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

% ***Date of decision:16th February, 2026***

\+ **MAC.APP. 291/2019 & CM APPL. 8989/2019**

NEW INDIA ASSURANCE CO LTD .....Appellant

Through: Ms. Anjali Dhingra, Adv. for Ms. M.N. Singh.

versus

ABDUL SHALAM @ SHAIL & ORS .....Respondents

Through: Mr. Idresh Ahemad and Mr. Anurag, Advs. for R-1.

\+ **MAC.APP. 62/2023**

ABDUL SHALAM ALIAS SAHIL .....Appellant

Through: Mr. Idresh Ahemad and Mr. Anurag, Advs.

versus

NEW INDIA ASSURANCE COMPANY LTD AND ORS .....Respondents

Through: Ms. Anjali Dhingra, Adv. for Ms. M.N. Singh. for R-1.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J: (ORAL)

1. ***MAC.APP. 291/2019*** has been filed by the Insurance Company

seeking reduction of compensation awarded by Motor Accidents Claims Tribunal ['MACT'], (North), Rohini, Delhi at Rs. 15,31,000/- to *Sh. Abdul Shalam @ Sahil (*hereinafter, *'**claimant**')*, failing which the Insurance Company was to pay interest @ 9% on the amount of Rs. 11,37,647.48/- to claimant *w.e.f.* 13.01.2019, till realization; whereas ***MAC.APP. 62/2023*** is a cross-objection filed by claimant seeking enhancement of compensation awarded.

2. Claimant was working as a helper in loading and unloading goods in truck bearing registration no. HR-38Q-4110 (hereinafter, '***offending vehicle***') which was owned by respondent no.3/*Sh. Bijender Sharma* and driven by respondent no.2/*Sh. Rujdar Khan*.

3. On 14th September 2013, after loading goods in the offending vehicle, claimant and driver reached the hotel and left after having food. Claimant was sitting in the offending vehicle and due to the negligent driving of the vehicle, he lost control and fell down and was injured by the rear tyres of offending vehicle. FIR was registered under Sections 279/338 of Indian Penal Code, 1860 ('***IPC***'). Chargesheet was filed and on that basis, MACT arrived at the conclusion that accident in question occurred due to rash and negligent driving of offending vehicle by driver, resulting in injuries to claimant.

4. As regards compensation, there is dispute on two counts: ***firstly***, that permanent disability which was assessed at *56%* in both lower limbs was taken as *35%* functional disability by MACT.

5. *Ms. Anjali Dhingra*, Counsel appearing on behalf of Insurance Company contends that the functional disability ought to have been taken

at half of *56% i.e. 28%* with respect to the whole body than *35%.*

6. On the other hand, *Mr. Idresh Ahemad*, Counsel appearing on behalf of claimant contends that functional disability ought to have been taken at *56%* itself, considering that claimant was injured in a manner where he could not recover and that he was working as a manual labourer *i.e.* as a cleaner in the offending vehicle, and he could not be employed any more in that capacity.

7. ***Secondly*** issue relates to pecuniary loss towards income which was granted at *Rs.61,776/-* [***Rs.7,722/- (basis minimum wages) x 8 months***]

8. *Ms. Anjali Dhingra*, Counsel for Insurance Company contends that no discussion is made in the impugned award, as to the basis on which loss of income for 8 months has been awarded.

9. *Mr. Ahemad*, Counsel for claimant counters this by stating that the nature of injury was such, that it took that much time to recover and, therefore, a broad estimation was done by MACT in this regard.

10. Considering that there is no discussion by MACT on these aspects, rather than remanding the matter back to MACT, after a passage of 13 years since the accident, which occurred on 14th September 2013, the Court is inclined to make its own assessment in order to put a closure to these matters.

11. Court has perused the permanent Disability Certificate issued by Government of NCT of Delhi, *Dr. Baba Saheb Ambedkar Hospital* which states that there is *56%* permanent disability in relation to both lower limbs.

12. In addition to this, claimant is present in Court and through his

counsel contends that he has a plate in his right leg and a serious surgical intervention, done on his other limb, therefore, he has to use crutches in order to walk and is unable to do the work which he was doing at that time of accident and further states that he is unemployed.

