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* **IN THEHIGH COURTOF DELHIAT NEW DELHI**

\+ MAC.APP. 235/2026, CM APPL. 21759/2026 & CM APPL. 21760/2026

LIBERTY GENERAL INSURANCE LTD. .....Appellant

Through: Mr. Amtej Kumar Nagar, Advocate.

versus

SANTOSH KUMAR MISHRA & ORS. .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% **06.04.2026**

1. This appeal has been filed by Insurance Company seeking modification of award dated 22nd December 2025 passed by Motor Accidents Claims Tribunal ('***MACT***') Patiala House Courts, New Delhi in DAR No. 77/2020, awarding compensation of *Rs.6,34,000/-* along with interest at the rate of 9% per annum to the injured claimant/respondent no.1.

2. Injured claimant/respondent no.1 sustained injured in an accident which was occurred on 09th November 2019, when injured claimant/respondent no.1, an auto driver, was waiting for a passenger near Sarojini Nagar Market; and was hit by the offending vehicle bearing registration no. DL-9-CX-2817, driven at a high speed. He was initially taken to *AIIMS Trauma Centre* and further treatment continued in *Gandhi Hospital, Om Vihar, Uttam Nagar, Delhi* where he was admitted from 09th

November 2019 to 13th November 2019 in the hospital. Criminal proceedings were initiated against the driver and owner of offending vehicle.

3. *Mr. Amtej Kumar Nagar*, counsel for Insurance Company, has preferred a challenge on the sole ground that MACT has assessed functional disability at 10%, despite injured claimant/respondent no.1 having suffered 3% permanent disability in respect of the right lower limb, as noted by the Disability Certificate issued by Dr. Ram Manohar Lohia Hospital.

4. Upon a perusal of the impugned award, this Court notes that the MACT has considered the testimony of claimant as ***PW-1,*** who stated in his cross examination that after his accident, he tried to drive the Three-Seater Auto Rickshaw ('***TSR***'), but was unable to do so due to pain and swelling in his leg. After consulting with a doctor, he was advised to do a sedentary job, considering that he still had a rod implanted in the leg.

5. Based on his testimony, MACT took an estimate of 10% functional disability, considering principles enunciated in ***Raj Kumar v. Ajay Kumar & Anr.*** (2011) 1 SCC 343. Considering his vocation as an auto driver, his the right leg is extremely critical for driving the said vehicle, as the same is important for pushing the brake and accelerator. The relevant finding of the MACT in that regard is extracted as under:

> "*26. PW-1 is stated to be an auto rickshaw driver. In his evidence it is stated that a steel rod is implanted in his leg. In his cross 'examination it is stated that after his accident he was not able to drive auto rickshaw due to pain in his leg. Though the insurance company has argued that the functional disability may be considered as NIL but they have failed to put forth any rationale in this regard. Right leg is an important limb for pushing break and accelerator for*

driving any vehicle Accordingly, the functional disability is considered as 10%.”

(emphasis added)

6. In ***Raj Kumar v. Ajay Kumar*** (*supra*), 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])*
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> ***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)

7. Therefore, the Court does not find anything amiss in the assessment by the MACT, which has been done on a reasonable basis. Accordingly, this

Court is not inclined to allow this appeal.

8. Appeal is, accordingly, dismissed.

9. Statutory amount be released, if any, to the Insurance Company.

10. Compensation awarded by the MACT stands confirmed will be deposited, along with the accrued interest, before the MACT within the next four weeks. Release of compensation will be as per the directions of the MACT.

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

ANISH DAYAL, J

APRIL 6, 2026/RK/*sp*