



2025:DHC:10788



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Decided on: 01.12.2025***+ **MAC.APP. 770/2025, CM APPLs. 75455/2025 & CM APPL. 75456/2025****ROYAL SUNDARAM GENERAL INSURANCE
COMPANY LIMITED**

.....Appellant

Through: **Ms. Mouli Sharma & Ms. Suman
Bagga, Advocates.**

versus

RUPESH JHA & ANR.

.....Respondents

Through: **None.****CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. The appellant – Royal Sundaram General Insurance Company Limited [“Insurance Company”], has preferred the present appeal against the award dated 24.09.2025, whereby the Motor Accident Claims Tribunal [“Tribunal”] has awarded a sum of Rs. 23,84,524/- to the claimant [respondent No. 1 herein], alongwith interest at the rate of 9% per annum.

2. Respondent No. 1 sustained injuries in a motor accident that occurred on 04.09.2020 at about 04:45 AM on the Noida Express Highway. He was travelling in his car bearing registration No. DL-1ZB-9500 from Burari, Delhi to Bihar, when another car, bearing registration

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No. UP-80CA-0031 [“offending vehicle”], purportedly coming from the wrong side, collided with his vehicle. At the time of the accident, respondent No. 1, then aged about 34 years, was accompanied by other passengers, who also suffered grievous injuries.

3. The case of respondent No. 1 is that he was self-employed as a driver and was operating his car as a cab registered with OLA Cabs, and as a private taxi. He claimed that he was earning approximately Rs. 45,000/- to Rs. 50,000/- per month.

4. Alleging rash and negligent driving by the driver of the offending vehicle [respondent No. 2], respondent No. 1 instituted proceedings under Section 166 of the Motor Vehicles Act, 1988. The appellant – Insurance Company was the insurer of the said vehicle, and the Tribunal fastened liability upon it under the impugned award.

5. The Tribunal held in favour of respondent No. 1, finding that the injuries were caused due to the rash and negligent driving of respondent No. 2. It thereafter assessed compensation amounting to Rs. 23,84,524/-, under the following heads:

S.No.	Heads	Awarded by the Tribunal
<u>Pecuniary Loss</u>		
(i)	Medical Expenses	Rs. 10,000
(ii)	Expenditure on conveyance	Rs. 35,000
(iii)	Expenditure on Special diet	Rs. 35,000
(iv)	Cost of nursing/attendant	Rs. 35,000
(v)	Loss of Income	Rs. 91,860
Total pecuniary loss		Rs. 2,06,860



<u>Non Pecuniary Loss</u>		
(vi)	Pain and suffering	Rs. 50,000
(vii)	Loss of amenities of life	Rs. 35,000
(viii)	Disfiguration	Rs. 35,000
(ix)	Loss of future income	Rs. 20,57,664/-
Total non-pecuniary loss		Rs. 21,77,664/-
TOTAL COMPENSATION		Rs. 23,84,524/-

6. Ms. Mouli Sharma, learned counsel for the Insurance Company, presses a singular ground of challenge in the present appeal. She submits that the Tribunal erred in computing the loss of income by taking the functional disability of respondent No. 1 at 50%, whereas the medical evidence indicated that respondent No. 1 had suffered only 29% permanent disability in relation to the right lower limb.

7. Alongwith the present appeal, the Insurance Company has placed on record the relevant evidence in this regard, including the affidavit of evidence of respondent No. 1 [PW-1], and his cross-examination, as well as the disability certificate dated 18.04.2024 issued by Aruna Asaf Ali Government Hospital, Government of NCT of Delhi [Ex. PW1/15].

8. Respondent No. 1 was the sole witness examined before the Tribunal. Although respondent No. 2 had filed an affidavit by way of evidence, it is the admitted position that he was not produced for cross-examination. Consequently, his affidavit holds no evidentiary value, and cannot be relied upon.

9. On the basis of the evidence, the Tribunal concluded that the respondent No. 1 was working as a driver, but that he had failed to



establish the quantum of his actual income. The Tribunal, therefore, assessed the loss of income on the basis of the minimum wages applicable in Delhi for an unskilled person. These findings are not under challenge. However, the Insurance Company contends that the Tribunal's computation of loss of future earnings by taking the functional disability at 50% is excessive and unsustainable.

