



2025:DHC:3665

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

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Judgment delivered on:13.05.2025

+ **MAC.APP. 64/2025 & CM APPL. 3870/2025, CM APPL. 3871/2025**

**THE NEW INDIA ASSURANCE
COMPANY LIMITED**

.....Appellant

versus

RAJAN & ORS.

.....Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Aditya Kumar, Ms. Ila Nath & Ms.
Sheetal Dubey, Advs.

For the Respondent :

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present appeal is filed challenging the judgment and award dated 26.10.2024 (hereafter '**impugned award**') passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, West District, Tis Hazari Courts, Delhi, in MACT Case No. 390/2019.

2. Briefly stated, on 14.04.2019 at about 11:15 AM, while Respondent No.1 was standing near his stationary vehicle—parked on the side of Rohtak Road near Metro Pillar No. 307, Udyog Nagar, Peeragarhi, Delhi—the insured vehicle (car) bearing registration no. DL-3CCN-9403, being driven rashly and negligently by Respondent No.2, came from behind and hit Respondent No.1, causing grievous injuries.



3. Consequently, FIR bearing no. 168/2019 under Sections 279/337/338 of the Indian Penal Code, 1860 was registered at P.S. Paschim Vihar West. Respondent no.1 was hospitalized from 15.04.2019 to 25.04.2019 at Safdarjung Hospital and subsequently assessed to have suffered 80% permanent disability in relation to the right lower limb due to above-knee amputation.

4. By way of the impugned award, the learned Tribunal has directed the appellant to pay compensation of ₹89,57,265/- to Respondent No.1, along with interest at the rate of 7% per annum from the date of filing of the Detailed Accident Report (DAR) i.e., 02.07.2019 till realization.

5. Respondent claimed before the learned Tribunal that at the time of the accident, he was 28 years of age, working as an unskilled labourer, earning ₹14,468/- per month, and that due to the amputation of his right leg, his ability to engage in gainful employment had been drastically affected.

6. The learned Tribunal, accepting the evidence on record, including the disability certificate and testimony of the prosthetist from Ottobock Healthcare, assessed the functional disability to be 80% and awarded a lump sum of ₹35,28,000/- towards prosthetic limbs, ₹5,00,000/- for maintenance of prosthesis, ₹5,00,000/- towards attendant charges, ₹1,50,000/- towards special diet, ₹1,73,616/- for loss of income during treatment, and ₹33,05,649/- for loss of future earning capacity, among other heads.



7. Challenging the award, the learned counsel for the appellant submitted that the learned Tribunal erred in mechanically treating 80% permanent disability of the lower limb as equivalent to 80% functional disability, without assessing the impact on the actual earning capacity of the claimant. It is contended that even in cases of more grievous injuries, as considered by the Hon'ble Apex Court in ***Mohd. Sabeer v. U.P. SRTC : 2022 SCC OnLine SC 1701***, the functional disability was assessed at only 60%. It is further argued that once a substantial amount is awarded towards procurement and replacement of prosthetic limbs, and towards their annual maintenance, the functional disability cannot be considered at such a high level. Reliance is placed on ***Raj Kumar v. Ajay Kumar : (2011) 1 SCC 343*** to argue that the assessment of functional disability must be based on cogent evidence of the actual impact on earning capacity and not solely on the extent of physical disability.

8. The learned counsel further submitted that the learned Tribunal erred in awarding excessive amounts towards conveyance charges, special diet, and attendant charges in the absence of any documentary evidence. The sum of ₹5,00,000/- awarded for attendant charges is submitted to be entirely notional, with no justification provided. Similarly, the award of ₹1,73,616/- for loss of actual income during treatment is assailed as being without basis, in the absence of proof that the claimant was unable to work for a full year. It is thus submitted that the award is excessive, arbitrary, and liable to be modified appropriately in accordance with settled legal principles.



Analysis

9. Learned counsel for the appellant–insurance company was heard and the record of the learned Tribunal, including the impugned award and evidence led by the parties is perused.

