



2025:DHC:11325



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IN THE HIGH COURT OF DELHI AT NEW DELHI*Decided on: 11.12.2025*

+ MAC.APP. 90/2015 & CM APPL. 27578/2015

SHANKAR MEHTO

.....Appellant

Through: Ms. Aruna Mehta, Mr. Lakshay Mehta and Mr. Sanjeev Mehta, Advocates.

versus

RAJO BHAGAT & ORS

.....Respondents

Through: Mr. A.K. Soni, Advocate for R-3.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. The appellant, who was the claimant before the Motor Accident Claims Tribunal [“the Tribunal”], has preferred the present appeal, assailing the award dated 20.10.2024 passed in Suit No. 49/2014, seeking enhancement of the compensation granted to him. By the impugned award, the Tribunal awarded a sum of Rs. 5,10,369/- alongwith interest at the rate of 9% per annum.

A. FACTS

2. The facts, as recorded in the impugned award, are that on 26.08.2008, the appellant was travelling from *Azadpur Mandi, Delhi, to Anand Parbat, Delhi*, in a vehicle [bearing registration No. DL-1L-F-9640] [“insured vehicle”], which was loaded with sugarcane for delivery to a juice shop. During the journey, the insured vehicle collided with a



divider in front of Bali Nursing Home on Desh Bandhu Gupta Road, Delhi, and turned turtle, resulting in the appellant sustaining injuries.

3. FIR No. 242/2008 was registered on 26.08.2008 under Sections 279 and 337 of the Indian Penal Code, 1860, at Police Station Desh Bandhu Gupta Road, Delhi.

4. The appellant filed a claim petition under Section 166 and 140 of the Motor Vehicle Act, 1988, arraying the driver, owner and the insurer – Reliance General Insurance Company Ltd [“the Insurance Company”] as respondent Nos. 1 to 3 respectively.

5. The Tribunal returned a finding of rash and negligent driving against the driver of the insured vehicle [respondent No. 1 herein], and awarded a sum of Rs. 5,10,369/-, alongwith interest at the rate of 9% per annum, against the Insurance Company, without granting it any recovery rights against the owner of the vehicle. The compensation was awarded under the following heads:

Sr. No.	Heads	Amount
1.	Loss of income	Rs.1,69,713/-
2.	Medicines and medical treatment	Rs.2,241/-
3.	Loss of wages	Rs.18,415/-
4.	Loss of amenities of life	Rs.1,00,000/-
5.	Pain and suffering	Rs.1,00,000/-
6.	Conveyance charges	Rs.10,000/-
7.	Special diet	Rs.10,000/-
8.	Disfigurement	Rs.1,00,000/-
Total		Rs. 5,10,369/-



B. SUBMISSIONS

6. I have heard Ms. Aruna Mehta, learned counsel for the appellant, and Mr. A.K. Soni, learned counsel for Insurance Company.
7. Ms. Mehta, in support of the appeal, submits as follows:
 - (a) That the Tribunal has erred in assessing the appellant's functional disability at only 16%, despite the disability certificate establishing permanent disability of 32%, in respect of the left upper limb. She submits that the assessment is contrary to the law laid down by the Supreme Court in *Raj Kumar v. Ajay Kumar & Anr.*¹, as the appellant's condition renders him unable to continue the employment he had prior to the accident.
 - (b) That the Tribunal erred in adopting minimum wages payable in Delhi at Rs. 3,683/-, which is less than his monthly income of Rs. 8,000/- per month, as a labourer employed by respondent No. 2.
 - (c) The Tribunal erred in disallowing reimbursement of expenses with respect to the appellant's physiotherapy, merely on the ground that the appellant's permanent address was in Bihar, notwithstanding that the accident, treatment, employment, and residence all took place in Delhi.
 - (d) That the award fails to compensate the appellant for gratuitous services rendered by the family of the injured.
8. Mr. Soni, on the other hand, supports the finding of the Tribunal on these aspects.
9. Each of these aforesaid issues is taken up in turn.



