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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 16th March 2026.*+ **MAC.APP. 232/2023 & CM APPL. 22370/2023**

SH ASHISH KUMAR SHARMA

.....Appellant

Through: Mr. S.N. Parashar, Advocate with
Mr. Ritik Singh, Advocate.

versus

SH MONU & ORS.

.....Respondents

Through: Mr. Attin Shankar Rastogi, Advocate
with Ms. Jigyasa Parashar, Advocate
for NIC/R-3.**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT**

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ANISH DAYAL, J: (ORAL)

1. This appeal has been filed by the claimant/injured for enhancement of the compensation awarded by order dated 01st November 2022 passed by the Motor Accidents Claims Tribunal ('*MACT*'), South East District, Saket Court, New Delhi, whereby compensation of Rs. 14,32,301/- along with interest @ 9% per annum from the date of filing the DAR was awarded.

2. Brief facts are that the accident occurred on 23rd august 2017 at about 8:00 AM, when *Ashish Kumar Sharma*/ injured was traveling with his friends as pillion rider on motorcycle. When the injured along with his friends reached Sarita Vihar, New Delhi, the backside wheel of their vehicle got punctured requiring them to stopped the vehicle on the side of the road. A truck bearing no. HR-55S-0350 came at high speed, without



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any indicator in a rash and negligent manner and hit the vehicle from the backside resulting in grievous injuries to claimant/ injured. The injured was taken to Apollo Hospital, New Delhi, wherein MLC No. 602/17 was prepared. FIR was registered under Section 279/338 Indian Penal Code, 1860 and subsequently chargesheet was filed.

3. *Mr. S.N. Parashar*, counsel appearing for injured/claimant, has claimed enhancement on three grounds. **Firstly**, that the functional disability was considered at 25% despite permanent physical disability being certified at 82% in relation to right lower limb; **Secondly**, that the *future prospects* have not been granted, considering that claimant was below 40 years of age on the date of the accident, 40% ought to have been awarded towards *future prospects* and; **thirdly**, that the compensation on account of non-pecuniary heads was grossly inadequate.

4. *Mr. Attin Kumar Rastogi*, counsel for Insurance Company, contends that the assessment of the MACT was right and appropriate, and there was no reason for the functional disability to be increased, particularly considering that claimant/ injured was only taking tuition and could have continued that vocation.

5. The Court has considered the Disability Certificate, which assesses the permanent disability at 82% in relation to the right lower limb. *Paragraph 28* of the award also describes the nature of medical condition and injury as compound fracture distal femure lateral condyle + proximal tibia fracture right side & other injures. Further, the testimony of **PW1**/ injured noted that rod, plate, and screws were inserted in his right leg, due to which he was walking with the support of a walker for a long time and still is not fully well done to such a fracture. It is further noted that he



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cannot walk properly till date due to the injuries received in the accident in question. He further deposed that due to such injury, he left his study and his whole career is ruined. He further deposed that at the time of accident he was taking tuition and earning about Rs. 15,000/- per month.

6. Even though the claimant, did not place on record proof of the fact that he was taking tuitions, but having considered the evidence on record as well as the photograph presented by *Mr. Parashar* relating to claimant's condition, the Court is of opinion that 25% of functional disability is highly inadequate, considering that his whole mobility and functionality would be completely affected resulting from the said injuries. Further, claimant was 18 years of age at the date of the accident, which is quite early in his life and claimant's whole earning life would have been affected completely.

7. Reliance in this regard can be placed on the judgment of Supreme Court in *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343, wherein it was 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 the present case, applying the principles laid down in **Raj Kumar v. Ajay Kumar** (*supra*), this Court is required to assess the effect of the permanent disability on claimant's earning capacity and not merely adopt the medical percentage of disability. The claimant, being 18 years of age at the time of the accident and having suffered 82% permanent disability in relation to the right lower limb, has clearly suffered a substantial restriction in mobility and functional ability. While it is possible that he may continue to undertake some form of tuition work, his capacity to carry on such activity effectively and consistently stands significantly impaired. Thus, considering his avocation, age, and the nature of injuries, the functional



disability is reasonably assessed at 50%, reflecting a substantial, though not total, loss of earning capacity.