13. Notwithstanding the same, assessment of functional disability is done on principles enunciated *inter alia* by the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, where the Supreme Court held that the Tribunal must assess not merely the extent of permanent disability but its actual impact on the claimant's earning capacity, which may differ from the medical percentage of disability. This requires evaluating the claimant's pre-accident vocation, the functions affected, and whether livelihood can still be earned despite the disability. The Court emphasised that disability and loss of earning capacity are distinct concepts, except in cases where evidence shows they coincide. Relevant paragraphs are extracted as under:

> "***11.*** *What requires to be <u>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</u>. (See for example, the*

decisions of this Court in Arvind Kumar 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.

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.*"

(emphasis added)

14. In ***Raj Kumar v. Ajay Kumar*** (*supra*), the Court summarized the 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."

(emphasis added)

15. The Court, therefore, has to assess as to what activities could be carried on by claimant, despite the permanent disability; ascertain the profession, nature of work, age of claimant, and whether he was totally disabled from working or could he still carry on activities and functions which he was earlier carrying out or is he prevented from discharging previous functions or can he carry out any other lesser scale of activity to continue earning.

16. It is an admitted position, that at that time claimant was working as a cleaner in the truck/offending vehicle which involves manual labour and an immense amount of mobility and movement, including, climbing up and down a transport vehicle and carrying weight for loading and unloading. This is an intense job requiring manual work, therefore, with *56%* disability in lower limbs, the assessment of functional disability cannot be considered at *35%* as opined by the MACT.

17. On the contrary, this would reduce his ability to do a similar job and he would be restricted to jobs, which do not involve any major mobility.

18. Accordingly, in the Court's opinion, functional disability ought to be assessed at ***50%*** of the whole body and, therefore, compensation would have to be recomputed.

19. As regards loss of income for 8 months, MACT has not given any reference to loss of earnings being, minimum wages. Moreover, no other

evidence has been produced by the claimant in this regard.

20. Statement of petitioner, who examined himself as ***PW-1***, records that police took him to a hospital from the accident spot within 5-10 minutes of the accident and recorded his statement in the hospital after about 1 ½ months of the accident. He rebutted the suggestion that he was unemployed or not earning anything. This statement before MACT was recorded in September 2016 *i.e.* three years after the accident had taken place. He further rebutted the suggestion that he had fully recovered or did not require any further treatment.

21. This Court has taken notice of a document on record which is a follow-up Out Patient Department ('***OPD***') report at All India Medical Sciences (*AIIMS*) noting on 07th May 2014 that the claimant be provided a wheelchair.

22. Further, there is a discharge summary dated 12th November 2013 of Jai Prakash Narayan Apex Trauma Centre which describes the problem as under:

WOUND OVER LOWER BACK & GLUTEAL REGION AND RIGHT THIGH AND
EXTENDING UPTO BELOW KNEE WITH UNDERLYING DEGLOVING UPTO MID THIGH
ALL PERIPHERAL PULSES PALPABLE IN ALL LIMBS, NEUROVASCULAR BUNDLE INTACT
USG ABDOMEN-INTERNAL ECHO IN UB REST NORMAL SCAN

23. In view of the same, considering that there is no further evidence on record for loss of income for eight months while hospitalization seems to be for not more than two months (*14th September 2013 i.e. date of accident till 12th November 2013 i.e. date of discharge*), pecuniary loss of income is reduced to ***4 months*** from ***8 months***, to accommodate another two months for recovery.

24. The Supreme Court in ***K.S. Muralidhar v. R. Subbulakshmi and Anr.***

2024 SCC Online SC 3385, observed that "*pain and suffering*" cannot be captured by any fixed definition, drawing on legal, medical, and philosophical sources to emphasise its deeply subjective and life-altering nature. It recognised that translating such profound human loss into money is an inherently artificial exercise, yet courts must ensure fairness, consistency, and sensitivity to the victim's lifelong deprivation. The Court stressed that in cases of severe or 100% disability, compensation must meaningfully reflect the permanent rupture in the victim's physical, emotional, and existential well-being. Relevant paragraphs are extracted as under:

> "***13.*** *While acknowledging that 'pain and suffering', as a concept escapes definition, we may only refer to certain authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.*
>
> *13.1 The entry recording the term 'pain and suffering' in P. Ramanatha Iyer's Advanced Law Lexicon[9] reads as under:—*
>
> *"**Pain and suffering.** The term 'Pain and suffering' mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.*
>
> *This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The, [1900] A.C. 113, 116]"*
>
> …

13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in Heil v. Rankin[16]*, as referred to in Attorney General of St. Helenav. AB*[17] *as under:—*

