



2025:DHC:418



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

% ***Pronounced on: 23<sup>rd</sup> January, 2025***

+ **MAC.APP. 104/2023, CM APPL. 9402/2023 & CM APPL. 48260/2023**

**M/S NATIONAL INSURANCE CO. LTD.**

National Legal Vertical Delhi  
Regional Office –II  
2-E-9 Jhandewalan Extension  
New Delhi

....Appellant

Through: Ms. Rakhi Dubey, Mr. Sandeep Kumar Dubey, Mr. Sandeep Singh & Mr. Rahul Thakur, Advocates

Versus

1. **MR. RAJENDER SINGH MEENA** (*Injured*)

S/o Sh. Krishan Lal  
R/o H-6 Police Colony,  
PS Moti Nagar, New Delhi

2. **SH. KRISHAN** (*Driver*)

S/o Sh. Sukhbir Singh  
R/o H-29, Police Colony  
Moti Nagar, New Delhi

3. **SH. SANJAY** (*Owner*)

S/o Sh. Sukhvir  
R/o H. No. 360 Village Mundela Kalan,  
District South West, Delhi.

.....Respondents

Through: Mr. Dinesh Dahiya, Advocate for Respondents No.2 & 3

+ **MAC.APP. 120/2023, CM APPL. 10996/2023**

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Digitally Signed By: RAHIL SHARMA

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**MAC.APP. 104/2023 & MAC.APP 120/2023**

**Page 1 of 14**



2025:DHC:418

**M/S NATIONAL INSURANCE CO. LTD.**

.....Appellant

Through: Ms. Rakhi Dubey, Mr. Sandeep Kumar Dubey, Mr. Sandeep Singh & Mr. Rahul Thakur, Advocates

Versus

1. **SUNITA DEVI** (*Injured*)  
W/o Surender Pal Singh  
R/o B-2, Type II Police Colony  
PS Moti Nagar, New Delhi
2. **SH. KRISHAN** (*Driver*)  
S/o Sh. Sukhbir Singh  
R/o H-29, Police Colony  
Moti Nagar, New Delhi
3. **SH. SANJAY** (*Owner*)  
S/o Sh. Sukhvair  
R/o H. No. 360, Vill. Mundela Kalan,  
District South West, Delhi

.....Respondents

Through: Mr. Dinesh Dahiya, Advocate for Respondents No.2 & 3

**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**

1. These two Appeals *under Section 173 Motor Vehicle Act, 1988* have been filed by the ***Appellant-National Insurance Company Ltd.*** challenging the Impugned Awards dated 26.11.2022 *vide* which the learned Motor Accident Claims Tribunal has granted compensation on account injuries suffered by Respondents *Rajinder Singh Meena and Sunita Devi*, in the road



2025:DHC:418



accident, on 12.02.2015.

2. On 12.02.2015 at about 1:45 am, Respondents- Rajinder Singh Meena and Sunita Devi, were returning to their residence in Moti Nagar from a social function, in Maruti Omni Van No. DL 9CR 7403, driven by Respondent No.2- Krishnan. When the Van reached Near Hiran Kundna More, near Metro Depot at Munda, an unknown Truck going ahead of their vehicle, applied emergency brake and Respondent No.2 also applied the brake but the Van crashed into the Truck and got severely damaged. All the passengers travelling in the Van received injuries and were taken to the hospital. *FIR No.77/2015, dated 12.02.2015 under Sections 279/338 IPC was registered at Police Station Mundka against the unknown Driver of the offending Truck.*

3. Since the Driver of the offending Truck was untraced, compensation in the sum of Rs.2,00,000/- was awarded to the injured- Rajinder Singh Meena and Rs.50,000/- to Sunita Devi, by Delhi Legal Services Authority, vide Order dated 01.12.2016.

4. On 06.12.2016, Respondents/Injured-Rajinder Singh Meena and Sunita Devi preferred separate Claim Petitions before the learned Motor Accident Claims Tribunal against the Driver and Owner of the Maruti Omni Van, in which they were travelling, alleging that the negligence of the Van. They claimed that the driver and owner of the Maruti Omni and the offending Truck were jointly and severally liable to pay the compensation.