C. ASSESSMENT OF FUNCTIONAL DISABILITY

10. The first issue pertains to the loss of earning capacity suffered by the appellant.

11. The judgment of the Supreme Court in *Raj Kumar* requires assessment of functional disability by analysing the nature and extent of disability suffered by the injured, and assessing the likely impact on his future income, in the context of his particular vocation. This enables the Tribunal to arrive at a just and equitable quantification of the loss of earning capacity, for which the respondents are required to compensate.

12. As recorded in the impugned award, the medical evidence, exhibited as Ex. PW6/1 to Ex. PW6/24, revealed that the appellant was initially taken to Bali Nursing Home, Karol Bagh, Delhi, where his Medico-Legal Case was prepared. Thereafter, he was admitted to Lady Hardinge Medical College and Hospital, New Delhi. The appellant sustained a fracture of the left palm, and underwent surgery. He remained hospitalised about eight days, from 11.09.2008 to 18.09.2008. The appellant was assessed to have suffered permanent disability to the extent of 32% in respect of his left upper limb, as reflected in the disability certificate dated 23.10.2009 issued by Aruna Asaf Ali Government Hospital [Ex. PW6/23].

13. The impugned award also refers to the testimony of PW-3, Dr. B. Kanhar, Senior Orthopaedic Surgeon, Aruna Asaf Ali Government Hospital, who deposed as under:

“Today I have seen the disability certificate of Sh. Shankar Mehto S/o. Sh. Lao Mehto Dated 23.10.2009. The said disability certificate was issued by the Medical Board, Aruna Asaf Ali Hospital and I was one of

¹ (2011) 1 SCC 343 [hereinafter “*Raj Kumar*”].



*the members of this Medical Board. The copy of the abovesaid disability certificate is already Ex.PW1/6 which bears my signatures at point A. Original seen and returned. **The petitioner Sh. Shankar Mehto has suffered post traumatic stiffness over left hand wrist with permanent disability of 32% in relation to the left upper limb. His condition is not likely to improve in future. A person who is doing the job of a labourer for lifting of the weight with the help of both of his hands is incompetent to perform his job².***

14. PW-3 was cross-examined by learned counsel for the Insurance Company, during which he stated as follows:

“It is correct that abovesaid observation given by me is not mentioned in the disability certificate. It is incorrect to suggest that the petitioner can do every kind of work. Today I have not physically examined the petitioner before giving this observation.”³

15. The Tribunal considered the aforesaid evidence in the following terms:

*“PW-3 Dr. B. Kanhar, Senior Orthopedic Surgeon, Aruna Asf Ali Government Hospital, Rajpur Road, New Delhi has proved the disability certificate of the petitioner which is already exhibited as Ex.PW1/6. He testified that he was one of the members of the Medical Board. He testified that petitioner Sh.Shankar Mehto has suffered post traumatic stiffness over left hand wrist with permanent disability of 32% and his condition is not likely to improve. He denied the suggestion that the petitioner can do every kind of work.
In view of the evidence of Doctor witness, I will consider functional disability of the petitioner as 16% qua the whole body.”*

16. With regard to the vocation of the appellant, it is undisputed that he was working as a labourer, employed by respondent No. 2, at Azadpur Sabzi Mandi.

17. Upon consideration of the aforesaid evidence, particularly the testimony of Dr. B. Kanhar [PW-3], extracted above, and in light of the principles laid down in *Raj Kumar*, I am of the view that the Tribunal’s

² Emphasis supplied.

³ Emphasis supplied.



assessment of functional disability at 16% is inadequate. The material on record establishes that the appellant has suffered a substantial and permanent impairment of 32% in his left upper limb, which is non-progressive and unlikely to improve. The appellant, being a labourer whose occupation necessarily involved the use of both hands for loading and unloading goods, has been rendered severely impaired in performing his pre-accident work. In cases where a person's livelihood is entirely dependent on manual labour, the assessment of functional disability must reflect not merely the medical or clinical impairment, but also the resultant loss of earning capacity.