> *"23. This principle of 'full compensation' applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in Andrews v. Grand & Toy Alberta Ltd., 83 DLR (3d) 452, 475-476, this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of 'full compensation' for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in H West & Son Ltd. v. Shephard, [1964] A.C. 326 when he said:*
>
> *'The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.'*
>
> *24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the damages he receives because of the injury which he has sustained. Lord Clyde recognised this in Wells v. Wells, [1999] A.C. 345, 394H when he said: 'One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant."*

…

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14. In respect of 'pain and suffering' in cases where disability suffered is at 100%, we may notice a few decisions of this Court:—

14.1 In R.D Hattangadi v. Pest Control (India) (P) Ltd. It was observed:

*"**17.** The claim under Sl. No. 16 for 'pain and suffering' and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs. 3,00,000 each under the two heads. The High Court has allowed Rs. 1,00,000 against the claims of Rs. 6,00,000. When compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs. 1,50,000 in respect of claim for 'pain and suffering' and Rs. 1,50,000 in respect of loss of amenities of life. We direct payment of Rs. 3,00,000 (Rupees three lakhs only) against the claim of Rs. 6,00,000 under the heads "'pain and suffering'" and "Loss of amenities of life".*

(Emphasis Supplied)

14.2 This Judgment was recently referred to by this Court in Sidram v. United India Insurance Company Ltd reference was also made to Karnataka SRTC v. Mahadeva Shetty (irrespective of the *percentage of disability incurred, the observations are instructive), wherein it was observed:*

> *"18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident through out his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned…"*

(emphasis added)

25. Therefore, considering the principles laid down in ***K.S. Muralidhar*** (*supra*), compensation for mental & physical shock and pain & suffering is granted at ***Rs.1,00,000/-*** each, in consonance with the principles laid down in

26. Compensation for marriage prospects is enhanced to ***Rs.1,00,000/-,*** considering that the claimant was merely 20 years old at the time of accident.

27. Accordingly, revised computation is as under:

Sr. No.	Heads	Awarded by the Tribunal	Awarded by this Court
PECUNIARY LOSS			
1	Expenditure on treatment (A)	Rs. 28,575/-	Rs. 28,575/-
2	Expenditure on conveyance (B)	Rs. 30,000/-	Rs. 30,000/-
3	Expenditure on special diet (C)	Rs. 30,000/-	Rs. 30,000/-

4	Cost of nursing / attendant (D)	Rs. 30,000/-	Rs. 30,000/-
5	Loss of earning capacity (E)	35%	50%
6	Loss of income (F)	Rs. 61,776/- (8 x Rs. 7,722)	Rs. 30,888/- (4 x Rs. 7,722)
	NON-PECUNIARY LOSS		
7	Compensation for mental and physical shock (G)	Rs. 20,000/-	Rs. 1,00,000/-
8	Pain and suffering (H)	Rs. 20,000/-	Rs. 1,00,000/-
9	Disfiguration (I)	Rs. 50,000/-	Rs. 50,000/-
10	Loss of marriage prospects (J)	Rs. 50,000/-	Rs. 1,00,000/-
	DISABILITY RESULTING IN LOSS OF EARNING CAPACITY		
11	Percentage of disability assessed and nature of disability as permanent or temporary	56% Permanent	56% Permanent
12	Loss of future income (Income X% Earning capacity x Multiplier) (K)	Rs. 8,17,296.48	Rs. 11,67,566.4
13	Total compensation (A + B + C + D + F + G+ H + I + J + K)	**Rs. 11,37,647/-** [Rs. 11,37,647.48/- rounded off]	**Rs. 16,67,029/-** [Rs. 16,67,029.4 rounded off]
14	Interest awarded	9%	9%

28. *Vide* order dated 25th February 2019, this Court had stayed the operation of impugned award subject to deposit of the entire awarded amount with interest with the concerned MACT within 6 weeks and amount so deposited was to be converted into annual Fixed Deposit Receipts (FDRs) with automatic renewals and *vide* order dated 18th October 2022, 50% of the awarded amount was released to the claimant as per the scheme of impugned award.

29. For the aforesaid reasons, award of MACT is enhanced by *Rs. 5,29,382/-*. Said amount shall be deposited by the Insurance Company

along with accrued interest at the rate of 9% per annum, within four weeks from today, before MACT and shall be disbursed as per the directions to be given by the MACT.

30. List before the MACT on 9th March, 2026

31. Copy of this judgment be sent to the concerned MACT.

32. Appeals stand disposed of with above directions.

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

34. Statutory deposit be refunded to Insurance Company.

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

ANISH DAYAL
(JUDGE)

FEBRUARY 16, 2026/mk/*sp*