5. The learned Tribunal *vide two separate Awards dated 26.11.2022 granted compensation* in the sum of Rs.22,85,954/- and Rs.7,16,438/- along with interest @6% p.a. to Rajinder Singh Meena and Sunita Devi respectively, against the Appellant/National Insurance Company Ltd.



2025:DHC:418



**MAC. APP 104/2023:**

6. *The challenge to the impugned Award dated 26.11.2022 by the Appellant/Insurance Company is on the ground that **Respondent/Rajender Singh Meena** had registered a criminal case against the unknown Truck Driver and he has already been granted compensation in the sum of Rs.2,00,000/- from DLSA, vide Order dated 01.12.2016. Thereafter, with intent to extort money from the Insurance Company, the Injured in connivance with Respondent No.1-Driver of the Maruti Omni, in which they were travelling, filed the Claim Petition before the learned Tribunal.*

7. *The Awards have been challenged by the Insurance Company on the following Grounds:*

- (i) that the Maruti Omni was not the offending vehicle;
- (ii) that the Functional Disability of the Petitioner has been assessed as 50% however, the Respondent- Rajender Singh Meena is continuing his service in Delhi Police and getting his regular salary, and did not suffer any loss of income and no compensation could have been granted towards loss of earning capacity;
- (iii) that the sum of Rs.1,50,000/- granted towards *Future Treatment* is arbitrary in absence of any evidence;
- (iv) that the compensation of Rs.1,00,000/- for Pain and Suffering is on the higher side; and
- (v) that sum of Rs.30,000/- each on account of Conveyance and Special Diet and Rs.50,000/- towards Attendant Charges have no basis.



8. It is, therefore, submitted that the impugned Award is liable to be modified / set aside.

**MAC. APP 104/2023:**

9. The grounds of challenge to the impugned Award dated 26.11.2022 in respect of *Injured/Sunita* are essentially the same. In addition, it is asserted that her *Functional Disability* in respect of her right lower limb has been assessed as 35%, whereas it should have been taken as 18% in terms of Judgment in *Raj Kumar vs. Ajay Kumar*, AIR Online 2010 SC 125.

10. It is therefore, submitted that the impugned Award dated 26.11.2022 deserves to be modified/ set aside.

**Submissions by Counsel for Claimants/Injured:**

11. Learned *counsel on behalf of the Claimants/ Injured* has argued that though the initial FIR was registered against untraced Truck Driver, but eventually Investigating Officer was able to trace out the offending Truck and the Charge Sheet was filed against the Driver and Owner of the Truck. Consequently, Claim Petitions were filed against the Driver and Owner of the offending Truck which caused the accident. No challenge has been made by the Driver of the offending Truck denying his involvement in the accident. Merely because it took a long time for tracing out the offending vehicle, cannot be a ground to discredit the involvement of the offending Truck in the accident.

12. It is further contended that whatever compensation has been granted by the DLSA, can be deducted/ adjusted from the final compensation amount and it does not prejudice the Insurance Company in any manner.

13. Insofar as the quantum of compensation awarded is concerned, it is asserted that the learned Tribunal has rightly assessed the quantum of



Compensation, which does not merit any interference. It is submitted that these Appeals are without merit and are liable to be dismissed.

**14. Submissions heard and record perused.**

***Negligence of the Maruti Omni:***

15. The *first plea* taken on behalf of the Appellant/Insurance Company is that the offending vehicle was the Truck and not the Maruti Omni Van in which the Injured persons were travelling at the time of the accident. But the Injured in connivance with Driver of the Maruti Omni Van, have filed the Claim Petitions.

16. There is no denial that the two injured were travelling in the Maruti Omni Van, which was being Driven by Respondent No.2 and owned by Respondent No. 3. *What is required to be considered is whether there was negligence attributable to Respondent No.2, the Driver of the Maruti Omni Van?*

17. PW-1/Rajender Singh Meena, the Injured had deposed that there were five persons, including him and Smt. Sunita, in the Maruti Omni Van of which Respondent No.2- Sh. Krishan was the driver. He was sitting on the front seat, while Smt. Sunita was sitting on the back seat. It is further deposed by him that Respondent No.2 was driving the Maruti Omni Van at a very high speed and he rammed into the back side of the Truck which was plying ahead of the Maruti Omni Van, as it applied sudden brakes, resulting in grievous injuries to Rajender Singh Meena as well as the other passengers.