Assessment of Functional Disability at 80%

10. The primary contention of the appellant is that the learned Tribunal erred in treating the permanent physical disability of 80% in relation to the right lower limb as being equivalent to 80% functional disability and further contended that assessment of functional disability must be based on cogent evidence of the actual impact on earning capacity and not solely on the extent of physical disability

11. The Hon’ble Apex Court in ***Raj Kumar v. Ajay Kumar : (2011) 1 SCC 343*** considered the effect of permanent disability on actual earning capacity. It was held that the Tribunal should first ascertain the activities the claimant was carrying on prior to the accident and the effect of the disability on the activities he is likely to carry on in future. The nature of work before the accident and also the age of the victim were held to be relevant factors. The relevant portion of the judgment is reproduced hereunder :

“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.”

12. It is thus well settled that functional disability is to be assessed with reference to the impact of the injury on the earning capacity of the claimant, and not merely on the percentage of physical disability.

13. Perusal of the impugned award reveals that the learned Tribunal has not proceeded solely on the basis of the disability certificate. The claimant was aged 28 years and employed as an unskilled labourer, engaged in loading and unloading work. His job undeniably required physical strength and mobility.

14. Notably, with an above-knee amputation of the right lower limb, and in the absence of evidence to suggest availability of alternative employment or formal education, the claimant would not be in a position to resume his earlier vocation or switch to a desk job.

15. It is not the case of the Insurance Company that Respondent No.1 is educated or possesses any skill that would enable him to earn a livelihood equivalent to his pre-accident employment in a desk job. It is common knowledge that job opportunities for semi-skilled or unskilled individuals with such impairments are limited and not always gainful.

16. Evidently, even with a prosthetic limb, the claimant may not be able to perform the work that he was doing at the time of the accident. The prosthetic limb may at best give him the means to live a dignified



life but cannot be the basis to presume employment for a unskilled worker when concededly, the opportunities to work are much less than the number of people available for such works.

17. The argument of the learned counsel for the appellant that compensation towards prosthetic limb and its maintenance negates the functional disability to such extent is misconceived. As held by the Hon'ble Apex Court in *Mohd. Sabeer v. U.P. SRTC* : 2022 SCC OnLine SC 1701, a prosthetic limb cannot fully restore the functional ability of a natural limb, particularly for those engaged in manual labour.

18. The learned Tribunal has applied a realistic and pragmatic assessment in concluding that the functional disability would effectively be 80%, and I find no reason to interfere with the same.

Cost of Prosthetic Limb and Its Maintenance

19. The learned counsel for the appellant further contended that the learned Tribunal erred in applying a multiplier of 8 to calculate the recurring cost of the prosthetic limb, contending instead that a multiplier of 7 would be more appropriate given the age of the claimant. In *Mohd. Sabeer v. U.P. SRTC* (*supra*), the Hon'ble Apex Court accepted the principle of recurring costs for prosthetic replacements every 5-6 years and awarded lump sum compensation accordingly.

20. In the present case, the learned Tribunal has noted that the average lifespan of the prosthetic limb is five years and that the



claimant would require replacement up to the age of 70. Considering the claimant was 28 years of age at the time of accident, the application of multiplier 8 for future replacements cannot be said to be excessive. Additionally, a separate component of ₹5,00,000/- has been awarded towards annual maintenance, factoring in the repair and upkeep costs over the claimant's lifetime.

21. No error is found in the learned Tribunal's approach on this aspect.

Conveyance Charges and Special Diet

22. The next contention of the learned counsel for the appellant is that the learned Tribunal erred in awarding ₹50,000/- towards conveyance charges and ₹1,50,000/- towards special diet, in the absence of any documentary proof. It is true that the learned Tribunal, in the impugned award noted the absence of receipts or vouchers. However, in injury cases, some leeway must be accorded while assessing costs incurred for conveyance and diet, particularly in prolonged treatment involving grievous injuries.

23. The quantum awarded is within reasonable limits and does not call for interference.

Attendant Charges

24. The award of ₹5,00,000/- towards attendant charges is assailed by the appellant on the ground that it is based on a notional estimate and unsupported by any receipts or documentary proof. However, this Court is not persuaded by such an objection, having regard to the



realities that govern caregiving in the unorganised sector. It is well known that attendants engaged by injured persons are often informal caregivers or even unpaid family members – without any formal contract, wage slips or any receipt. In such circumstances, absence of documentary proof cannot by itself disentitle the injured to just compensation for a need that is so evidently necessitated by the nature of disability.