9. As regards the *second issue*, considering that the injured was 18 years of age on the date of the accident, 40% future prospects have to be granted considering the principles enunciated in *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680.

10. As regards the *third issue* pertaining to non-pecuniary compensation, reliance may be placed on the judgment of the Supreme Court in *K.S. Muralidhar v. R. Subbulakshmi and Anr.* 2024 SCC Online SC 3385, wherein it was 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. 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 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*, as referred to in *Attorney General of St. Helena v. AB* 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”.

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



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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)

11. Further, reliance can be placed on the judgment of **KSRTC v. Mahadeva Shetty**, (2003) 7 SCC 197, wherein the Supreme Court as regards loss of amenities of life notes as under:

“18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is 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 of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned.”

(emphasis supplied)

12. In light of judgments cited above, in the facts and circumstances of the case, the Court is of the view that the compensation on account of *pain and suffering* and *mental and physical shock* granted at Rs. 25,000/- each is highly inadequate as claimant suffered 82% permanent physical disability in relation to right lower limb at a young age of 18 years resulting in significant impairment of mobility would endure prolonged pain and suffering. Accordingly, compensation under the head of *pain and suffering* and *mental and physical shock* is enhanced to Rs. 1,00,000/- each. Further, considering the age of claimant, compensation granted on account of the *loss of amenities of life* and *disfigurement* at Rs. 50,000/- is also inadequate



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and the same is enhanced to Rs. 1,00,000/-.

13. The revised computation is as under:

S. no	Heads of Compensation	Awarded by tribunal	Awarded by the Court
Pecuniary Loss			
1.	Expenditure on treatment (A)	Rs. 33,473/-	Rs. 33,473/-
2.	Expenditure on special diet (B)	Rs. 25,000/-	Rs. 25,000/-
3.	Expenditure of conveyance and special diet (C)	Rs. 25,000/-	Rs. 25,000/-
4.	Attendant Charges (D)	Rs. 25,000/-	Rs. 25,000/-
5.	Income of injured per month (E)	Rs. 16,182/-	Rs. 16,182/-
6.	Future prospects @ 40% (F)	-	Rs. 6,473/-
7.	Loss of income (G)	Rs. 1,00,000/-	Rs. 1,00,000/-
8.	Functional disability (H)	25%	50%
9.	Multiplier (I)	18	18
10.	Loss of future income [(E+F) x 12 x H x I]= J	Rs. 8,73,828/-	Rs. 24,46,740/-
Non-pecuniary loss			
11.	Pain and suffering (K)	Rs. 25,000/-	Rs. 1,00,000/-
12.	Mental and physical shock (L)	Rs. 25,000/-	Rs. 1,00,000/-.
13.	Loss of Amenities of Life (M)	Rs. 50,000/-	Rs. 1,00,000/-
14.	Disfigurement (N)	Rs. 50,000/-	Rs. 1,00,000/-
15.	Loss of marriage prospects (O)	Rs. 2,00,000/-	Rs. 2,00,000/-
16.	Total (A+B+C+D+G+I+J+K+L+M+N+O)= P	Rs.14,32,301/-	Rs.32,55,213/-
17.	Interest	9%	9%

14. Enhanced compensation along with 9% interest per annum from date



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of filing DAR will be deposited before the MACT within a period of four weeks.

15. It is directed that a lump sum amount of Rs. 2,00,000/- shall be released to the claimant within a period of two weeks thereafter. The remaining amount, along with accrued interest, shall be kept in Fixed Deposit Receipts (FDRs) of Rs. 25,000/- each for periods of 1 month, 2 months, 3 months and so on, in succession as maybe calculated. The interest accruing on the said FDRs shall be credited to the designated Savings Bank Account of the claimant. The amount of FDRs on maturity would be released to the Savings Bank Account of claimant upon due verification.

16. The appeal is disposed of in terms of the above. Pending applications are rendered infructuous.

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

(ANISH DAYAL)
JUDGE

MARCH 16, 2026/RK/zb