18. *Respondent No.2 Sh. Krishan*, Driver of the Van in his affidavit evidence EX. RW1/A, took the sole defence that because the Truck had applied sudden brakes, he also tried to apply emergency brakes, despite



2025:DHC:418



which the Maruti Omni Van rammed into the Truck.

19. It is the basic driving principle that a person who is driving a vehicle, is expected to maintain a safe distance and to ensure that in case the vehicle plying ahead of it applies sudden brakes or stops, he should be able to apply brakes and stop the vehicle, preventing it from banging into the vehicle ahead of it. It is a fact that while driving on the road, there may be unexpected situations where a child or any animal or person may suddenly come in front of the vehicle and *it is the duty of the Driver to have sufficient control on the vehicle to prevent hitting or causing the accident.*

20. The Truck cannot be held negligent simply because it had to apply sudden brakes for some reasons. It was the Driver of the Maruti Omni Van, who was supposed to exercise due care and caution and maintain safe distance from the vehicle ahead of it, to prevent happening of any accident. In this incident, Maruti Omni Van was severely damaged, which could be only because of huge impact when it banged into the Truck, due to negligence of the Driver of the Van. It is evident that the Driver of the Van was *unable to apply emergency brakes in time*, establishing his negligence while driving the vehicle.

21. The learned Tribunal has therefore, rightly concluded that it was Driver of the Maruti Omni Van in which the injured was travelling, who was rash and negligent in causing the accident. *There is no infirmity or perversity in this finding returned by the learned Tribunal and does not merit any interference.*

***Compensation on account of Permanent Disability:***

22. The *second challenge* is with regard to the quantum of compensation awarded *in the sum of Rs.18,21,300* to Sh. Rajender Singh Meena on



2025:DHC:418



account of Functional Disability *which has been assessed as 50% in relation to the whole body.*

23. The grievance of the Insurance Company is that the Injured is a permanent employee of Delhi Police, who was working as MTS and is getting a salary of Rs.50,000/- per month.

24. The Insurance Company has rightly contended that even though Permanent Disability was suffered by the Injured but admittedly, there is no loss of income. He has continued to be in employment and getting his salary. The injured in his testimony as PW-1 has also not deposed that due to this accident, there has been an impact on in his promotional avenues, career, reduction in his salary or future income.

25. The Petitioner in support of his case had examined PW4/ASI Harpal who has deposed that Rajender Singh is working as Multi Tasking Staff (Class IV employee). His pay slips w.e.f. January, 2015 to December, 2015 are collectively Ex.PW4/A and the copy of the Salary Statement is Ex.PW4/B.

26. PW5/ASI Amarpal Singh brought the Service Record of the Respondent Rajender, according to which he had joined as MTS (Class-IV) on 31.05.1991. He further proved that the Respondent Rajender availed Commuted Leave (Medical Leave) w.e.f 12.02.2015 to 31.08.2015 i.e. for 201 days and thereafter w.e.f. 1.09.2015 to 21.09.2015 i.e for 21 days. After his Medical Leaves got exhausted, he availed Earned Leave w.e.f 22.09.2015 to 01.11.2015 i.e. for 41 days and w.e.f 04.07.2016 for 19 days and again w.e.f. 05.06.2017 for 12 days. The Leave Record is Ex.PW5/A. Though, he also admitted in his cross-examination that only Earned Leaves and not Medical Leaves can be encashed.



2025:DHC:418



27. From the testimony of the Petitioner read with the Testimony of PW4 ASI Harpal, it is evident that the injured was a permanent Class-IV employee. It is also proved that there were no further promotional avenues except that he was entitled to his annual increments. In these circumstances when the injured has continued to be in service and is getting his entire salary, there is no loss of salary on account of the injuries suffered.

***28. In view of the fact that Injured Rajinder Singh Meena has continued to be in employment and has not suffered Loss of Income; grant of sum of Rs.18,21,300 is not justified.***

29. Pertinently, under the Rights of Persons with Disabilities Act 2016, there is an embargo against any discrimination against persons with disabilities in various contexts, including employment, is prohibited. Employers are mandated to provide equal opportunities for persons with disabilities when it comes to recruitment, promotion and other aspects of employment.

