



2026:DHC:690



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

% *Reserved on : 13th January 2026*
Pronounced on : 29th January 2026
Uploaded on : 30th January 2026

+ **MAC.APP. 517/2018 & CM APPL. 22859/2018**

BHARTI AXA GENERAL INSURANCE CO LTD.....Appellant

Through: Mr. Navneet Kumar, Adv.

versus

RAJENDER @ BUNTYRespondent

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

+ **MAC.APP. 799/2019**

RAJENDER @ BUNTYAppellant

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

versus

BHARTI AXA GEN INSURANCE COMPANY LTD & ORS

.....Respondents

Through: Mr. Navneet Kumar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These appeals have been filed by insurance company and the claimant respectively. The Insurance company has filed the appeal under section 173 of the Motor Vehicle Act, 1988 (*'MV Act'*), seeking to set aside the



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impugned judgment and award dated 20th February 2018 passed by the *Motor Accidents Claims Tribunal* (“MACT”), Saket in MACT No. 3486/2016. Whereas the claimant has filed *cross-objections* to the same under Order XLI Rule 22 of the Code of Civil Procedure, 1908, seeking enhancement of the award.

2. The appeal filed by the insurance company is essentially on the ground that the Tribunal awarded *exorbitant* compensation under the heads of non-pecuniary damages, i.e. *loss of expectation of life* (Rs.3 Lacs), *pain and suffering* (Rs.3 Lacs), *loss of amenities of life* (Rs.3 Lacs), *disfiguration* (Rs.50,000/-) and *special diet and conveyance charges* (Rs.90,000/-).

3. On the other hand, the claimant has filed cross-objections seeking enhancement of the compensation awarded by the Tribunal.

The Incident

4. On 9th September 2015 at about 2.30 p.m., *Mr. Rajender alias Bunty* was returning to his house from the side of *Pallapul, Faridabad*, on the road parallel to *Agra Canal*, riding on motorcycle bearing registration number DL-3SCW-9636, which was driven by *Mr. Bunty*, with *Mr. Rajhans* sitting as the pillion rider.

5. When they reached Shyam Colony, Durga Builder, a *Nissan Micra Car* (hereinafter the ‘*offending vehicle*’), bearing registration No. DL-2F-0001, driven by *Mr. Vijinder* (driver), allegedly in a rash, negligent manner struck the motorcycle. As a result, *Mr. Rajender alias Bunty* fell



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down and sustained injuries.

6. An *FIR No. 480/2015* under Sections 279/337/338/304A of Indian Penal Code, registered at *PS Sarai Khwaja, Faridabad*.

7. Claim petitions were filed. *Sh. Bunty* (driver) and *Smt. Indu* (owner) filed their written statements, as also the insurance company (appellant herein). The insurance company pleaded that the driver of the offending vehicle did not possess a valid driving licence and, therefore, there was a breach of terms and conditions of the insurance policy. It was further pleaded that there was contributory negligence on part of the injured, since he was allegedly driving the motorcycle at high speed.

The Impugned Award

8. On issue of negligence, relying on the decision in *National Insurance Company Limited v. Pushpa Rana* 2009 ACJ 287, the MACT reached a conclusion that issuance of the chargesheet under Sections 279/304A of the Indian Penal Code, 1860, along with the recovery memo, and the mechanical inspection report of the offending vehicle, constituted sufficient proof that the driver was negligent, and the injuries were caused due to the rash and negligent driving of the driver of the offending vehicle.

Compensation awarded

9. Regarding compensation, placing reliance on *Ankur Kapoor v. United Insurance Company Limited* (2018) 1 SCC 136, the Tribunal on the basis of the disability certificate showing permanent physical disability



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to the extent of 41% in relation to the right lower limb, which was non-progressive and not likely to improve, awarded Rs.14,000/- towards *medical expenses*, Rs.3,00,000/- towards *pain and suffering*, Rs.3,00,000/- towards *loss of amenities and enjoyment of life*, and Rs.3,00,000/- towards *loss of expectation of life*.

10. *Mr. Rajender alias Bunty* was engaged in the work of an electrician and earning Rs.20,000/- per month at the time of the accident. However, since no documentary evidence was filed in support of the said income, monthly income was taken at the minimum wage of an *unskilled workman* in Delhi, which was Rs. 9,048/- per month. Considering that the injured had taken rest for about 6 months, the loss of income during treatment was computed at Rs.54,288/-.

11. *Functional disability* was estimated at 20.5%, half of the 41% physical disability. *Future prospects* were taken at 40% on the basis of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors.*** (2017) 16 SCC 680 and, therefore, the *loss of future income* was calculated at Rs.9,048/- plus 40% equal to Rs.12,668/- per month. Applying the functional disability, the *loss of future earnings* was computed at Rs.31,164/- *per annum*.

