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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAC.APP. 195/2026, CM APPL. 17571/2026, CM APPL. 17572/2026&CM APPL. 17573/2026**

LIBERTY GENERAL INSURANCE LIMITEDAppellant

Through: **Mr. Pramod K Sah, Advocate.**

versus

PRADEEP MEHRARespondent

Through:

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

ORDER

20.03.2026

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1. This appeal has been filed assailing impugned award dated 10th December 2025, passed by Motor Accidents Claims Tribunal ('*MACT*') South-West District, Dwarka Court, Delhi in *MACT No. 124/2021*, awarding compensation of *Rs.58,36,000/-* along with interest of 7.5% per annum.

2. *Mr. Pramod K Sah*, counsel for appellant/Insurance Company, seeks to assail this award on the assessment of functional disability, which was taken at 60% as opposed to the permanent disability being 40% in relation to left upper and lower limb, as certified.

3. *MACT* has dealt with this aspect in paragraph 8 of the impugned award, which is extracted as under:

"There is a disability at 40% in left upper and lower limb.



Injured has deposed in the affidavit that due to the accident he has lost his job. His cross examination does not deviate from this claim. This is also supported by the employer who states that after the accident Pradeep Mehra was not able to do the same job and he did not join the job due to movement difficulty. No doubt the job of Cargo Assistant could require movement but it cannot be said that the injured cannot be able to procure any job at all. Since disability is both in upper and lower limb, difficulty could be more in procuring a proper job. The doctor has specifically stated that the injured has difficulty in cross leg sitting, squatting, walking on slope, stair climbing and standing of affected limb, lifting objects over head and putting shirt. This shows that the injured would be facing severe problem in life. As such, a fine balance is required to ascertain the functional disability. A three judges bench of Hon'ble Supreme Court in Pappu Deo Yadav vs Naresh Kumar AIR 2020 SC 4424 has opined that it would be wrong to take half of physical disability for the purpose of considering functional disability. It is not the law that functional disability should be equal to the physical disability. There can be variation upward or downward depending on circumstance of each case. Therefore in the available circumstances, 60% functional disability is accepted..."

4. MACT considered the evidence of **PW-3/ Dr. Vijay Kumar Jain, CMO (NFSG) RML Hospital**, who stated that respondent/injured has *“difficulty in cross-leg sitting, squatting, walking on slope, stair climbing and standing of affected limb, lifting objects overhead and putting shirt.”*
5. Considering that respondent/injured was working as a Cargo Assistant with *Cargo World Exim Services* in Delhi, it would have been impossible for him to continue his job due to his disability, considering the nature of this job and would affect him in carrying on his livelihood.
6. Assessment of functional disability at 60%, therefore, is appropriate



considering that approximately half of his body has been affected due to the permanent disability.

7. Reliance in this regard may be placed on ***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 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. (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.

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.”

(emphasis added)

8. 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)

9. Having assessed the plea, Court is not inclined to allow this appeal and the appeal is accordingly dismissed.

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

11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 20, 2026/RK/sp