30. However, it cannot be overlooked that he has availed Medical/Earned Leave of total 294 days. While Medical Leave may not be encashable, but it cannot be ignored that because of this accident, he has been compelled to exhaust his leave, which he would have otherwise been able to avail in future on different occasions. Therefore, the Respondent is entitled to his entire salary for the period for which he remained on leave. As per the Petitioner, he remained under active treatment and was not able to resume his duty for 11 months. ***Therefore, he is entitled to his salary for 11 months in lieu of the leave that he was compelled to avail.***

***31. The compensation towards Loss of Leave thus, comes to Rs.2,56,850/- (23,350 X 11 months).***



32. The Insurance Company has claimed that these amounts given under the defined heads is excessive and needs to be revised. It is pertinent to observe that the Future Loss of Income has been denied to the Respondent/Injured. It cannot overlooked that the Respondent in his testimony as PW1 has categorically deposed that as per his medical documents he had suffered head injury, Facio Maxillary Fracture, Mandibular Fracture, Fracture Acetabulum right side. There were injuries on other parts of his body as well. He continued under treatment for 11 months and had spent more than Rs.5 lakhs on his medical treatment, but only certain bills had been reimbursed by CGHS. He further deposed that he has been able to resume only semi-normal life. As per the Disability Certificate Ex.PW2/A the Respondent has suffered Locomotor Disability to the extent of 56% in relation to right lower limb and 26% Neuro Psychological Disability (Intellectual Disability) and 60% of Permanent Neurological Disability (Chronic Neurological Condition). Considering this prolonged medical treatment and his Permanent Disability, in the light of his testimony that he would require treatment in future, *a sum of Rs.1,50,000/- on account of Future Treatment has been rightly granted by the learned Tribunal.*

33. The learned Tribunal has granted a sum of Rs.1,00,000/- towards Pain & Suffering, but considering the Permanent Disability and he has only able to resume his semi-normal life, the compensation towards **Pain & Suffering** is hereby enhanced to **Rs.3,00,000/-**.

34. Likewise, the compensation on account of Conveyance and Special Diet has been granted in the sum of Rs.30,000/- each. However, considering that the respondent had suffered Mandibular Fracture and his active



2025:DHC:418



treatment which continued for 11 months, *the amount of compensation towards Conveyance and Special Diet are hereby increased to Rs.75,000/- each.*

35. The Respondent has been granted a compensation of Rs.50,000/- towards the Attendant Charges. It cannot be overlooked that the Respondent has been able to assume only a semi-normal life and suffered Locomotor Disability to the extent of 56% in relation to right lower limb in addition to Neuro Phycological disability; the respondent would be requiring an Attendant for his life time. Though, no cogent evidence has been led in regard to the Attendant Charges, but it cannot be overlooked that some family member would be spending some time on the extra care required by the injured. *Therefore, the compensation towards Attendant Charges is hereby enhanced to Rs.4,00,000/-.*

36. The **modified Compensation** in respect of Injured/Rajinder Singh Meena is as under: -

| S. No. | Heads of Compensation                        | Awarded by the Tribunal | Awarded by this Court |
|--------|----------------------------------------------|-------------------------|-----------------------|
| 1.     | Reimbursement of medical expenses            | Rs.824                  | Rs.824/-              |
| 2.     | Compensation on account of future treatment  | Rs.1,50,000/-           | Rs.1,50,000/-         |
| 3.     | <b>Pain and Suffering</b>                    | Rs.1,00,000/-           | Rs.3,00,000/-         |
| 4.     | <b>Conveyance</b>                            | Rs.30,000/-             | Rs.75,000/-           |
| 5.     | <b>Special Diet</b>                          | Rs.30,000/-             | Rs.75,000/-           |
| 6.     | <b>Attendant Charges</b>                     | Rs.50,000/-             | <b>Rs.4,00,000/-</b>  |
| 7.     | Loss of Income during treatment              | Nil                     | Nil                   |
| 8.     | <b>Compensation on account of disability</b> | Rs.18,21,300/-          | <b>Nil</b>            |
| 9.     | Loss of amenities of Life                    | Rs.50,000/-             | Rs.50,000/-           |



