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

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Date of decision: 28th January 2026+ **MAC.APP. 579/2013**

SH DURVESH KUMAR

.....Appellant

Through: Mr. S.N. Parashar and Mr. Ritik Singh,
Advs.

versus

SH HARPAL & ORS

.....Respondents

Through: Ms. Vandana Kahlon and Mr. Rudra
Kahlon, Advs. for R-3.**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J: (ORAL)**

1. This appeal has been filed seeking enhancement of the compensation awarded by the impugned award dated 15th February 2013 by the Motor Accidents Claims Tribunal ('**MACT**') in MACT No.34/2011, whereby a total compensation of Rs.11,81,930/- along with interest @ 7.5% per annum was awarded.
2. The accident occurred on 25th October 2010 due to the rash and negligent driving of the offending truck driven by respondent no.1 (driver). The appellant suffered grievous injuries resulting in amputation of the left leg and suffered 85% permanent disability with respect to left lower limb.



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3. *Mr. S.N. Parashar*, counsel appearing for the appellant/claimant, places his contentions seeking enhancement on the three counts.
4. **Firstly**, it is contended that the functional disability ought to have been assessed at 100% instead of 50%, as assessed by the impugned award, considering that the appellant was working as a Manager at *Kaleva Sweets* and could not continue in employment thereafter. He relies on the decision of the Supreme Court in ***Anthony v. Managing Director, Karnataka State Road Transport Corporation*** (2020) 7 SCC 161, wherein 75% physical disability had been reduced to 25% by the High Court; however, the Supreme Court set aside the said finding and held that the appellant was entitled to compensation based on 75% permanent physical disability.
5. To this, counsel for respondent/Insurance Company states that appellant had already been granted *Rs.2,58,150/-* towards the provision of an artificial limb, the quotation for which has been placed on record. Therefore, the question of 85% disability with respect to complete loss of functionality and earning capacity ought not to be entertained.
6. Counsel for appellant contends that while deciding the issue of functional disability, no reasoning or assessment has been given by the MACT, as can be noticed from *paragraph 35* of the impugned award.
7. Reliance placed by counsel for the appellant on the decision of the Supreme Court in ***Anthony*** (*supra*) may not be apposite, considering that ***Anthony*** (*supra*) pertained to a painter engaged in manual labour.
8. In the present case, as contended by the appellant, he was working as a Manager at *Kaleva Sweets*. However, it is also noted that during the cross-examination of the injured/claimant as PW-1, he admitted that he did not



possess any documentary proof to show that he was in employment or of his income as on the date of the accident. Though, he did not deny that he was not working for *Kaleva Sweets* on the date of the accident.

9. In this scenario, even if it is assumed that the appellant was working as a Manager at *Kaleva Sweets*, though not proved, the claim of 100% functional disability cannot be sustained or permitted. There is no assertion on behalf of appellant that he was involved in a manual or labour work.

10. To the contrary, he was, at best, working in a managerial capacity, which would require some movement but not extensive mobility.

11. In *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343, 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 emphasized 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)

12. In **Raj 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,



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occupation or job, age, education and other factors.”
(emphasis added)

13. Considering the observation made by the Supreme Court in **Raj Kumar** (*supra*) and the facts of the present case, at best the assessment of *functional disability* could be increased marginally to **60%**, but not beyond that.

14. This is also in the context that the appellant was awarded compensation for an artificial limb, from which he may have derived benefit, and therefore, in that scenario the reduction of the earning capacity would have been somewhat mitigated.

15. The **second** issue raised by *Mr. Parashar*, counsel for the appellant, relates to *attendant charges*, which have not been granted, despite that **PW-1** having stated in his affidavit of evidence that he had engaged an attendant at *Rs.3,000/- per month for ten months*.

16. Counsel for the respondent/Insurance Company contends that even in the cross-examination no other evidence was produced by **PW-1** regarding the engagement of an attendant.

17. However, this Court notes that in the cross-examination he denied the specific suggestion given that he had not incurred any amount on the attendant.

18. It is admitted by counsels for parties that the injured/appellant was in hospital for two months.

19. Considering that he may have required the attendant for those two months and may be a few months subsequently, the attendant charges can be awarded to him for **six months** at *Rs.3,000/- per month*.

20. Moreover, the Supreme Court in the case of **Ningamma v. United India**



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Insurance Co. Ltd. (2009) 13 SCC 710 has held that the Court is duty-bound to award just compensation, even if the same has not been specifically pleaded by the claimant. The relevant part of the judgment is extracted as under:

“25.....Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award “Just Compensation” irrespective of the fact whether any plea in that behalf was raised by the claimant or not.....”

(emphasis added)

21. The **third** issue, which has been raised, pertains to application of the *multiplier* of 14 instead of 15, even though the appellant was 40 years and 3 months of age at the time of the accident.
22. In terms of the tabulation provided in ***Sarla Verma v. DTC*** (2009) 6 SCC 121, the multiplier applicable would be **15** in the category of 35 years to 40 years.
23. Accordingly, the same shall also stand corrected.
24. The revised computation, therefore, is as under:

Sr. No.	Heads of compensation	Awarded by the Tribunal	Awarded by this Court
1	Medical Expenses	Rs. 73,226/-	Rs. 73,226/-
2	Cost of nursing / attendant	-	Rs. 3,000 X 6 = Rs. 18,000/-
3	Percentage of loss of earning capacity in relation to disability	50%	60%
4	Loss of income (Rs.7,020/- X 6)	Rs. 42,120/-	Rs. 42,120/-
5	Future Prospect @ 30% of Rs.7,020/-	Rs. 2,106	Rs. 2,106
6	Annual income (Rs.9,126/- X 12)	Rs. 1,09,512/-	Rs. 1,09,512/-
7	Multiplier	14	15
8	Loss of future income	Rs. 7,66,584/-	Rs. 9,85,608/-
9	Non-pecuniary loss	Rs.3,00,000/-	Rs.3,00,000/-
10	Total compensation	Rs. 11,81,930/-	Rs. 14,18,954/-



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11	Interest awarded	7.5% per annum	7.5% per annum
12	Enhanced compensation	Rs. 2,37,024/-	

25. The enhanced amount shall be deposited before the MACT within 4 weeks and be disbursed to the claimant within two weeks thereafter, in terms of the directions of the MACT along with interest.
26. Copy of the judgment be sent to the MACT for further directions in terms of the re-computation.
27. List before the MACT on 03rd March 2026.
28. Appeal stands disposed of with above directions. Pending applications, if any, are rendered infructuous.
29. Statutory deposit, if any, be refunded to appellant.
30. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 28, 2026/mk/bp