



2026:DHC:4316



\$~59 & 60

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

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*Date of decision: 15<sup>th</sup> May 2026*

+ **MAC.APP. 888/2014, CM APPL. 16384/2014, CM APPL. 26033/2015, CM APPL. 19518/2026**

THE NEW INDIA ASSURANCE CO LTD .....Appellant

Through: Mr. J.P.N. Shahi, Advocate

versus

SUNIL BAJAJ & ORS .....Respondents

Through: Mr. Anuj Jain, Advocate for  
Respondent no.1.

(60)

+ **MAC.APP. 538/2016**

SUNIL BAJAJ .....Appellant

Through: Mr. Anuj Jain, Advocate

versus

NEW INDIA ASSURANCE CO LTD & ORS .....Respondents

Through: Mr. J.P.N. Shahi, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J (ORAL)**

1. These cross-appeals have been filed challenging the impugned award dated 14<sup>th</sup> August 2014 passed by the Motor Accident Claims Tribunal,



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Central-District, Tis Hazari Courts, Delhi (*‘MACT/Tribunal’*), where the Tribunal awarded a compensation of Rs. 10,74,773/- along with interest @ 9% per annum to the injured-claimant (*Mr. Sunil Bajaj*).

2. **MAC.APP. 888/2014** has been filed by the Insurance Company seeking reduction of the compensation, whereas **MAC.APP. 538/2016** has been filed by the claimant seeking enhancement of compensation.

3. The accident occurred on 3<sup>rd</sup> January 2010 at about 08.15 p.m. near *New Delhi Railway Station Bus Stand, near Pahar Ganj*, when the claimant, *Mr. Sunil Bajaj*, along with his wife and 6-year-old son, were riding on the scooter, the offending vehicle being driven by respondent no.1 at high speed while overtaking an *auto* from the railway station side, struck the scooter, as a result of which claimant sustained various injuries.

4. The doctor certified 35% permanent disability in relation to the claimant’s right lower limb, pursuant to which a claim for compensation was filed, resulting in the impugned award.

5. On the basis of the submissions of *Mr. JPN Shahi*, counsel for the Insurance Company and *Mr. Anuj Jain*, counsel for the respondent, the following issues arise for determination:

- i. Considering that the injured was admittedly 29 years of age on the date of the accident, *future prospects*, as per principles enunciated in ***National Insurance Co. Ltd. v. Pranay Sethi*** (2017) 16 SCC 680, ought to be granted at 40%.
- ii. While the MACT considered notional income at Rs.11,000/- per month based on the evidence filed by the employer of the injured-claimant, the Insurance Company contends that it should be



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taken as minimum wages. For this, the testimony of **PW3**, *Office Assistant, Classic Diamond Trade Mark Pvt. Ltd.*, where the claimant was working, has to be taken into account, as well as the testimony of **PW1**, the claimant himself. The claimant, in his testimony, stated that he was working as an Office Assistant in *M/s. Classic Diamond Trade Mark Private Limited* and was engaged in field work. In this regard, Salary Certificate dated 25<sup>th</sup> April 2011, exhibited as **Ex. PW3/A**, has to be seen, which notes that the claimant was getting *Rs.11,000/-* per month as salary and had worked till the date of the accident. Considering the testimony of **PW3** and **PW1** and its corroboration with **Ex. PW3/A**, there is no reason why the assessment of the MACT should be displaced. Accordingly, **Rs.11,000/-** shall be taken as the notional income.

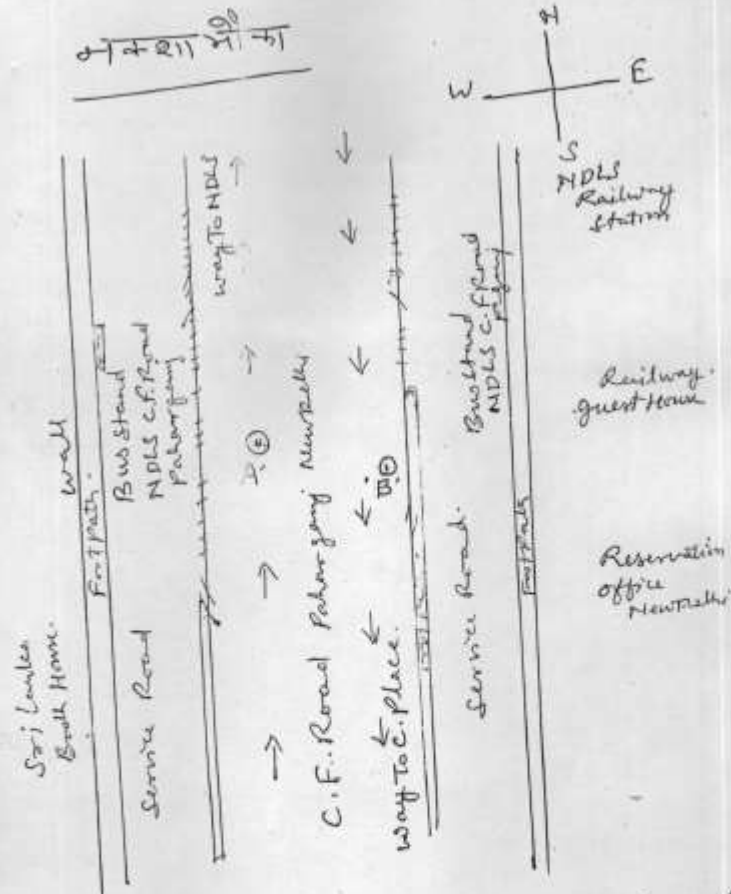
- iii. Issue of contributory negligence has been raised by the Insurance Company, on the grounds that it was a head-on collision and that the claimant was negligent in driving his vehicle on the central part of the road, which resulted in the collision. However, in this regard, the testimony of the injured claimant in cross-examination is relevant, wherein he stated that he was returning from his in-laws' house with his wife and 6-year-old child and was not carrying any luggage except a small bag, and that he was driving at a normal speed despite heavy traffic on the road. The site plan, which forms part of the Trial Court Record, has been perused by this Court and is extracted as under:



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Case File No 3/10 dt. 4-01-10 U/S 279/337 IPC  
P. Paharganj Delhi.



