



2026:DHC:1893



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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 26th February 2026*+ **MAC.APP. 493/2014**

M/S NATIONAL INSURANCE CO LTD

.....Appellant

Through: Mr. Pankaj Seth & Mr. Yurvaraj
Sharma, Advs.

versus

ANIL KUMAR & ORS

.....Respondent

Through: Mr. Debashis Mukherjee, Mr. Parma
Nand and Mr. Anand Shankar,
Advocates for Respondent No. 1**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed challenging award dated 28th February 2014 passed by MACT, Saket Courts in MACT No.714/2011, whereby compensation of Rs.21,52,901/- was awarded to injured-claimant, *Mr. Anil Kumar*, who had suffered injuries in an accident on 20th March 2011 when an *Indigo Car* bearing No.DL-3C-BB-2867 (offending vehicle) being driven by respondent no.2, hit motorcycle of injured. The offending vehicle was insured with the appellant.

2. As per the disability certificate, claimant suffered 90% permanent disability with respect to his left lower limb.



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3. *Mr. Pankaj Seth*, counsel for Insurance Company, challenges the assessment of functional disability at 100%, contending that there was disability only with respect to left lower limb. He contends that even though claimant had claimed to be a TSR driver, there are other vocations in which he could have engaged himself. Therefore, 100% functional disability, amounting to complete loss of earning capacity, cannot be imputed in a case of this nature. In this regard, he adverts to *paragraph 15 and 19* of the MACT award, whereby the Tribunal has considered the principles laid down by the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343; however, according to *Mr. Seth*, the said principles have not been applied in the correct manner to the facts of the present case.

4. To this extent, this Court is inclined to agree with submissions of *Mr. Seth*, as 100% loss of earning capacity can be imputed only in cases where person is completely disabled or completely paralysed and is unable to earn anything at all. The present case is not a case of amputation, rather it is a case of disability caused due to fracture involving a femur, which has been operated with external fixtures/plating.

5. The Supreme Court in the case ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, 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.

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)

6. In **Raj Kumar v. Ajay Kumar** (*supra*), the Court summarised 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)

7. In the fact and circumstances of the present case and taking into account the principles laid down in ***Raj Kumar*** (*supra*), the Court is of the opinion that the *functional disability* ought to be considered as **75%**.

8. Aside from this, the Court has noted that *future prospects* have not been awarded in terms of principles of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors.*** (2017) 16 SCC 680. Since benchmark income adopted was the minimum wages applicable to skilled labour, i.e., Rs. 7,410/- per month and was *45 years of age*, *future prospects* at **30%** ought to be awarded.

9. Further, since the claimant had just turned *45 years* on the date accident, it would be appropriate that *multiplier* of **14** is adopted, as per tabulation in ***Smt. Sarla Verma & Ors v. Delhi Transport Corporation & Anr.*** (2009) 5 SCC 121.

10. Accordingly, the revised computation is as under:

Sr. No.	Heads	Awarded by the Tribunal	Awarded by this Court
1	Compensation for medical expenses	Rs. 5,46,941/-	Rs. 5,46,941/-
2	Compensation for pain & suffering	Rs. 1,00,000/-	Rs. 1,00,000/-
3	Compensation for special diet and conveyance	Rs. 50,000/-	Rs. 50,000/-
4	Compensation for attendant charges	Rs. 1,50,000/-	Rs. 1,50,000/-
5	Income of Injured (D) (less Income Tax)	Rs. 7,410/-	Rs. 7,410/-
6	Add Future Prospects (E)	-	30%



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7	Multiplier (F)	13	14
8	Functional Disability (G)	100%	75%
9	Loss of earning capacity including future due to disability [(Dx12) + E] x F= H)	Rs. 11,55,960/-	Rs. 12,13,758/-
10	Compensation for loss of amenities and enjoyment of life	Rs. 1,00,000/-	Rs. 1,00,000/-
11	Compensation for disfigurement	Rs. 50,000/-	Rs. 50,000/-
12	Total	Rs. 21,52,901/-	Rs. 22,10,699/-
13	Interest awarded	9% per annum	9% per annum
	Enhanced amount	Rs. 57,798/-	

11. *Vide* order dated 26th May 2014, this Court directed the Insurance Company to deposit the entire awarded amount with interest with the Registrar General of this Court, subject to which stay was granted. Further, the Registrar General of this Court was directed to release 60% of the awarded amount in favour of the respondent no. 1/claimant as per the terms and conditions fixed by the Tribunal. *Vide* order dated 23rd February 2023, this Court directed release of 20% of amount lying deposited to respondent no.1/claimant upon furnishing adequate security of the like amount to the satisfaction of the Registrar General of this Court. The same was modified on 28th August 2023, and the Court directed release of 20% of the total amount, i.e. principal + interest, which would come to Rs.3,90,493.32/-

12. Accordingly, the enhanced amount along with interest thereupon be deposited by the Insurance company within a period of 4 weeks and be released to the respondent no.1/claimant within a period of 2 weeks thereafter.

13. Accordingly, appeal stands disposed of.

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



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15. Statutory deposit (if any) shall be refunded to appellant.
16. Judgement be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 26, 2026/sm/bp