18. Having regard to the nature of the injury, the appellant's vocation, and his age at the time of the accident, the functional disability is accordingly reassessed at 50%.

D. APPLICATION OF MINIMUM WAGES

19. With regard to the quantum of income, the Tribunal proceeded on the basis that the appellant's assertion of being employed as a labourer, earning Rs. 8,000/- per month, remained unproved. Consequently, the Tribunal assessed his monthly income on the basis of the minimum wages applicable to an unskilled worker in Delhi, which at the relevant time was Rs. 3,683/- per month. Ms. Mehta submits that the Tribunal has erred in applying minimum wages, rather than the income claimed by the appellant.

20. In his affidavit of evidence [PW6/A], the appellant had deposed as follows:

"1. That the deponent was a labourer in Azadpur Subzi Mandi and used to load and unload the goods and was earning Rs.300/-to Rs.400/- per day and in a month used to earn approx. Rs.8000/- per



month.

2. The respondent no. 2 had taken the contract to supply sugarcane to various juice shop of Karol Bagh, Anand Parbat and Shastri Nagar, Delhi. The respondent No. 2 who was doing the work loading and unloading the fruits and vegetable in Azad Pur Subzi Mandi Delhi and employed him for three months on the salary of Rs. 6,000/- per month for w.e.f. 1st august 2008 to uproot the sugar canes with the help of other labours from the fields of Sonipat on behalf of the respondent no. 2 and get them loaded in the vehicle for Azadpur Subzi Mandi where the sugar canes were used to be weighed and extra canes used to be unloaded in the office of the respondent no.2 at Azadpur Subzi Mandi and from there the goods were taken to the shop keepers of Karol Bagh, Ananad Parbat and Shastri Nagar in the vehicle along with the petitioner who used to travel in the vehicle as the representative of the respondent no.2⁴.”

21. During cross-examination by learned counsel for the Insurance Company, the appellant stated as follows:

“At the time of the accident I was already living in Delhi for about 3-4 years. On the date of the accident I had done the work of loading and unloading goods only for 2-3 days prior to the accident in question. I was doing the work of loading and unloading at the request of private parties but I was not employed with anyone for the said purpose. Again said I was in employment for the work of loading and unloading the goods for 3 days when I had met with the accident. For the work of loading and unloading I used to travel in the loaded vehicle also. The name of my employer was Sh. Phool Chand but I do not know his father's name, address and in whose name Sh. Phool Chand was carrying his business. My employer Phool Chand had met me casually in Azad Pur Subzi Mandi, Delhi. The person who referred me to my employer Sh. Phool Chand is Sh. Vijay Kumar but I do not know his father's name and address. He was doing the business of Parchun but I do not know under what name Sh. Vijay Kumar was doing his Parchun business. No hours of work were fixed in respect of my employment with Sh. Phool Chand. I was travelling in the offending vehicle from Azad Pur Subzi Mandi to DBG Road, Karol Bagh, New Delhi. I had myself loaded the goods in that offending vehicle but total weight of loaded goods in that offending vehicle might be 7-8 quintile. However, I am not exact about it. Nobody-else except myself and driver of the offending vehicle were there on the offending vehicle. I was not sitting above the loaded goods but I was sitting by

⁴ Emphasis supplied.



