional disability at 100% in ***Gurudev Singh*** (*supra*), is on account of the fact that the claimant was a professional driver, and was driving a truck, which is clearly distinguishable from the present case. However, considering that appellant/injured has suffered *60% permanent visual disability*, he would certainly face a huge impediment in carrying out any activity, or even getting a desirable vocation. Accordingly, the functional disability shall be assessed at '**75%**'.

15. As regards the minimum wages, considering yet again that there is nothing on record to establish that appellant/injured was working as a professional driver, income on the basis of minimum wages of an *unskilled* worker, ought to be sustained. However, in the opinion of this Court, the minimum wages of a *matriculate* may instead be taken into consideration, since the evidence of him having passed Class 10<sup>th</sup> is available on record.



16. Accordingly, income of appellant/injured shall be considered in terms of the minimum wages of a *matriculate*, at Rs.18,563/- per month.

17. An amount of Rs.70,000/- had been awarded by the MACT under the head of *special diet, conveyance and attendant charges*. The MACT observed that nothing had been placed on record with respect to the same; however, considering his medical condition, it proceeded to award the aforesaid amount.

18. *Mr. Roy*, counsel for Insurance Company, further pointed out to *paragraph 15* of **Raj Kumar** (*supra*), to contend that only nominal compensation can be awarded under non-pecuniary heads, when compensation has been awarded by treating the loss of future earning capacity as 100% or even anything more than 50%. For ease of reference, the relevant portion from **Raj Kumar** (*supra*) has been reproduced hereinbelow:

“15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

(emphasis added)

19. However, considering that this is a case of certified 60% *permanent visual disability*, which would possibly be even more on a practical level, compensation towards *conveyance and special diet* shall be increased to Rs.1,50,000/-. As far as the head of *pain and suffering and enjoyment of life*, as well as *loss of amenities* is concerned, the same has already been granted at Rs.1,50,000/- and Rs.1,00,000/- respectively.



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20. As far as *attendant charges* are concerned, consolidated compensation of Rs. 2,00,000/- had been awarded in *Sumer (supra)*. Accordingly, Rs.2,00,000/- shall be awarded towards *attendant charges*.
21. In view of the above, appeal is allowed.
22. Accordingly, the revised compensation shall be as under:

| S. no                     | Heads of Compensation                                | Awarded by Tribunal    | Awarded by the Court |
|---------------------------|------------------------------------------------------|------------------------|----------------------|
| <b>Pecuniary Loss</b>     |                                                      |                        |                      |
| 1.                        | Compensation towards medical bills (A)               | Rs. 13,716/-           | Rs. 13,716/-         |
| 2.                        | Expenditure on conveyance and special diet (B)       | Rs. 70,000/-           | Rs.1,50,000/-        |
| 3.                        | Attendant charges (C)                                |                        | Rs. 2,00,000/-       |
| 4.                        | Income of injured per month (D)                      | Rs. 15,310/-           | Rs.18,563/-          |
| 5.                        | Loss of Income (E) (for 8 months)                    | Rs. 1,22,480/-         | Rs. 1,48,504/-       |
| 6.                        | Future Prospects (F) @40%                            | Rs. 21,434/-           | Rs. 25,988.2/-       |
| 7.                        | Functional disability (G)                            | 40%                    | 75%                  |
| 8.                        | Multiplier (H)                                       | 16                     | 16                   |
| 9.                        | Loss of future earning capacity (I) [F X 12 X G X H] | Rs. 16,46,131/-        | Rs. 37,42,301/-      |
| <b>Non-pecuniary loss</b> |                                                      |                        |                      |
| 10.                       | Pain and suffering/enjoyment of life (J)             | Rs. 1,50,000/-         | Rs. 1,50,000/-       |
| 11.                       | Loss of amenities (K)                                | Rs. 1,00,000/-         | Rs. 1,00,000/-       |
| 12.                       | Total Compensation [A + B + C+ E+ I + J+ K]          | Rs. 21,02,281/-        | Rs. 45,04,521/-      |
| 13.                       | <b>Enhanced compensation</b>                         | <b>Rs. 24,02,240/-</b> |                      |
| 14.                       | Interest                                             | 9%                     | 9%                   |



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**Directions**

23. For aforesaid reasons, compensation has been enhanced by **Rs. 24,02,240/-** (*‘enhanced amount’*).

24. It is therefore directed that enhanced amount along with 9% interest per annum be deposited before the MACT within a period of *four weeks*. It is directed that a lump sum amount of *Rs. 2,00,000/-* shall be released in favour of the appellant/injured from the deposit of enhanced amount within a period of *two weeks* thereafter. Remaining enhanced amount, along with accrued interest till date, shall be kept in Fixed Deposit Receipts [*‘FDRs’*] of *Rs. 25,000/-* each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of appellant/injured. The amount of FDRs on maturity would be released to the Savings Bank Account of appellant/injured upon due verification.

25. The originally awarded amount along with accrued interest shall continue to be released in favour of appellant/injured in terms of the directions passed by the MACT *vide* impugned award dated 7<sup>th</sup> May 2018.

26. Appeal is disposed of in the above terms.

27. Pending applications, if any, are rendered infructuous.

28. Copy of this judgment be sent to the concerned MACT/bank for information and compliance.

29. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)  
JUDGE**

**AUGUST 7, 2026/ak/ya**