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

% *Date of decision: 24th February 2026*

\+ **MAC. APP. 905/2013**

THE ORIENTAL INSURANCE CO LTD .....Appellant

Through: Mr. JPN Shahi, Advocate.

versus

SH NARESH KUMAR & ORS .....Respondents

Through: Ms. Aayushi Priya, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

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ANISH DAYAL, J: (ORAL)

1. The present appeal has been filed challenging the award dated 06th August 2013 passed by Motor Accidents Claims Tribunal (‘***MACT***’) (South), Saket Court, New Delhi, in Suit No. 96/11, whereby the claim of injured/claimant was allowed and compensation of *Rs. 15,28,240/-* along with interest @ *7.5%* per annum was awarded.

2. The accident occurred on 10th November 2010 at about 7:30 AM, near *Ghitorni, New Delhi*. Injured was travelling on his motorcycle, when a dumper bearing registration no. HR-55E-7848 driven in a rash and negligent manner, while trying to overtake the motorcycle collided with it, resulting in grievous injuries to the claimant. The Disability Certificate certified the permanent physical

disability as *60%* with respect to the right lower limb and the functional disability was assessed by Tribunal at 40%.

3. *Mr. JPN Shahi*, counsel for Insurance Company, contends that the functional disability ought to have been taken at *30%* instead of at *40%* as determined by the MACT in *paragraph 15* of the impugned award.

4. A perusal of the award would show that the claimant suffered *60%* physical permanent disability of right lower limb, and his leg was amputated. He was in private employment and was earning *Rs. 12,000/-* per month. He was also undergoing a driving training course and was stated to be an excellent swimmer who intended to participate in swimming competitions.

5. It was contended that injured had been working as a Marketing Executive at resident-cum-office at *1236-A, Housing Board Colony, Ajanta Public School, Sector 31, Gurgaon, Haryana*. However, there was no appointment letter produced on record.

6. The discharge summary at Safdarjung Hospital shows that he has a crush injury to the right foot along with dislocation for which he was operated upon. Thereafter, he received treatment from Tirath Ram Shah Charitable Hospital, during which period, amputation was done as foot was gangrenous.

7. Later at the second round of admission to Tirath Ram Shah Charitable Hospital, there was a revised amputation and debridement. The Medical Board of the Pandit Madan Mohan Malaviya Hospital certified the disability at *60%* with respect to right lower limb.

8. The Court must refer to 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.*"
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> (emphasis added)

9. In ***Raj Kumar v. Ajay 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, occupation or job, age, education and other factors.*"

(emphasis added)

10. Considering the judgment of ***Raj Kumar v Ajay Kumar*** (*supra*), assessment of the MACT taking the functional disability at *40%* is not at all amiss, particularly considering the vocation of injured was Marketing Executive and the amputation would affect his mobility to a large extent. Amputation results in stark reduction of functionality which directly impacts earning capacity. Job opportunities get massively reduced since very few jobs do not require any mobility. An assessment of functional disability less than *50%* is quite appropriate and justified. Therefore, the impugned award does not warrant any interference.

11. *Vide* order dated 08th October 2013, this Court had directed stay of the impugned award subject to the deposit of the entire awarded amount along with up-to-date interest accrued with the Registrar General of this Court. Further, release of *80%* of the awarded amount is directed, as per the terms and conditions fixed by the Tribunal.

12. It is directed that the balance amount along with accrued interest be released in favour of claimant as per the Scheme of the impugned award.

13. Accordingly, appeal is dismissed in view of the observations above. Pending applications (if any) are rendered infructuous.

14. Statutory deposit, if any, be refunded to the appellant.

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

(ANISH DAYAL)
JUDGE

FEBRUARY 24, 2026/RK/zb