*the side of the driver. No Pacca bills etc. are generally issued in respect of transaction of goods. **It is wrong to suggest that I was not in the employment of Sh. Phool Chand.** It is wrong to suggest that I have deposed falsely in respect of the expenditure incurred by me as a result of the injuries sustained by me under all heads. It is wrong to suggest that I have also deposed falsely in respect of future expenses likely to be incurred by me. It is wrong to suggest that I have suffered any economic loss of earnings as a result of the accident in question. It is wrong to suggest that I was travelling in the offending vehicle as an unauthorized occupant⁵.”*

22. In view of the aforesaid, I am of the view that the Tribunal’s reasoning in assessing the appellant’s income does not warrant interference in appeal. While documentary evidence is not strictly required to determine income in cases involving labourers employed in the informal sector, the appellant’s own deposition in cross-examination raises doubts regarding his employment status, the duration of his work, and the existence of any fixed remuneration to the tune of Rs.8,000/- per month. In his affidavit, he claimed earnings of Rs. 300-400/- per day, amounting to Rs. 8,000/- per month, but also stated that he was employed at this salary by respondent No.2 only for a period of three months. In cross-examination, his testimony indicates that he worked only sporadically, without any fixed income.

23. Although it is well-settled that the Tribunal is not bound by the strict rules of evidence, it must nevertheless arrive at a just and reasonable estimate of compensation, based on the preponderance of probabilities⁶. In the present case, the appellant has failed to discharge even this limited evidentiary burden, as far as quantum of income of

⁵ Emphasis supplied.

⁶ *Mathew Alexander v. Mohd. Shafi* [(2023) 13 SCC 510] [paragraph 12]; *Rajwati v. United India Insurance Co. Ltd.* [2022 SCC OnLine SC 1699] [paragraph 20]; *Dr AKB Sadbhavana Mission School of Homeo Pharmacy v. Ministry of Ayush* [(2021) 2 SCC 539] [Paragraph 21]; and *Bimla Devi v.*



Rs.8,000/- per month, claimed by him, is concerned. The Tribunal was, therefore, justified in proceeding on the basis of minimum wages to assess loss of income.

E. REASSESSMENT OF LOSS OF INCOME

24. Having regard to the above discussion, compensation for loss of income is recomputed as follows:

Sr.No.	Heads	Amount
1.	Annual income	Rs. 3,683/- x 12 = Rs. 44,196/-
2.	Income after addition of 50% for future prospects Rs. 44,196/- x 50% = Rs.22,098/-	Rs.44,196/- + Rs.22,098/-= Rs. 66,294/-
3.	Application of multiplier (16)	Rs. 66,294/- x 16 = Rs.10,60,704/-
4.	Application of functional disability (50%)	Rs.10,60,704/- x 50%
Loss of total income		Rs. 5,30,352/-

25. The amount under this head, therefore, stands enhanced from Rs.1,69,713/- to Rs. 5,30,352/-.

F. EXPENSES ON PHYSIOTHERAPY

26. The next issue to be considered is, whether the Tribunal has rightly excluded compensation on account of expenditure for physiotherapy, as claimed by the appellant.

27. The appellant had exhibited medical bills for physiotherapy,

Himachal RTC [(2009) 13 SCC 530] [Paragraph 11].



amounting to Rs.30,000/-, marked as Exhibit PW4/A.

28. Evidence was given before the Tribunal by Dr. B.C. Jain, Head of the Department of Orthopaedics, Saroj Hospital, Rohini, Delhi [PW-5], who deposed as follows:

“I have treated the patient Sh. Shankar Mehto who was having flaxion Deforminty left hand. On examination of the patient, I observed that the patient had inability to extend the left hand second-third-fourth and fifth fingers. There was deformity in the left hand upper wrist. I had medically treated the patient w.e.f. 20.11.2008 to 19.3.2011 as an OPD patient. I have also given the estimate bill for the surgery of the left upper writs which will cost Rs.2,00,000/-. The original medical treatment record of the patient is Ex.PW5/A (colly.) running into three sheets which bears my signatures at points A, B, C, D and E. The estimate as mentioned above is Ex.PW51B. I had also advised the patient for physiotherapy. After his surgery, the pain in the upper left hand wrist will subside which is likely to happen in the present case.”⁷

29. PW-5 confirmed that the appellant was treated as an OPD patient from 20.11.2008 to 19.03.2011, and was advised to undergo physiotherapy. While cross-examined by learned counsel for the Insurance Company, he was not challenged on these specific aspects of treatment or physiotherapy.