12. Since the injured was 26 years of age at the time of accident, the applicable multiplier as per ***Smt. Sarla Verma & Ors v. Delhi Transport Corporation & Anr.*** (2009) 5 SCC 121 was taken as 17, and *loss of future earnings* was calculated at Rs.5,29,788/-.

13. Since the MACT found that the injured was bedridden and had a 41%



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physical disability with respect to his right lower limb and had to engage an attendant to look after him, a sum of *Rs.90,000/-* was granted under *attendant charges, special diet and convenience charges* and a sum of *Rs.50,000/-* towards the *disfiguration*.

Analysis

14. *Mr. Navneet Kumar*, Advocate, presenting for the appellant/insurance company, restricted his submissions to only compensation granted under *non-pecuniary* heads. He contended that once the *functional disability* was assessed at half of the *physical disability*, calculation of *Rs.3 Lakhs* towards future income was on the higher end, *Rs.3 Lakhs* compensation for *pain and suffering, loss of amenities and enjoyment of life* and another *Rs. 3 Lakhs* towards *loss of expectation of life* towards non-pecuniary damages was exorbitant. There was no evidence produced by the claimant/injured that he would not be able to work in the future.

15. *Mr. Kumar*, Advocate, contended that reliance was wrongly placed by the MACT on *Ankur Kapoor (supra)*, since the facts and circumstances of this present case were different and therefore it was not applicable.

16. *Mr. S. N. Parashar*, counsel for respondent, pointed out from the record that claimant was an electrician who had to move from place to place and was required even to climb stairs. Therefore, the permanent disability to the extent of *41%* ought to have been computed at *41%* only, rather than reducing it to *20.5%*.



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17. He relied on the judgment in ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, to contend that the current profession of the claimant should be taken into consideration while calculating future prospects.

18. He further contended that the income of injured was taken from that of the *unskilled worker*; however, the profession of an electrician comes under *skilled workers*, though the same was not pleaded. The claimant had also stated that he was earning Rs.20,000/- per month.

19. The issues, which are left for the determination of this Court are: *firstly*, whether *non-pecuniary* damages under the heads of *loss of expectation of life, pain and suffering* and *loss of amenities of life* at Rs.3,00,000/- each respectively were exorbitant and need to be adjusted; *secondly*, whether the calculation of *functional disability* at 20.5%, half of 41% *permanent disability* in the context that the injured was an electrician, was a depressed estimation by the Tribunal; and *lastly*, that the minimum wages calculated of an *unskilled worker* ought to have been that of a *skilled worker*, considering the current vocation of the injured.

20. Mr. Rajender alias Bunt sustained fracture shaft of femur right, fractured tibial plateau bone right and abrasions on his body. He was moved to the Dev Medical Centre by the auto driver, then referred to a higher centre and then admitted in the emergency department of Jai Prakash Narayan Apex Trauma Centre, AIIMS. After 7 hours, he was referred to Safdarjung Hospital. He was operated on twice on his right leg. His right thigh was operated on with interlocking nails, and right *tibial plateau bone fracture*



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was operated on, and a POP slab was applied on his right leg. He was discharged on 24th September 2015, thereby having remained in hospital for about 15 days. He apparently continued to take treatment as an OPD patient. As PW-1, he stated in his evidence that he could not stand for a long time, run, play, sit in a squatting position, ascend stairs, swim, lift weights, drive and board vehicle and any strenuous physical activity which required some strength on his right leg.

21. The treatment card of *Jai Prakash Apex Trauma Centre* was exhibited as **Ex.PW-1/1**, discharge summary of *Safdarjung Hospital* exhibited as **Ex.PW-1/2**, original treatment papers and OPD cards exhibited as **Ex.PW-1/3** to **Ex.PW-1/11**. He stated that he was doing the work of an electrician and earning Rs.20,000/- per month, and he lost his earnings from the date of the accident.

22. In ***Raj Kumar*** (*supra*), there was a distinction drawn between physical disability, suffer, and the resultant functional disability that must be assessed, which impacts the earning capacity.

23. The Supreme Court in ***Raj Kumar*** (*supra*), in the following paragraphs, gave the procedure to be adopted by the Tribunal, which has to first decide about permanent disability, and then go through a 3-step procedure to ascertain the loss of the actual earning capacity:

“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:



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(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



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activities and functions so that he continues to earn or can continue to earn his livelihood.”

(emphasis added)

24. On this basis, as regards the injured/claimant is concerned, it can be assessed that the disablement was permanent, as per the medical record, of 41% of the right lower limb. As regards the assessment of *loss on actual earning capacity*, the Tribunal ought to have assessed the activities the claimant could carry on in spite of *permanent disability*, and what he could not be able to do as a result of the permanent disability, in context of his avocation, professional nature of work, as also his age.

25. Considering that the vocation of the claimant was that of an electrician, he would be expected to walk around and go to various sites to perform his job, as well as to climb ladders and stools in order to carry out his work. Except for standing in one spot with the support of crutches or some other aid, no other activity would be possible for him.