2025:DHC:418



|     |                       |                |                       |
|-----|-----------------------|----------------|-----------------------|
| 10. | Disfiguration         | Rs.25,000/-    | Rs.25,000/-           |
| 11. | <b>Loss of leaves</b> | Rs.2,28,830/-  | <b>Rs.2,56,850/-</b>  |
|     | <b>Total</b>          | Rs.24,85,954/- | <b>Rs.13,32,674/-</b> |

37. Thus, the **total compensation** granted to the Claimant is re-calculated as Rs. 13,32,674/- rounded of to **Rs.13,35,000/-** along with interest @6% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 26.11.2022 of the learned Tribunal. ***However, the amount of Rs.2,00,000/- received as compensation from DLSA, shall be deducted from the total compensation***

38. *The excess amount, if so deposited, be returned to the Insurance Company.*

39. The Appeal no. MAC. APP. 104/2023 and pending Application(s), if any, are accordingly disposed of.

**MAC.APP. 120/2023:**

40. Respondent/Injured- Sunita as PW-3, has deposed on the similar lines as Injured/Rajinder Singh Meena. As per Discharge Summary of MGS Super Specialty Hospital, Ex. PW2/3, she had suffered *spiral fracture tibia right side with medical malleolus fracture right side*.

41. The learned Tribunal, observed that the Injured/Sunita has suffered 35% disability and granted compensation of Rs.50,000/-towards Future Treatment. Reliance was placed upon Supreme Court's decision dated 06.03.2018, in *Jagdish vs. Mohan & Ors.*, SLP (C) No. 7739/2017, wherein the injured who had suffered 90% disability, was awarded Rs.3,00,000/- as compensation towards Future Medical Expenses.

42. Even though there is not much discussion by the learned Tribunal about the need for future treatment, but it cannot be overlooked that the



2025:DHC:418



injured was a lady of 46 years of age, who suffered 35% disability and medical complications, grant of Rs.50,000/- for Future Treatment cannot be faulted with. ***It is a reasonable assessment made by the learned Tribunal and in view of the injuries suffered by the Respondent, and therefore, it does not merit any interference.***

43. The learned Tribunal has referred to various judgments wherein depending upon the kind of permanent disability, the Functional Disability has been assessed. In relation to the Permanent Disability, there has to be subjective satisfaction of the conclusion of the Functional Disability, which essentially depends upon the age and profession of the injured or the deceased.

44. In the case of Injured/Sunita, injuries to the extent of 35% for having suffered spiral fracture tibia right side, with medical malleolus fracture right side, have been assessed. It can be easily appreciated that the nature of disability suffered by Injured/Sunita, shows her Functional Disability inasmuch as she would have faced difficulty in discharging her day to day house hold chores. ***The learned Tribunal has rightly assessed the Functional Disability as 35% and no interference on this ground is required to be made.***

45. The Appellant/Insurance Company has challenged grant of Rs.50,000/- towards Pain and Suffering. ***In view of permanent disability suffered by Injured-Sunita, it cannot be said that the compensation so granted is on the higher side.***

46. The Petitioner has been granted 20,000/- each for expenses incurred on Special Diet, Conveyance and Attendant Charges. Again, citing the nature of the injuries and permanent disability, it cannot be held that it is



2025:DHC:418



excessive. The Petitioner, having suffered a fracture, would have remained under treatment for some months and would have required some person to help her in day-to-day chores. *In the circumstances, no interference is warranted in the impugned Award dated 26.11.2022 in respect of Injured-Sunita. However, the amount of Rs.50,000/- received as compensation from DLSA shall be deducted from the total compensation.*

47. With aforesaid, the present Appeal and pending Application(s), if any, are accordingly disposed of.

**Relief: -**

48. *The Appeal No. MAC. APP. 104/2023 filed on behalf of the Insurance Company is hereby allowed.*

49. *The Appeal No. MAC. APP. 120/2023 filed on behalf of the Insurance Company is hereby partly allowed.*

50. Both the Appeals are disposed of accordingly along with the pending Application(s), if any.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JANUARY 23, 2025**

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