25. In the present case, Respondent No. 1 suffered an above knee amputation of the right leg and was rendered functionally disabled to the extent of 80%. The learned Tribunal, while noting the absence of specific proof of who was hired or what was paid, took judicial notice of the fact that an individual with such a disability would undeniably require substantial daily assistance, both during the initial recovery and as part of long term rehabilitation. Notably, that assistance, whether rendered by hired help or by family members, is compensable.

26. A coordinate Bench of this Court in ***National Insurance Co Ltd v. Pawan Kumar & Ors: 2023:DHC:5729***, while rejecting a similar objection upheld the grant of ₹5,00,000/- towards attendant charges, holding that

“16. I am again unable to find any merit in the submission made by the learned counsel for the appellant. The learned Tribunal, while awarding a sum of Rs.5,00,000/- towards attendant charges in favour of the respondent no.1, has observed as under:-

“ATTENDANT CHARGES



32. The contention of counsel for petitioner is that the petitioner has permanent disabled in the accident and he had incurred expenditure on attendant charges. Petitioner during the course of his deposition has failed to substantiate the amount spent by him on attendant charges. Although the petitioner has not proved by cogent evidence as to who was hired by him as attendant, period of hiring attendant and the amount paid to attendant. However as per disability certificate the petitioner has suffered 95% permanent physical impairment in relation to his left upper limb and right lower limb. PW2 Dr.Adarsh Kumar who was member of disability board has deposed that the petitioner can not squat and he will have difficulty in discharging his routine activities like using of washroom. Thus looking at the nature of disability and deposition of PW2 notice can be taken of the fact that the petitioner will require assistance of attendant for his daily routine work. Moreover, the petitioner has to be compensated for the gratuitous services rendered by his family members. Reliance is placed on United India Insurance Company Ltd. Vs. Rama Swamy &Ors., MAC App, No. 328/11. In view of the aforesaid, in my view, a sum of Rs.Five Lacs would be just and proper towards attendant charges and the same is awarded accordingly.”

17. The learned Tribunal has rightly held that taking into account the injury suffered by the respondent no.1, he would require the assistance of an attendant for his daily routine work. This may be in the form of hired help or even in the form of gratuitous services rendered by his family members. Either way, the respondent no.1 has to be compensated for the same.

18. In *Abhimanyu Partap Singh (Supra)*, the Supreme Court, in fact, determined the compensation payable for attendant charges on the basis of the minimum wages notified and by applying the multiplier method. Judged by that standard, the Award of only Rs.5,00,000/- towards attendant charges to the respondent no.1 can by no stretch be said to be unreasonable or unwarranted.”



27. The learned Tribunal's assumption of a notional wage of ₹12,000/- per month is broadly in line with prevailing minimum wage norms for unskilled caregiving work and accounts for at least 10–12 months of post-accident dependency.

28. In light of the above, the learned Tribunal's assessment under this head is both fair and consistent and by no stretch can be said to be unreasonable and unwarranted.

Loss of Actual Income During Treatment

29. As regards the award of ₹1,73,616/- towards loss of actual income during the treatment period, the learned Tribunal has proceeded on the basis of monthly income of ₹14,468/- for 12 months. The learned counsel for the appellant submits that there is no evidence that the claimant was incapacitated for a full year. While the hospitalization period was only from 15.04.2019 to 25.04.2019, the nature of injury and need for recovery and rehabilitation, including prosthesis, justify the presumption that he remained out of gainful employment for an extended duration.

30. The learned Tribunal's assessment of one year is a reasonable approximation and cannot be held to be speculative or excessive.

Conclusion

31. Having considered the rival submissions and the material on record, this Court finds no infirmity in the assessment made by the



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learned Tribunal either with respect to the quantum of compensation or the heads under which it was awarded.

32. The appeal is accordingly dismissed. However, the appellant is granted four additional weeks from today to deposit the awarded amount with interest before the learned Tribunal. In the event of failure, the learned Tribunal shall ensure recovery in accordance with law.

AMIT MAHAJAN, J

MAY 13, 2025