



2026:DHC:5616



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 10th July 2026**+ **MAC.APP. 555/2023 & CM APPL. 64435/2023****SIB GENERAL INSURANCE CO LTD** Appellant

Through: Mr. Sameer Nandwani, Advocate.

versus

SMT KANCHAN BASNET & ORS. RespondentThrough: Ms. Pallavi Tripathi, Adv with
Mr. Atul Mishra, Advocate.**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed by Insurance Company assailing the award dated 13th September 2023 passed by the Motor Accidents Claims Tribunal ('*MACT/Tribunal*'), Tis Hazari Courts, New Delhi, in *MACT No. 647/2018*, whereby compensation of Rs. 13,24,638/- along with interest @8% per annum was awarded for an accident which occurred on 04th June 2017, resulting in serious injuries to the claimant.
2. *Mr. Sameer Nandwani*, counsel for Insurance Company, challenges the award on the ground of determination of functional disability at 15%, as also the future loss of income which has been granted. Further, interest rate awarded at 8% has also been challenged.
3. On perusal of the Award, it is noted that the claimant had suffered 15% permanent physical impairment with relation to her left lower limb,

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which had compromised her earning capacity for the future.

4. The claimant used to run a *boutique* and, therefore, the functional disability was taken at 15% and applied to the annual income in order to calculate the loss of future earnings.

5. Reliance in this regard can be placed on ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, the Supreme Court held that the Tribunal must assess not merely the extent of permanent disability but its actual impact on the claimant's earning capacity, which may differ from the medical percentage of disability. This requires evaluating the claimant's pre-accident vocation, the functions affected, and whether livelihood can still be earned despite the disability. The Court emphasised that disability and loss of earning capacity are distinct concepts, except in cases where evidence shows they coincide. Relevant paragraphs are extracted as under:

“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co.



Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head



of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

(emphasis added)

6. Considering the vocation of claimant, the Court does not find anything amiss in assessing the functional disability at 15%. The claimant was admittedly running a *boutique*, which required prolonged standing, movement, interaction with customers, supervision of tailoring and day-to-day management of the establishment. Applying the triple test enunciated in ***Raj Kumar v. Ajay Kumar*** (*supra*), it cannot be said that the claimant became wholly incapable of carrying on her avocation; equally, it cannot be ignored that the permanent disability would impede the efficient discharge of the functions. The disability, therefore, has a direct bearing on her earning capacity, though not to the extent of rendering her completely unemployable.

7. Further, as regards the contention that no compensation towards *future loss of income* should be awarded on the ground that injured's income subsequently increased, as reflected in the ITRs, the same cannot be accepted. Such an increase in income cannot, by itself, be a ground to



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deny compensation towards loss of future earning capacity. The disability suffered by the claimant would inevitably affect her ability to efficiently carry on her work of running the boutique and could render her less competitive in the long run. Even if there is no immediate loss of income, considering the disability incurred, almost certainly there would be a loss of earning in the future.

8. Moreover, the grant of *future prospects*, therefore, also cannot be questioned, considering it has been a standardized parameter enunciated by the Supreme Court in *Sarla Verma v. DTC*, (2009) 6 SCC 121. *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 and, therefore, has been rightly granted at 25% considering the claimant was 44 years of age at the time of the accident

9. The award of interest @ 8% per annum is also just and reasonable and cannot be said to be excessive. Accordingly, the appeal filed by the Insurance Company is not tenable on any of the grounds urged.

10. *Vide* order dated 13th December 2023, this Court directed that subject to the deposit of the entire award amount along with interest before the Tribunal there shall be stay on the enforcement of the impugned award. It was further directed that an amount of *Rs. 10 Lakhs* shall be released in favour of claimant in accordance with schedule of disbursement as prescribed in the impugned award.

11. It is directed that the balance compensation deposited along with accrued interest shall be released to the claimant as per the directions of the Tribunal in the impugned award.

12. Accordingly, the appeal is dismissed. Pending applications are rendered infructuous.



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13. Statutory deposit, if any, shall be refunded to appellate/Insurance Company.
14. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

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