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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 08th July 2026+ MAC.APP. 486/2025

SH DEEPAK KUMAR

.....Appellant

Through: Mr. S.N. Parashar and Mr. Ritik
Singh, Advs.

versus

SH ABHINAY PANDEY & ORS.

.....Respondent

Through: Mr. Sameer Nandwani, Adv. for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENTANISH DAYAL, J (ORAL)

1. This appeal has been filed by the appellant/injured seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, South District, Saket Courts, New Delhi [*MACT/Tribunal*], vide impugned award dated 21st October 2024, passed in *Petition No. 21/22*, whereby compensation of Rs. 13,27,080/- along with interest at the rate of 9% per annum was awarded [hereinafter, '*impugned award*'].

2. The present appeal pertains to an accident which occurred on 01st December 2020, when the injured/appellant was travelling in a TSR; the driver thereof took a sharp turn at a high-speed, causing the TSR to overturn. Consequently, the appellant/injured suffered grievous injuries, and remained under treatment for *eight* months. He was certified as having **40% permanent physical disability** in respect of his *left lower limb*. The disability certificate in



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this regard was issued on 03rd October 2022 and forms a part of the record.

3. *Mr. S.N. Parashar*, counsel for appellant/injured, states that appellant/injured was working as an ‘*electrician*’ and, therefore, his vocation would have been affected as a result of such permanent disability. He further states that, in view of the aforesaid, assessment of functional disability by the MACT at **20%**, by citing a rule that functional disability ought to be taken as *one-half* of the permanent disability, is not sustainable. The MACT has, in *paragraphs 31 to 34* of the impugned award, dealt with the issue of functional disability; however, the observation that “*as a matter of rule half of the disability percentage has to be taken as functional disability, therefore, I take his functional disability as 20%*” proceeds on an erroneous proposition of law. There is no such rule or principle enunciated by any Court.

4. The guiding light on this issue is the decision of the Supreme Court, in ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, which lays down a *triple test*, in the following manner, for assessing functional disability. For ease of reference, the relevant portion from ***Raj Kumar v. Ajay Kumar*** (*supra*), is 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



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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



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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)

In **Raj Kumar v. Ajay Kumar** (*supra*), the Court summarized these principles, which are extracted as under:

“19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

5. Considering the aforesaid principles, and applying them to the facts of the case, plea of appellant/injured that he would have been adversely affected in pursuing his vocation as an ‘electrician’ and, therefore, the functional disability may be taken at **50%**, is accepted.

6. Accordingly, the compensation shall be revised as under:



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S. no	Heads of Compensation	Awarded by tribunal	Awarded by the Court
	Pecuniary Loss		
1.	Compensation towards medical bills (A)	Rs. 78,274/-	Rs. 78,274/-
2.	Expenditure on special diet, conveyance and attendant charges (B)	Rs. 40,000/-	Rs. 40,000/-
3.	Income of injured per month (C)	Rs. 15,492/-	Rs. 15,492/-
4.	Loss of Income (D) [Rs. 15,492/- X 8]	Rs. 1,23,936/-	Rs. 1,23,936/-
5.	Future Prospects (E) 40%	40% [Rs. 6,196]	40% [Rs. 6,196]
6.	Functional disability (E)	20%	50%
7.	Multiplier (F)	17	17
8.	Loss of future income (G) [(C +E) X 12 X E X F]	Rs. 8,84,870/-	Rs. 22,12,176
	Non-pecuniary loss		
9.	Pain and suffering (H)	Rs. 1,00,000/-	Rs. 1,00,000/-
10.	Loss of Amenities of Life (I)	Rs. 1,00,000/-	Rs. 1,00,000/-
11.	Total [A + B + D + G + H + I]	Rs. 13,27,080/-	Rs. 26,54,386
12.	Enhanced compensation	Rs. 13,27,306/-	
13.	Interest	9%	9%

Directions

7. Accordingly, the compensation shall stand enhanced by **Rs.13,27,306/-** [*‘enhanced amount’*].
8. As regards the plea regarding minimum wages of an unskilled worker taken at Rs. 15,492/- per month, Mr. S.N. Parashar, counsel for



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appellant/injured, does not point out any other evidence placed on record, in support of his plea that the appellant/injured was working as an '*electrician*' and earning Rs.25,000/- per month.

9. Accordingly, the determination by the MACT in this regard cannot be faulted with.

10. Enhanced amount along with 9% interest per annum from the date of filing the petition shall be deposited before MACT within a period of *four* weeks. It is directed that a lump sum amount of Rs. 5,00,000/- shall be released to the claimant from the deposit of enhanced amount within a period of two weeks thereafter. Remaining enhanced amount, along with accrued interest, shall be kept in Fixed Deposit Receipts ['**FDRs**'] of Rs. 25,000/- each for periods of 3 month, 6 months, 9 months and so on, in succession as maybe calculated. Interest accruing on said FDRs shall be credited to the designated Savings Bank Account of claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant upon due verification.

11. Accordingly, the appeal stands disposed of.

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

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

(ANISH DAYAL)
JUDGE

JULY 8, 2026/mk/ya