26. Also, considering that it was a permanent disability and that he was aged 26 years, these aspects ought to have been taken into account. However, it could be said that the claimant was not totally disabled from earning any kind of livelihood and could still carry out certain activities and functions, though with serious impediments. Therefore, at the third step, as provided in **Raj Kumar** (*supra*), it can be stated that he could carry on some other activities, or activities on a lesser scale, and still continue to earn his livelihood.



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27. Considering that there was about 41% *permanent disability* in the right lower limb, the impact on the said limb would have affected his activities. His *loss of earning capacity* would have been reduced by at least one-third, in the assessment of this Court. Therefore, the Court would consider the *functional disability* to be about 35%, and not 20.5% as had been assessed by the Tribunal.

28. On the other hand, as regards *non-pecuniary* damages, the Supreme Court in **Raj Kumar** (*supra*), has stated in *paragraph 6* as under:

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).



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In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

(emphasis added)

29. On this basis, considering that it was a case of permanent disability, as per the Supreme Court in **Raj Kumar** (*supra*), compensation could also be granted for loss of future earnings on account of *permanent disability* [per paragraph 6(ii)(b)], *future medical expenses* [per paragraph 6(iii)], *loss of amenities* [per paragraph 6(v)], and *loss of expectation of life* [per paragraph 6(vi)].

30. As regards the sum of Rs. 3 lakhs awarded towards *pain and suffering*, and the other two components, namely *loss of expectation of life* and *loss of amenities of life*, awarded at Rs. 3 lakhs each, are all sustained. The Court finds the said amounts to be appropriate, having regard to the circumstances of the claimant's avocation and the adjustments/arrangements he is required to make in his daily life on account of his disability, including the impact of such disablement on his ability to enjoy life to the fullest.

31. As regards *future earnings*, since the claimant has failed to produce any documentary proof of having passed matriculation, he is accordingly considered as an *unskilled worker* for the purpose of assessment of



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compensation under the head of loss of future earnings.

Conclusion

32. The appeal and cross-objections are allowed to the extent noted above, and compensation is recomputed as under:

Sr. No.	Heads of compensation	Awarded by the Tribunal	Awarded by this Court
Pecuniary loss			
1	Expenditure on treatment	Rs. 14,000	Rs. 14,000
2	Expenditure on conveyance	-	-
3	Expenditure on special diet	Rs. 90,000	Rs. 90,000
4	Cost of nursing / attendant	-	-
5	Percentage of loss of earning capacity in relation to disability	20.5%	35%
6	Loss of income (Rs.9,048/- X 6)	Rs. 54,288	Rs. 54,288
7	Future Prospect @ 40% Rs.9,048/-	Rs. 3,619.20	Rs. 3,619.20
8	Annual income (Rs.12,668/- X 12)	Rs.1,52,016	Rs.1,52,016
9	Multiplier	17	17
10	Loss of earning capacity	Rs. 5,29,788	Rs. 9,04,495.20
11	Any other loss which may require any special treatment or aid to the injured for the rest of his life	Already included in 8 and 14	Already included in 8 and 14
Non-pecuniary loss			
12	Compensation for mental and physical shock	Already included in 13 and 14	Already included in 13 and 14
13	Pain and suffering	Rs. 3,00,000	Rs. 3,00,000
14	Loss of amenities of life	Rs. 3,00,000	Rs. 3,00,000
15	Loss of amenities or loss of expectation of life span on account of disability	Rs. 3,00,000	Rs. 3,00,000
16	Disfiguration	Rs. 50,000	Rs. 50,000
17	Loss of marriage prospects	Nil	Nil
18	Loss of earning, inconvenience,	Already	Already included



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	hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	included in 13 and 14	in 13 and 14
19	Total compensation	Rs. 16,38,076	Rs. 20,12,783.20 rounded to Rs. 20,12,784/-
20	Interest awarded	9% per annum	9% per annum

33. Accordingly, the compensation awarded is enhanced from *Rs. 16,38,076/-* to *Rs. 20,12,784/-*.

34. In the above terms, these appeals are disposed of; pending applications, if any, are rendered infructuous.

35. Statutory deposit, if any, be refunded to the Insurance Company.

36. On the first date of hearing, this Court directed appellant/Insurance Company to deposit a sum of *Rs. 10,00,000/-* with the Registrar General of this Court. The balance amount along with interest accrued thereon be also deposited with the Registrar General of this Court within 4 weeks. 50% of the amount, so deposited, be released in favour of claimant/*Rajender @ Bunty* within 2 weeks thereafter. The balance 50% of the amount be sent back to MACT for further disbursement. The Registrar General of this Court shall ensure that the amounts are disbursed to the claimants after due verification and upon their furnishing necessary bank account particulars.

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

**ANISH DAYAL
(JUDGE)**

JANUARY 29, 2026/mk/bp