30. The physiotherapist, Mr. Dharmender Gopal [PW-4], also gave evidence before the Tribunal, deposing as follows:

“Today I have brought the record i.e. copy of receipts pertaining to the physiotherapy given to the patient Sh. Shankar Mahto R/o. Sarai, Peepalthala, Delhi. I had given the physiotherapy treatment to the petitioner Sh. Shankar Mahto w.e.f. 21.11.2008 to 30.8.2009. I used to charge Rs.200/- per domestic visit. The original receipts regarding the same are Ex.PW4/A (colly) running into four sheets which pertains to the above mentioned period. The receipts Ex. PW4/A bear my signatures at points A, B, C and D.

The abovesaid patient was having post traumatic deformity in the left hand wrist.”⁸

⁷ Emphasis supplied.

⁸ Emphasis supplied.



31. PW-4 was cross-examined by learned counsel for the Insurance Company, and categorically denied the suggestion that the physiotherapy receipts were forged or fabricated.

32. Despite this evidence, the Tribunal rejected the claim solely on the ground that the appellant was not a permanent resident of Delhi, but a resident of Bihar, holding as follows:

“(i) Amount spent towards physiotherapy:

*PW-4 Sh.Dharmendra Gopal, Physiotherapist, Janaki Dass Kapoor Memorial Hospital, New Delhi has testified that he had given the physiotherapy treatment to the petitioner from 21.11.2008 to 30.08.2009 and that he had charged Rs.200/- per visit. On being cross-examined by Ld. Counsel for Insurance Company he denied the suggestion that the receipts regarding physiotherapy treatment given to the petitioner are forged and fabricated. The bills of physiotherapy are Ex. PW4/A (4 bills). As per the same the petitioner has paid a sum of Rs.6.000/- for physiotherapy treatment from 21st November 2008 to 5th January, 2009, a sum of Rs.6,000/-for 8th January 2009 to 18th March 2009, a sum of Rs.8,800/- from 25th March 2009 to 20th June 2009 and a sum of Rs.9,200/- from 1st July 2009 to 30th August, 2009. In all the petitioner had spent a sum of Rs.30,000/- towards physiotherapy according to him. **It was for the petitioner to prove beyond reasonable doubt that the bills placed on record by him towards physiotherapy are genuine ones. According to the claim petition the petitioner is a resident of Bihar, even in the affidavit sworn in by the petitioner for his testimony before this court, he has mentioned address of Bihar. He has not placed on record any local address of Delhi, even of any of his relative to show that he was living in Delhi for treatment. In these circumstances the bills for physiotherapy placed on record by the petitioner are not being believed by this court as the same are not reliable,** so as to grant amount of the same to the petitioner. The petitioner is therefore, not granted any amount for his physiotherapy treatment⁹.”*

33. Having regard to the evidence adduced, I am of the view that the Tribunal has erred in rejecting the claim for physiotherapy expenses. The Tribunal held that it was incumbent upon the appellant to prove the

⁹ Emphasis supplied.



genuineness of the bills beyond reasonable doubt. However, it is well-settled that, in adjudicating claims under the Motor Vehicles Act, the Tribunal is not bound by strict rules of pleading or evidence, and is required to arrive at a just and reasonable compensation based on the preponderance of probabilities¹⁰. The Tribunal, thus, misdirected itself on the required standard of proof.