नोट:- मनशा मौका में जो लोक उल्टा दिशा में दशाभिगमी  
है उसे C.F. Road नहीं है। जो रस्ती लगेको में  
तब Service Road है। मनशा मौका में Eye witness  
Smt. लक्ष्मी जो Sumit Kumar Bajaj की निशान देवी पर  
लगेको में है जो मनशा मौका में mark 'A' उल्टा दिशा में  
दशाभिगमी गंगा है जहाँ पर चालक ने S/C चालक की निशान देवी पर  
व उसकी पानी व लक्ष्मी के हाथ Accident निशान है। जो है मो. B.  
उल्टा दिशा में दशाभिगमी गंगा है जहाँ पर Accident हुआ। Smt. Laxmi  
Etarno जाति निशान।

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dt. 4/01/10  
P. Paharganj  
Delhi

iv. It is apparent that since the collision occurred at point 'A', the

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claimant was on the right side of the fairly broad road, and there was no question of any contributory negligence on their part. Moreover, the issue had not been specifically taken up in the written statement by the Insurance Company before the MACT and, therefore, was not possibly dealt with by the MACT in the impugned award.

- v. The issue of functional disability has to be considered, which has been taken at 17.5%, while permanent disability has been certified at 35%. *Mr. Jain* contends that it is quite inadequate, considering that the claimant was engaged in fieldwork at that time and would be highly restricted in his vocation. Applying the principles of ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, it would have to be examined whether the fractures resulting in 35% disability in the right lower limb would render the claimant incapable of pursuing any other vocation, even if field work was no longer possible. Relevant paragraphs of ***Raj Kumar*** (*supra*), in this respect, 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



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*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)

- vi. However, there is no doubt that field work, for which he was employed as an Office Assistant, would no longer be available to him, considering that it required extensive mobility. It would, therefore, be appropriate if the functional disability is considered at 30%, considering that his vocation, as he was employed in, could have been lost to him, and he would thereafter have to struggle for new job.

6. Accordingly, compensation is re-computed as under:

| Sr. No.               | Heads                                                  | Awarded by the Tribunal | Awarded by this Court         |
|-----------------------|--------------------------------------------------------|-------------------------|-------------------------------|
| <b>PECUNIARY LOSS</b> |                                                        |                         |                               |
| 1.                    | Expenditure on Medical Bills and medical treatment (A) | Rs. 33,723/-            | Rs. 33,723/-                  |
| 2.                    | Expenditure on conveyance (B)                          | Rs. 10,000/-            | Rs. 10,000/-                  |
| 3.                    | Expenditure on special diet (C)                        | Rs. 10,000/-            | Rs. 10,000/-                  |
| 4.                    | Income of injured (D)                                  | Rs. 11,000/-            | Rs. 11,000/-                  |
| 5.                    | Add: Future prospects (E)                              | 50% of 11,000/- = 5,500 | 40% of Rs. 11,000/- = 4,400/- |
| 6.                    | Multiplier (F)                                         | 17                      | 17                            |
| 7.                    | Functional disability (G)                              | 17.5%                   | 30%                           |
| 8.                    | Loss of income/Wages (H)<br>[Rs. 11,000 x 12]          | Rs.1,32,000/-           | Rs.1,32,000/-                 |



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|                           |                                                                  |                |                 |
|---------------------------|------------------------------------------------------------------|----------------|-----------------|
| 9.                        | Loss of future income/future earnings [(D+E) x 12 x F x G] = (I) | Rs.5,89,050/-  | Rs. 9,42,480/-  |
| <b>NON-PECUNIARY LOSS</b> |                                                                  |                |                 |
| 10                        | Pain and suffering (J)                                           | Rs. 1,00,000/- | Rs. 1,00,000/-  |
| 11                        | Loss of amenities of life (K)                                    | Rs. 1,00,000/- | Rs. 1,00,000/-  |
| 12                        | Disfigurement (L)                                                | Rs. 1,00,000/- | Rs. 1,00,000/-  |
| 13                        | Total compensation (A + B + C + D + H + I + J + K + L) = M       | Rs.10,74,773/- | Rs. 14,28,203/- |
| 14                        | Interest awarded                                                 | 9% per annum   | 9% per annum    |

7. Accordingly, the compensation is enhanced by Rs. 3,53,430/-.

8. By order dated 29<sup>th</sup> September 2014, this Court had directed the Insurance Company to deposit the entire compensation amount along with accrued interest before the Registrar General of this Court and further directed release of 80% of the amount to the claimant in accordance with the directions in the award through UCO Bank, Delhi High Court Branch.

9. Since, the appeal is being disposed of, the balance compensation deposited with the Registrar General of this Court be also released in favour of the claimant in accordance with the directions of the MACT in the award.

10. Further, Insurance Company will deposit the enhanced compensation, along with accrued interest, before the Registrar General within a period of four weeks, and the enhanced compensation be released to the claimants, as a lump sum within two weeks thereafter.

11. Statutory deposit, if any, be refunded to Insurance Company only upon deposit of the enhanced compensation amount, along with the accrued interest.

12. Appeals stand disposed of in above terms. Pending applications, if any,



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are rendered infructuous.

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

**(ANISH DAYAL)**  
**JUDGE**

**May 15, 2026/ak/bp**

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