10. With respect to the assessment of functional disability, the Supreme Court in *Raj Kumar v. Ajay Kumar*¹, has held that such assessment must be undertaken by correlating the nature and extent of the disability certified by the medical authorities, with the nature of work performed by the victim. The Court cautioned against mechanically equating the percentage of permanent physical disability with the percentage of loss of earning capacity, and laid down the following approach:

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.”

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



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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.”²

11. In the present case, respondent No. 1 deposed in his affidavit of evidence, regarding his vocation, as under:

*“2. That the deponent reside at the above said address and **before the accident, the injured/deponent was driver and driving his own vehicle as Cab and with Ola cab** and earn approx. Rs. 45,000/- to Rs. 50,000/- per month.*

*3. That on the unfortunate day of 04.09.2020 at about 4:45 a.m **the deponent was going on his car (Swift Desire bearing No.DL-1ZB-9500) from Burari, Delhi to Bihar with the passengers** and when the deponent reached Noida Express Highway, then suddenly, the offending vehicle bearing No.UP-80-CA-0031 Audi car (White Colour) came from wrong side and in a rash and negligent manner driven by the respondent and hit the Swift car of the deponent forcefully.*

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*8. That the injured/deponent aged about 36 years and possessing very good health. The injured is teetotaler. **Before the above accident, the deponent was driving his Swift car as a cab in Ola cab and also driving as private cab with private passenger** and*

² Emphasis supplied.



the deponent was earning of approx. Rs 45,000/- to 50,000/- per month at the time.

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10. *That the due to this accident, the deponent is unable to driving the vehicle* as the said deponent used to earn his livelihood tor himself and his family by driving the car as private use.”³

12. In his cross-examination by learned counsel for the respondent, the respondent No. 1 testified that he had been driving commercially since 2011 and that, on the date of the accident, he was travelling with passengers from Delhi to Samastipur in Bihar. However, he admitted that he had not placed on record any document to show his association with OLA Cabs or any proof of receipt of payments from OLA. He asserted that his passengers on that day were being taken as private cab passengers.

13. On the basis of the above evidence, I am of the view that the Tribunal has rightly proceeded on the basis that respondent No. 1 was working as a driver. This must then be correlated against the nature and extent of his disability.

14. The disability certificate [Ex. PW1/15], noted above, records 29% permanent physical impairment in relation to the respondent No.1's right lower limb. It further states that the condition is non-progressive and not likely to improve.

15. The Tribunal considered this aspect as follows:

“22. Petitioner claimed in his affidavit Ex. PW1/A that he has become permanently disabled after the accident and could not perform his work by resuming his duties. As per record the petitioner

³ Emphasis supplied.



*was a driver by profession and as per the disability certificate Ex. PW-1/6. the petitioner has suffered 29% permanent physical impairment with relation to his Right Lower Limb which is non progressive and not likely to improve in future. **As per evidence following physical disability he is unable to drive his vehicle which was his only source of his livelihood.** Further, due to loss of work following physical permanent disability the petitioner has suffered depression and financial loss of his income. **It is noteworthy that a driver has to use his Right Lower Limb continuously for driving a vehicle. For a person who drives a short distance the said permanent physical disability in the Right Lower Limb would not be a big challenge but same is a big challenge/ handicap for a person who has to drive a vehicle for hours during a day on routine basis.** Although, an exact assessment cannot be made regarding the functional disability of the petitioner but a practical approach can be adopted and therefore in the facts and circumstances, considering the physical permanent disability in the Right Lower Limb to the extent of 29% in the backdrop of location of the petitioner, **the functional disability of the petitioner is taken as 50%.....**”⁴*

16. Having regard to the evidence extracted above, I do not find any infirmity in the Tribunal’s decision. Respondent No. 1’s vocation as a driver was clearly asserted in his evidence and withstood cross-examination. A permanent disability of 29% in a lower limb constitutes a significant impairment for a person whose livelihood depends on driving. The Supreme Court in *Raj Kumar* mandated an approach that correlates the claimant’s vocation with the nature and extent of the injury to arrive at a functional assessment for computing loss of earnings, and this is precisely the approach adopted by the Tribunal in the present case. Considering that respondent No. 1 was 34 years old at the time of the accident, the Tribunal’s assessment of 50% functional disability for computing loss of future earnings is reasonable. Accordingly, I find no

⁴ Emphasis supplied.



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reason to interfere with this assessment of the Tribunal.

17. As no other ground has been pressed in the appeal, the same is dismissed. All pending applications also stand disposed of.

PRATEEK JALAN, J

DECEMBER 1, 2025

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