34. In the present case, PW-5 clearly testified that the appellant underwent OPD treatment from 20.11.2008 to 19.03.2011, and further advised him to undergo physiotherapy for his injury. This aspect of treatment was not challenged in cross-examination. Similarly, PW-4 stated that he himself had treated the appellant, and denied any suggestion that the physiotherapy bills were forged or fabricated. The four physiotherapy bills produced before the Tribunal, covering the period from 06.01.2009 to 30.08.2009 and exhibited as PW4/A, bear the signature of the physiotherapist and contain reference numbers. The period reflected in these bills is corroborated by the testimony of PW-5, who confirmed that the appellant remained under his OPD treatment from 20.11.2008 to 19.03.2011, encompassing the duration for which physiotherapy was necessary. Viewed together, the evidence of PW-4 and PW-5 and the documentary record demonstrate a consistent and credible chain of events. In such circumstances, and having regard to the standard of proof applicable in claims before the Tribunal, the physiotherapy bills carry sufficient evidentiary weight, and ought not to have been rejected.

35. In light of the above, the appellant is entitled to reimbursement of

¹⁰ *Ibid.*



physiotherapy expenses amounting to Rs. 30,000/-.

G. GRATUITOUS SERVICES:

36. Having regard to the nature of the injuries sustained by the appellant; his period of hospitalisation from 11.09.2008 to 18.09.2008; and the subsequent course of treatment extending over several months, including surgery, periodical OPD consultations, and prolonged physiotherapy as noted hereinabove, it is evident that he would have required assistance in the performance of his day-to-day activities during the period of convalescence. The disability certificate records post-traumatic stiffness of the left hand and wrist, and the medical evidence unmistakably indicates that the appellant experienced restricted mobility for a considerable duration, thereby impeding his ability to independently attend to routine tasks. In such circumstances, the need for attendant care stands sufficiently established¹¹.

37. It is well-settled that compensation under this head is admissible even where the assistance is provided gratuitously by family members, for the necessity of such support itself constitutes a compensable pecuniary loss. Having regard to the duration of treatment, the nature of injuries, and the appellant's restricted functional capacity during recovery, a sum of Rs.20,000/- is awarded towards gratuitous services.

H. CONCLUSION

38. As a result of the foregoing discussion, the compensation awarded to the appellant under the respective heads is enhanced as follows:

¹¹ *Sumer vs. National Insurance Co. Ltd.* [2023 SCC OnLine Del 5533] .



Sr. No.	Heads	Amount awarded by Tribunal	Amount awarded by the Court	Difference
1.	Loss of income	Rs.1,69,713/-	Rs. 5,30,352/-	(+) Rs.3,60,639/-
2.	Medicines and medical treatment	Rs.2,241/-	Rs. 32,241/-	(+) Rs. 30,000/-
3.	Loss of wages	Rs.18,415/-	Rs.18,415/-	NIL
4.	Loss of amenities of life	Rs.1,00,000/-	Rs.1,00,000/-	NIL
5.	Pain and suffering	Rs.1,00,000/-	Rs.1,00,000/-	NIL
6.	Conveyance charges	Rs.10,000/-	Rs.10,000/-	NIL
7.	Special diet	Rs.10,000/-	Rs.10,000/-	NIL
8.	Disfigurement	Rs.1,00,000/-	Rs.1,00,000/-	NIL
9.	Gratuitous services	-	Rs. 20,000/-	(+) Rs. 20,000/-
Total		Rs. 5,10,369/-	Rs. 9,21,008/-	(+) Rs. 4,10,639/-

39. In sum, the award of the Tribunal is hereby enhanced by Rs. 4,10,639/-, increasing the total compensation from Rs. 5,10,369/- to Rs. 9,21,008/-.

40. I am informed that the original amount awarded by the Tribunal has already been satisfied. The Insurance Company is directed to deposit the balance amount, together with accrued interest from the date of filing



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of the claim petition, at the rate granted by the Tribunal, i.e., 9% per annum, with the Registry within eight weeks from the date of this judgment.

41. Upon deposit, the said amount, alongwith accrued interest, if any, shall be disbursed to the appellant.

42. The appeal, alongwith pending application, is disposed of in these terms.

PRATEEK JALAN, J

DECEMBER 8, 2025
SD/